C.C.D. SARA

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder
https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print),
ISSN-L 2810-4188
No. 1 (2025)

INTERNATIONAL JOURNAL OF LEGAL AND SOCIAL ORDER

„PUBLIC SECURITY AND THE NEED FOR HIGH SOCIAL CAPITAL”

Editor-in-chief

IANCU Elena-Ana, SARA Law Research Center/"Aurel Vlaicu" University Arad, Romania

Executive Editors

IANCU Nicolaie, SARA Law Research Center, Romania

VIDREAN Dan, SARA Law Research Center/"Vasile Goldiș" University Arad, Faculty of Economic Sciences, Informatics and Engineering, Romania

Associate Editors

ALCIDES FRANCISCO Antúnez Sánchez, Granma University, Faculty of Economic and Social Sciences, Department-Careers in Law, Cuba

ÁRVA Zsuzsanna, University of Debrecen, Faculty of Law, Hungary

APAN Rodica-Diana, "Dimitrie Cantemir" Christian University Bucharest, Faculty of Law Cluj-Napoca, Romania

BARTA Attila, University of Debrecen, Faculty of Law, Hungary

BEAUDET-LABRECQUE Olivier, Haute Ecole de Gestion Arc, Institute of Economic Crime Investigation, Neuchatel, Swintzerland

BIRENBAUM Alberto Chartzman, Tres de Febrero National University (UNTREF), Argentina

BOGHIRNEA Iulia, National University of Science and Technology POLITEHNICA Bucharest, Pitesti University Center, Faculty of Economics and Law, Romania

CAMPOS DÍEZ Maria Soledad, University of Castilla la Mancha (UCLM), Department of Legal Sciences and Public Law, Spain

CARP Radu, University of Bucharest, Faculty of Political Sciences, Romania

CARBONE Vincenzo, UNINT University of International Studies in Rome, Italy

CÎRMACIU Diana, University of Oradea, Faculty of Law, Romania

CLIZA Marta-Claudia, "Nicolae Titulescu" University of Bucharest, Faculty of Law, Romania

CSATLÓS Erzsébet, University of Szeged, Faculty of Law and Political Sciences/Institute of Public Law, Hungary

CSŰRÖS Gabriella, University of Debrecen, Faculty of Law, Hungary

DIEU François, University of Toulouse Capitole, France

DOMÍNGUEZ PEREZ Eva María, National Distance Learning University: Madrid, Spain

DURDEVIC Zlata, Faculty of Law, University of Zagreb, Republic of Croatia

DUVAC Constantin, Academy of Economic Studies in Bucharest, Faculty of Law, Romania

ENGIN Enver Murat, Galatasaray University, Faculty of Law, Turkey

FERNANDES Paula Odete, UNIAG (Research Unit in Applied Management) Instituto Politécnico de Braganca, Portugal
KANEVA Svetla Marinova, University of National and World Economy, Faculty of Law, Sofia, Bulgaria
JANCE Ilia Kristinka, Faculty of Law, University of Tirana, Albania
GIRELLI Giovanni, Università degli Studi Roma Tre, Department of Law, Italy
GONZÁLEZ RABANAL Miryam, National Distance Learning University (UNED), Madrid, Faculty of Law, Department of Applied Economics and Public Management, Spain
HANUSZ Antoni, Maria Curie-Skłodowska University, Lublin, Poland
KALESNYKAS Raimundas, Institute of Law and Technology, Kazimieras Simonavicius University, Vilnius, Lithuania
LORINCZ Anca-Lelia, University of "Dunărea de Jos" Galați, Faculty of Law, Romania
LOPIŽIĆ Iva, University of Zagreb, Faculty of Law, Croatia
MADAI Sándor, University of Debrecen, Faculty of Law, Hungary
MATEFI Roxana, Transylvania University of Brașov, Faculty of Law, Romania
MALOKU Ahmet, University for Business and Technology, Prishtine, Faculty of Law
MIRAUT-MARTIN Laura, University of Las Palmas de Gran Canaria, Faculty of Juridical Sciences, Spain
MOISE Adrian-Cristian, "Spiru-Haret" University, Faculty of Law, Economic and Administrative Sciences, Craiova, Romania
MORARU Gratiela-Florentina, University of Castilla-La Mancha, Faculty of Labor Relations and Human Resources, Spain
PAVEL Tal, Founder and Director - Institute for Cyber Policy Studies, Israel
PORUMBESCU Gregory, School of Public Affairs and Administration, Rutgers University – Newark, California, United States
RAO Badrinath, Kettering University, Flint, MI, USA
RODRIQUES José Noronha, Research Center in Law and Society- CEDIS (New School of Law), University of the Azores, School of Business and Economics, Portugal
RUIZ BUENROSTRO Angel Edoardo, University of Guadalajara, Mexico
SAN SEGUNDO MANUEL Teresa, National University of Distance Education, UNED, Faculty of Law, Spain
SPĂTARU-NEGURĂ Laura Cristiana, "Nicolae Titulescu" University, Faculty of Law, Romania
SILVA Nascimento Luciano, Universidade Estadual da Paraíba, Legal Research Center, Brazil

STOYANOV Dimitar, Sofia University “Sf. Kliment Ohridski”, Faculty of Law, Bulgaria
SZCZĘŚNIAK Paweł, Maria Curie-Skłodowska University, Lublin, Poland
TEIXEIRA Anderson Vichinkeski, Universidade do Vale do Rio dos Sinos, Sao Leopoldo, Graduate Program in Law, Brazil
TIRI Edvana, Faculty of Political and Juridical Sciences “Aleksandër Moisiu”, University Durrës, Albania
TUȘA Enache, “Ovidius” University of Constanța, Romania
UNGUR BREHOI Carmen, University of Oradea, Faculty of History, International Relations, Political Science and Communication Sciences, Romania
VARADI-CSEMA Erika, University of Miskolc, Faculty of Law, Hungary
VIDAL MARÍN Tomás, University of Castilla-La Mancha: Ciudad Real, Castilla-La Mancha/Department of Legal Sciences and Public Law, Spain
VUCONG Giao, VNU Hanoi, Faculty of Law, Department of Constitutional and Administrative Law, National University of Vietnam Hanoi
YUAN-CHUN LAN, Chinese Culture University, Department of Law, Faculty of Law, Taiwan

Co-editors for the issue 1/2025, IJLSO:
IANCU Elena-Ana, Aurel Vlaicu University of Arad/ SARA Law Research Center, Romania

D'ARIENZO Maria, University of Naples “Federico II”, Faculty of Law, Italy

BELEA Simion, Technical University of Cluj- Napoca, Center of the University of Cluj-Napoca, Romania

CÎRMACIU Diana, University of Oradea, Faculty of Law, Romania

CONCENT

The use of artificial intelligence in teaching english: perspectives and challenges
Cristina Laura ABRUDAN 1

New dimensions of legal responsibility and liability in the era of new technologies
Elena ANGHEL ……..…… 17

Aspects regarding over-indebtedness prevention for vulnerable consumers
Rodica Diana APAN..... 31

Referendum as an instrument of democracy in a state governed by the rule of law: an analisys through the lens of the Romanian constitutional court's case-law
Valentina BĂRBĂȚEANU 46

Considerations regarding the constitutional protection of several social rights
Simion BELEA 57

Administrative and tax principles: a comparative analysis from a Hungarian perspective
Miklós Kornél BOBONKA 70

Judicial factor's participation in preliminary proceedings – a comparative perspective
Tomasz BOJANOWSKI 85

News on criminal liability for offenses related to drugs and products susceptible to having psychoactive effects, other than those provided for by the regulations in force
Bogdan BUNECI 101

International judicial cooperation in the application of law no. 143/2000 on the prevention and combating of illicit drug trafficking and consumption
Petre BUNECI 113

The evolution of facial identification in the judicial system
Claudiu Dănuț CIOCHINĂ 126

Reflections on the history of Romanian financial law
Diana CÎRMACIU ……..... 136

Legislative changes ragarding trafficking and exploitation of vulnerable persons – evolution and current justifications
Eduard CONSTANTIN …….……..… 142

Good governance through official development assistance: Romania's legal instruments for institutional consolidation in the Republic of Moldova
Andrei COPĂCEANU ……... 154

Public security and cooperation between state and religious denominations
Maria D'ARIENZO 181

Geopolitics of international relations from the perspective of the conflict in Ukraine
Marian DINCĂ 190

Criminal law challenges caused by migration for work
Elena-Ana IANCU 205

The measure of law as an expression of the legal meaning embedded in customary law
Svetla Marinova KANEVA 223

Understanding the instruments of power effects on the military instrument of power in multi-domain operations: a case study for human intelligence from a training perspective
Alexandru KIS, Andrei MARZA 231

International humanitarian law in the context of current conflicts. the logistics in special protection areas
Atanasie LĂZĂU-PĂCURARU 249

Review of some criminal judgments that do not resolve the substance of the case - procedural mean to ensure the legal order
Anca-Lelia LORINCZ 260

The new social reality: artificial intelligence and the necessity of aligning national legislation with societal evolution
Robert Nicolae LUNGEANU 272

High-risk ai systems in the light of the regulation (eu) 2024/1689 of the european parliament and of the council from the perspective of the potential harmful impact on personality rights
Roxana MATEFI 283

Legal instruments and policies for consumer rights and safety in Albania: an analysis
Iris MANASTIRLIU 292

From paper to digital: electronic signature and record in the context of Romanian legal regulations
Florina Florentina MOROZAN 296

Means of protecting victims of crime at european level
Mihaela PALADE-ROPOTAN 310

The offence - constitutional challenges or controversies
Mihaela Elvira PĂTRĂUȘ 325

Preliminary session judge important actor and guarantee of due judicial process after completion of preliminary investigations phase
Arben PRIFTI 342

Committee of regions of the european union impacting local governance performance through regional initiatives
Olta QEJVANI, Linert LIRËZA 353

The effects of ai on children's rights
Albert-Camil RATH-BOȘCA 366

The effects of british colonialism on the irish law of succession
Laura-Dumitrana RATH-BOȘCA 377

Ticket scalping – ai gone too far? in search of an optimal legal solution
Dimitar STOYANOV 391

Digitalisation – part of the public administration reform
Elena Emilia ȘTEFAN 407

Protecting the digital realm: a case study of Romania's cyber sovereignty
Pavel TAL 418

Engagement between tradition and modernity
Mihaela Ioana TEACA 431

Cyberbullying. The issue of security in the online environment in the age of digitization
Carmina-Elena TOLBARU 437

Like, share, (in) security in the age of influencers
Carmen UNGUR-BREHOI 455

The principle of equality according to customary law
Majlinda VELÇANI 469

The ecocide between the ethical ideal and the legal reality
Nasty-Marian VLĂDOIU, Amandalin MARIA 479

The impact of technology on strengthening basic human rights: reassessing property rights enforcement in Albania
Kejsi ZIU 487

The decision of the romanian constitutional court (rcc) no. 412 of 24 september 2025 – (in)compatibility with the principle of independence of regulatory authorities provided for by european legislation
Ionela-Alina ZORZOANĂ 493

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 1-16

THE USE OF ARTIFICIAL INTELLIGENCE IN TEACHING ENGLISH: PERSPECTIVES AND CHALLENGES

C.L. ABRUDAN

Received 10.11.2025; accepted 02.12.2025
First online publication: 16.12.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.284

Cristina Laura ABRUDAN
Department of International Business, Faculty of Economic Sciences, University of Oradea, Oradea, Romania
E-mail: cabrudan2003@yahoo.com
ORCID ID: https://orcid.org/0000-0002-5292-7495

Abstract

Artificial Intelligence has become one of the most influential technologies of the 21st century significantly changing our lives, in different fields, such as business, education, and healthcare. The link between the technological development and education is obvious. The appearance of new technological changes has brought along also new challenges leading to a transformation of the teaching and learning process. Probably the most significant from all is the change from teacher-based education to student-centred education. New trends have appeared in the teaching and learning process of English due to the appearance of the Artificial Intelligence-based tools.

The present study approaches the perspectives and challenges of teaching and learning English, focusing more on the students' opinions regarding the introduction of AI-based tools in the teaching process. It is about the introduction of new technology as an everyday tool in the educational process. Do students consider AI-based tools effective in the learning process? Do they consider it useful? The study begins with a systematic literature review. Semi-structures interviews in the qualitative phase represent the instrument for data collection.

The respondents have been 40 students, at different profiles, International Business in English – 10students; Accounting – 5 students; Marketing – 5 students; Tourism – 5 students; Finance-Banks – 10 students; Management – 5 students, at the Faculty of Economic Sciences, University of Oradea, being in the first and second year of bachelor studies. The results show that the intelligent content enhances the learning experience of the students, fostering interactivity and having a student-centred approach. The students perceive the integration of

AI-based tools in the learning process have resulted in better outcomes due to its interactive and engaging character. The personalized experiences have also contributed to better results in the productive skills (speaking and writing) but also receptive skills (reading and listening).

The significant integration of technology in what is known as blended learning has resulted in a boost in learning Business English, being more interactive, engaging and effective; it also contributes to the creation of personalized experiences that lead to an improved tailor-content based learning experience. The students feel that their skills (productive skills: speaking and writing and the receptive skills: reading and listening) have improved after a period of using technology- based tools in the teaching and learning process. The significant benefits come along with undeniable limitations.

The challenges include: infrastructure requirements, aspects regarding inclusion and equity, the preparation and the readiness of the teacher, ethical aspects, data privacy and unequal accessibility. In the realm of education, the maximizing of the benefits of AI cannot be done without addressing these limitations. This research study can be continued with the teachers' approach to the subject, the challenges and perspectives of teaching in the AI era.

Key words: *Artificial Intelligence; educational technology; teaching and learning methods; blended learning.*

INTRODUCTION

In today's fast paced world, the connection between technology and all fields of our lives is more than obvious. The future of English language teaching and learning is closely connected to the developments of technology and computing capacities of the intelligent machines. The educational landscape is rapidly evolving. Digital technology has been used in language teaching for many years, at different levels, in different forms. Although, it has undergone important transformations from the traditional methods to the present ones, teaching English requires a balanced approach that integrates both conventional and innovative methods.

AI has shown a great potential in the field of teaching and learning English, enhancing the learning process and improving the outcomes of it. Before exploring the current scene, it is important to have a look at the interesting and vivid journey of English Language Teaching. Traditional teaching and learning methods, such as textbook-based learning, grammar drills and lectures have long been regarded as the foundation of student-centred learning. The historical evolution goes back to the traditional methods like the grammar-translation approach, memorization and translation of texts, failing to motivate students.

The traditional methods have presented a great deal of problems and shortcomings, being considered monotonous and behind the times of the 4.0. and

5.0. era. However, as time passed, other methods that involved listening, speaking and other communicative methods started to gain prominence, emphasizing the oral proficiency, pattern practice and meaningful communication.

The shift from grammar rules approach to a more communicative and learner-centred approach has been done. Along with the advancement of technology, innovative approaches such as interactive learning, e-learning, case-based methods have gained more and more attention and praise.

The contemporary English Language Teaching landscape has different prominent trends, offering interactive platforms, digital resources, personalized learning experiences – all these having in common the communicative approach, focusing on fluency, real-world tasks and cultural competence.

The use of Artificial Intelligence has an undeniable impact on our lives. It has appeared 50 years ago and since then it has been developing continuously. It has become a buzzword in a world that relies more and more on information technology. It enables machines to perform tasks that require perception, reason, interaction and learning. Moreover, a huge change has been brought about by the appearance of recent advancements in generative AI, especially that of Chat GPT that has definitely underlined the transformative potential in the field of various industries. It has entered many industries, including the field of education with smart content that integrate multimedia, interactive tools, AI-related devices, information technologies, all these leading to the diversity of learning ways that are more and more appealing to students.

I. LITERATURE REVIEW

The much-debated topic of the use of Artificial Intelligence in education has become a major focus of the recent academic research. While the educational institutions search for innovative ways to increase learning efficiency, personalization and accessibility, AI-based tools are more and more developed to support adaptive learning platforms, automated grading and predictive academic performance modelling.

However, in order to have a clear image of where we are today, regarding the process of teaching and learning, it is important to have a look at its historical path, the journey that has been undertaken. English Language Teaching has evolved over time, the historical development of it providing us a varied context for understanding how teaching Business English has developed.

The rich historical contexts having rich teaching contexts, have provided valuable experiences. Thus, in the late 19th century and early 20th century, the prominent teaching method was that of pure memorization of vocabulary, translation methods were used a lot, emphasizing the need for knowing grammar rules and putting them into practice.

The translation method was used for classical languages, developing writing skills and reading skills, being criticised for lacking the development of communication skills. It was a method that eliminated the need of speaking; thus,

the students were extremely teacher-dependent as the teacher was the only one who was talking during the activities. Thus, the teacher-centred method was used. The beginning of the 20th century was marked by the development of the Direct Method, drawing attention to the need to develop oral communication and avoidance of translation.

Natural language use, conversational fluency and listening comprehension were the main three goals of introducing this teaching method. Keo and Lan (2024, p.3) stated that *'Through Direct Method approach may not sufficiently handle structured written assignments and reading exercises, it may impede the development of comprehensive language skills by ignoring reading and writing abilities.'*

The mid-20th century brought about a focus on repetition, audio-visual materials and pattern drills, being dominated by the Audio-Lingual method. Mart A. (2013, p. 1) states that *'Language items are presented to students in spoken form without reference to the mother tongue so that they can learn language skills effectively. The goal of the Audio-Lingual method is, via teaching vocabulary and grammatical patterns through dialogues, to enable students to respond quickly and accurately in spoken language.'* The approach was meant to increase automaticity, accuracy in language use and mastery of language structures, however, it was criticised for focusing only on rote learning, lack of meaningful communication and a high probability of monotony in class.

After this period, dominated by the above-mentioned methods, English Language Teaching started to become 'more active', meaning that it started approaching language teaching by using real-life tasks. Interactive activities and meaningful communication. The era of Communicative Approach has started. As Savignon (2002, p.5) states *'Central to Communicative Language Teaching is the understanding of language learning as both an educational and a political issue. Language teaching is inextricably linked with language policy. Viewed from a multicultural intranational as well as international perspective, diverse set of language-learning goals but a diverse set of teaching strategies.'* The Communicative Approach has as a main purpose the development of the pragmatic skills, cultural awareness and communicative competence. However, this approach has its limitations, among which we mention: adapting to learner backgrounds, balancing accuracy and fluency and effective technology integration.

The 1950s marked the appearance of AI, when scholars in the United State began, as Cordeschi noticed (2007) *'the creation of machines that could carry out complex tasks, such as playing chess or deciding what to buy on a shopping tour'.* Thus, the second half of the 20th century has been marked by a shift from the industrial and technical field into all spheres of life including education. The late 20th century English Language Teaching was marked by Task-Based Learning strategy, which is a method used even nowadays, the main characteristics of it

being real-life language use, learning through tasks and activities based on problem solving. Ha Loc and Tuyen (2002, p.3) observe that *'unlike the traditional methods of assessment which focus on paper-based tests, the task-based approach is used to evaluate learners' competence and ability to solve different kinds of tasks. In addition, the assessment of learning tasks is not only the reenactment of actual activities through lectures, but also the assessment of learners' reflective capacity in each problem.'* The intention of this method was to promote independent learning, individual language acquisition and critical thinking skills. Hence, the teachers using this method had to face challenges such as the difficulty in designing tasks, the assessment of the task performance and the authenticity of the tasks.

The beginning of the 21st century faced the introduction of technology in English Language Teaching, by incorporating in the language courses digital tools, online platforms, multimedia resources and adaptive learning systems. As Rintaningrum (2023, p.2) states, *'The advancement of technological tools causes a shift in some language learning activities. When dependency on textbook is not enough to address the advancement of modern education.'* The teaching/learning strategy of the 21st century is student based, students being conditioned in an environment where communication, collaboration, creativity, critical thinking as well as problem-solving are key components. Marysia (2023, p.7) claims that: '*The capacity for change adaptation, initiative and self-direction, social and intercultural competence, productivity and accountability, and leadership and responsibility are other traits that can be cultivated through scientific learning'*.

The following areas are essential in this respect:

- effectiveness of communication: active listening having as an outcome the comprehended meaning; media and technology use.
- communication and collaboration: in order to reach creative pursuits, the development of creative thinking entails the following steps: applying development approaches of broad concepts, new idea production and analysing own ideas.
- information, technology and communication literacy: the use of technology as a tool for analysing, organizing and evaluating information; understanding the ethical and legal issues regarding the information technology.

The historical developments mentioned above show us the evolution of the English language teaching methodologies, from the traditional approaches being based on grammar and translation, to a more communicative approach, being based on communication, collaboration, task-based strategy and technology-integrated practices. Current trends in teaching/learning Business English focus on a more dynamic shift towards students, innovation, technology integration and cultural competence, being learner-centred. As Kiwan and Rod (2012, p.3) notice *'In the era of fast technology and social networking, one can transact ideas and information not only through face-to-face interaction but also through technology,*

which allows for the instant formation and dismantling of (hyper) real communities based on temporary desire and politics.'

The language learning experiences are enhanced by technology integration, by using digital tools, online platforms, and multimedia resources. Many researchers in the field have concluded that the implementation of new technology, with VR headsets and the other accessories, has led to a close-to-life experience in the whole process of language learning. Interactive language learning experiences, exercises through games and personalised feedback are just a few results of new technology use in Business English teaching. Compared to printed books, technology-based materials have the advantage of dynamic functions and various modalities to support students' meaning-making. Being tailored to the individual learning needs, preferences and progress levels, these materials go beyond the traditional model, which is no longer accepted by the students. The main focus is to develop communicative competence, real-world language skills and interaction which makes sense. The practice of the language in authentic contexts is reached by using simulations, dialogues and role-play activities. As Kholstinina et al (2021) state, *'It has shown that all these methods and techniques promote students' learning and academic achievement, increase students' retention, enhance students' satisfaction with their learning experience, help students develop skills in oral communication, develop students' social skills, promote student self-esteem, help to promote positive intercultural relations, and the problem of using effective methods of teaching English is extremely important.'*

Today's world is a digital world with its emerging technologies among which the latest achievement, that of the Artificial Intelligence and big data processing have a strong impact on the education processes, more exactly on the strategies adopted for learning/teaching foreign languages. The appearance of the Artificial Intelligence and the development of it, with virtual reality, augmented reality and natural language processes are revolutionising language learning experiences. Bringing new ideas and new opportunities to all aspects of the teaching and learning process, it has revolutionised not only the students above mentioned traditional methods but also the teacher's role in the teaching process. We are facing a complex and promising tool in the field of language acquisition. On the other hand, teachers face an unprecedented challenge in integrating technology in their class in order to satisfy the learning needs of the young generation. Virtual reality and chatbots are the tools that need to be used by teachers in order to keep up with the digitally literate students and keep a high level of involvement in their classes. Technology comes along with a wide range of benefits and these benefits must be taken into consideration when thinking of strategies in teaching Business English.

II. RESEARCH METHODOLOGY

For this study, the selected approach is the qualitative type of study. Creswell J.W. (2024) in his book entitle *Qualitative inquiry and research design: Choosing among five approaches,* argues that *'the qualitative research is a type of research that explores and understands the meaning individuals or groups ascribe to social or human problems'*. This type of research typically involves in-depth interviews, focus groups and field of observation. The method used in this type of research includes structured, interviews, focus groups, and participant observation. They can lead to hypothesis and can help the researcher to continue the quantitative research at another level. It can be a stimulating and rewarding experience both for the researcher and for the participant.

II.1. Sample of study

This study has been conducted at the Faculty of Economic Sciences, University of Oradea, the sample being 40 students from the first year of our faculty (22 females and 18 males), all specializations of the faculty, meaning International Business in English, Finance and Banks, Marketing, Management, Accounting. The students' level in English ranges from upper-intermediate to advanced. The technique used in choosing the participant was the purposive sampling technique with non-probability sampling approach. Purposive sampling is a non-randomized sampling technique that selects sampling units (persons, cases or events) based on the criteria that would suit the objectives of the study. It is also called judgemental sampling as it relies on the researcher's judgement when selecting the samples that can provide the best information in order to achieve the study's objectives. Non-probability sampling is a technique by which not all the elements to be selected for the study are provided equal opportunities.

II.2. Research informants

The study's informants have been chosen with a view to a clear image of the Artificial Intelligence's impact on learning foreign languages, having clear reference to English, we have chosen key informants that could provide relevant information, being chosen following the inclusion criteria: 1. Economics students who have English selection exam scores above 80 points; 2. Economics students who have taken Introduction to Business English Course during the first semester.

II.3. Research Instruments

The instrument of the study is a semi-structured interview, containing five main topics, each being formed of three questions, regarding the students' challenges and perspective about using Artificial Intelligence based platforms and applications in learning foreign languages, more exactly English.

II.4. Data Collection and Analysis

All interviews have been anonymous and written. They were conducted in English. The interviews lasted between 10 and 15 minutes, each student being asked to describe their personal experience regarding the use of Artificial

Intelligence apps and platforms in developing their Business English knowledge. The first-year students at the University of Oradea, Faculty of Economic Sciences, the study programs of International Business, Finance-Banks, Accounting, Management, Marketing, and Economy of Commerce, Tourism and Services have been the respondents to the five questions in the questionnaire. The total number of respondents was 40 students and the representation of each study program is seen in Table 1.

Table 1 (showing the characteristics of all the participants in the study)

	Characteristics
Age	18-21 years old
Female/Male	22 Female, 18 Male
Educational Status	College students
School	University of Oradea, Faculty of Economic Sciences
Specialization	International Business in English – 10students; Accounting – 5 students; Marketing – 5 students; Tourism – 5 students; Finance-Banks – 10 students; Management – 5 students.

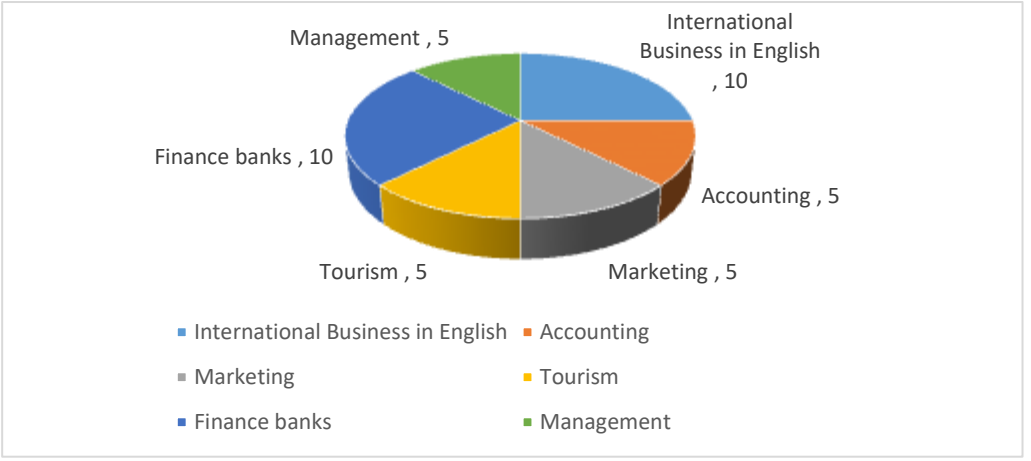


Figure 1: Students' specialisation
Source: own design

The study explores the following three main topics:

1. Motivation to try AI-based tools for learning English;
2. Perceptions and attitudes;
3. Usage and application;
4. Effectiveness and learning impact;
5. Challenges and concerns.

Research topic 1

In order to find out the attitude of students towards using AI-based technology in learning Business English, we asked questions regarding the students' motivation in using AI-based tools in learning English. The rate of frequency shows us the students' baseline and their level of familiarity with using AI-based tools in learning English.

QUESTION 1 regarding students' attitude towards AI

Are AI-based tools needed for learning English?		
Specialisation	**YES**	**NO**
International Business in English	7	3
Accounting	4	1
Marketing	3	2
Tourism	4	1
Finance-Banks	5	5
Management	4	1

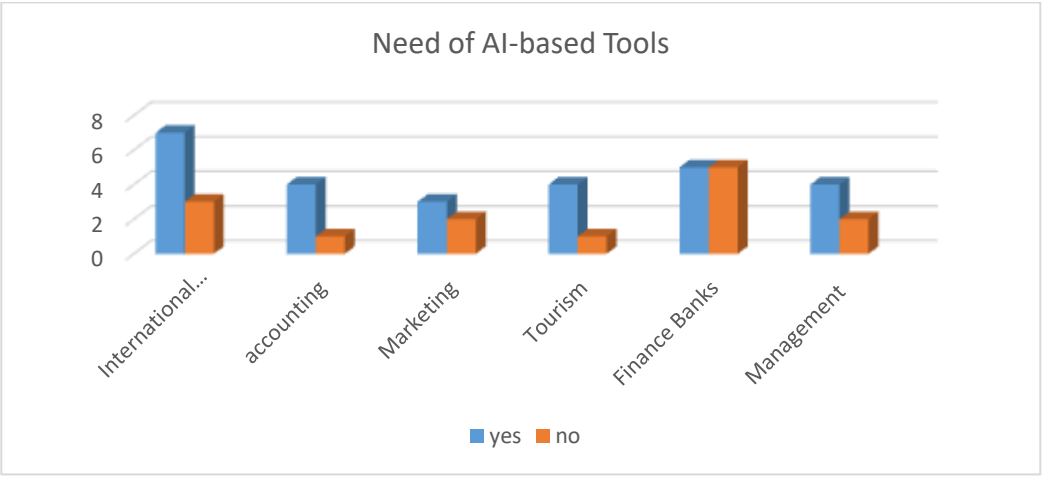


Figure 2: Students' motivation in using AI-based tools
Source: own design

Research topic 2

In order to find out the attitude of students towards using AI-based technology in learning English, we asked a question regarding the positive impact, of AI-based tools in learning English.

QUESTION 2 regarding benefits of using AI-based tools

Do AI-based tools have a positive impact on learning English?		
Specialisation	**YES**	**NO**
International Business in English	5	5
Accounting	3	2
Marketing	3	2
Tourism	4	1
Finance-Banks	5	5
Management	4	1

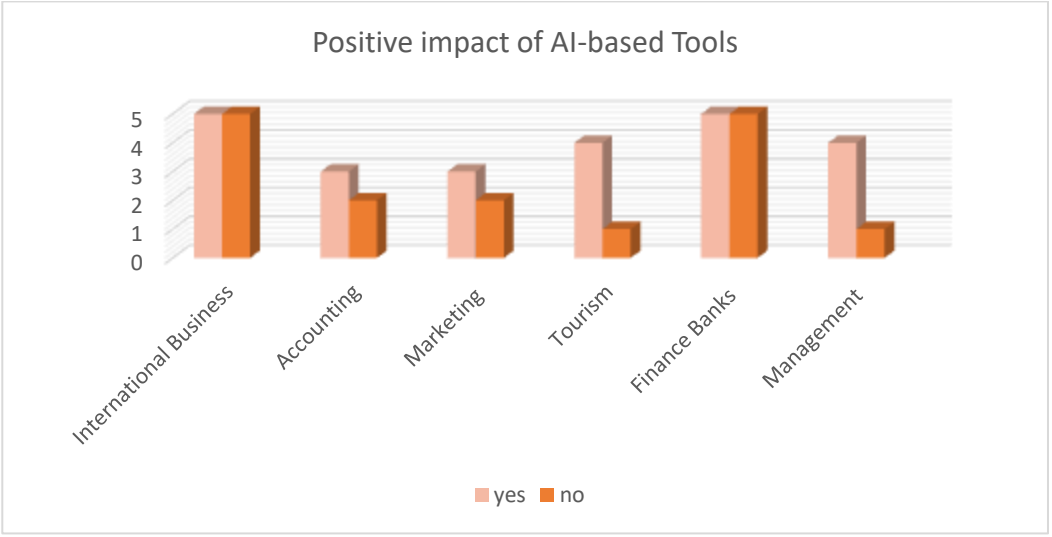


Figure 3: Students' benefits in using AI-based tools
Source: own design

Research topic 3

In order to find out the method students use in learning English with AI-based technology, we asked a question regarding skills development, communication and improvement.

QUESTION 3 regarding communicative skill development

Do you think your communication skills have developed after using AI-based tools in learning English?		
Specialisation	**YES**	**NO**
International Business in English	7	3
Accounting	3	2
Marketing	2	3
Tourism	3	2
Finance-Banks	5	5
Management	3	2

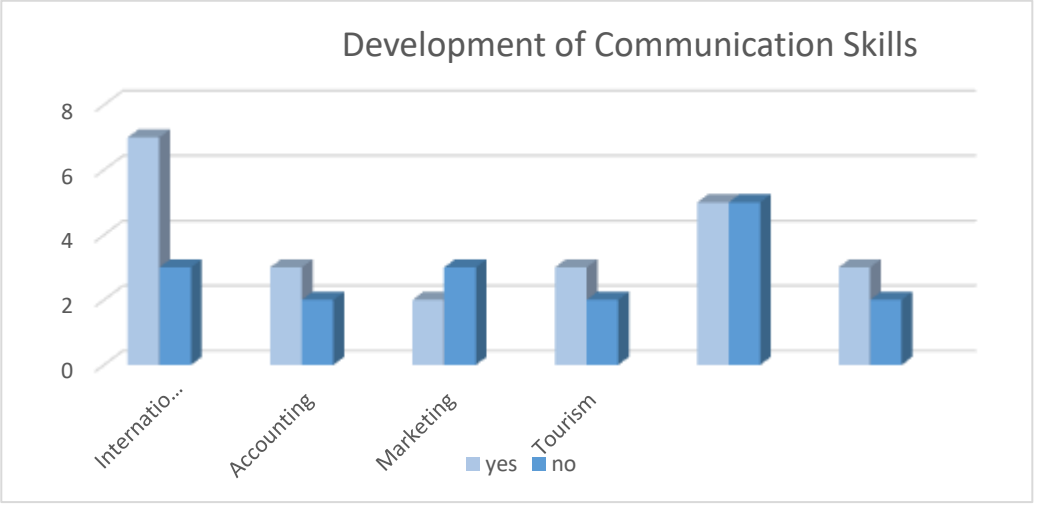


Figure 4: Students' development of communication skills
Source: own design

QUESTION 4 regarding effectiveness of AI-based learning in comparison with teacher guided learning

Do you think that using AI-based tools in learning English is more efficient than learning with a teacher?		
Specialisation	**YES**	**NO**
International Business in English	0	10
Accounting	0	5
Marketing	0	5
Tourism	0	5
Finance-Banks	2	8
Management	1	4

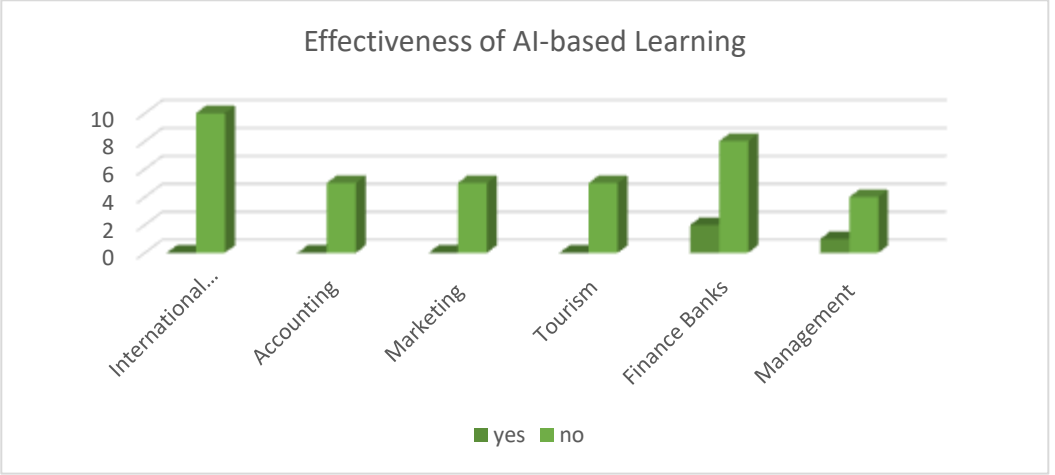


Figure 5: Students' perception on effectiveness of using AI-based tools
Source: own design

RESEARCH TOPIC 5

In order to find out the difficulties in learning Business English with AI-based technology, we asked a question focused on the challenges that have been faced by the students.

QUESTION 5 regarding the challenges faced by the students

Have you faced challenges while using AI-based tools in learning Business English?		
Specialisation	**YES**	**NO**
International Business in English	7	3
Accounting	4	1
Marketing	3	2
Tourism	1	4
Finance-Banks	3	7
Management	1	4

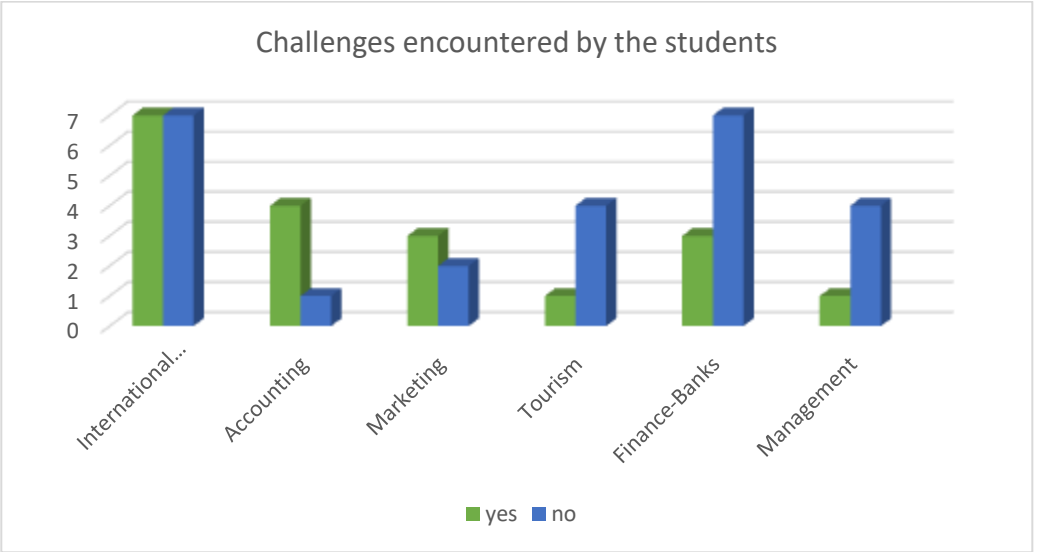


Figure 6: Students' challenges
Source: own design

Findings and Discussions

In this paper we tried to analyse the perspectives and challenges regarding the impact of Artificial Intelligence in the process of teaching and learning English. Starting from the concepts and analyses that we found in the literature review, we grouped our questions into five main categories. At the first question, regarding the students' attitude towards using AI-based tools in learning Business English, 67,5% answered with 'yes', only 33,5% answered 'no' to this question. The second question regarding the positive impact of using AI-based tools in learning Business English, the same percentage has been received: 60% 'yes', 40% 'no'. The third question was related to the skills developed by the students after using AI-based tools for learning Business English, receiving 57,5% 'yes and 42,5% 'no'. The fourth question related to the efficiency of learning with AI based tools in comparison with teacher guided learning process, the results show that 93% of the students prefer to have a teacher-based learning strategy. The fifth question referring to the challenges that the students faced when learning with AI based tools, the results show that 53% had no difficulties in approaching AI based tools for learning Business English. The findings of the study reveal that the majority of the respondents (40 students with upper-intermediate and advanced level of English) feel at ease using AI-based tools in learning English, feeling motivated, sensing benefits of this approach and facing challenges which can be overcome easily. Thus, the results indicate an awareness of the challenges of this approach along with the undeniable efficiency and effectiveness of the teaching and learning process undergone together with a teacher.

CONCLUSION

The process of teaching and learning English has become more interesting and more varied due to the technological

The appearance of AI has reshaped today's rapidly evolving educational landscape, shifting towards student-centred learning, innovative approaches, enhancing thus the students with engagement, fostering at the same time critical thinking and practical applications. AI has brought about new trends and the pedagogical shifts imposed by the technological advancement should be embraced and continued by the teachers with all the effort that they deserve.

The findings and discussions mentioned in the previous lines lead to the conclusion that AI-based tools are needed in the process of learning English, being perceived by the students as engaging, developing communicational skills, thus being a useful and important tool for our students. Our study reveals a clear increasing tendency in using AI-based tools in the process of English teaching and learning. Nevertheless, the findings point to the more integration of AI in the educational process are the following: increased students' motivation, undeniable positive impact increased communicational skills, teacher guided learning process is more appealing, challenges exist but they can be overcome, attention must be paid to integrating AI techniques with other teaching and learning methods, more empirical studies are needed in order to assess this emerging exciting field.

Overall, the findings suggest that AI-based tools are appealing to students, being effective aids in the endeavour of teaching and learning English, offering appropriate, student-tailored and engaging learning experience. By analysing the benefits brought out in this study, teachers can exploit the potential of AI-based technology to boost the effectiveness of the teaching process and promote the students' outcome. However, it is important to mention that by deliberately using these tools teachers imply a significant role of these tools, whose effectiveness may vary depending on the educational context.

English courses are taught by teachers who have the ultimate role and authority to determine the extent, the conditions, the dynamics, and the timing of using AI-based tools in the complex process of learning and teaching English. Consequently, we can conclude the fact that, in order to support this complex process, different educational scenarios may require different levels of technological input. Therefore, future studies may consider including a larger sampling instrument, for example, academic staff who teach students in the main study areas..

BIBLIOGRAFIE

1. Bonfield, C. A., Salter, M., Longmuir, A., Benson, M., & Adachi, C. (2020). Transformation or evolution? Education 4.0, teaching and learning in the digital

age. Higher Education Pedagogies, 5(1), 223-246. https://doi.org/10.1080/23752696.2020.1816847;
2. Çakmak, F. (2022). Chatbot-human interaction and its effects on EFL students' L2 speaking performance and anxiety. Novitas-ROYAL Research on Youth and Language, 16(2), 113-131;
3. Cordeschi, AI turns fifty: Revisiting its origins. Applied Artificial Intelligence, 21(4-5), 259-279. https://doi.org/10.1080/08839510701252304;
4. Creswell, J.W., Poth C. N., (2024) Qualitative Inquiry and Research Design: Choosing Among Five Approaches, 5th edition, Sage Publication;
5. Ha NDN, Loc N, Tuyen T. (2021) *Task-based approach: An overview*, European Journal of English Language Teaching, available: https://doi.org/10.46827/ejel.v7i1. 4090;
6. Keo V, Lan B. (2024) *Exploring language teaching methods: an in-depth analysis of grammar translation, direct method, and audiolingual method: A Literature Review*, International Journal of Advance Social Sciences and Education (IJASSE), available: https://doi.org/10.59890/ijasse.v2 i2.1766;
7. Kiwan S, Rod P. (2012) *Critical ELT Practices in Asia*, Sense Publishers, available: https://www.sensepublishers.com;
8. Kholstinina T, Vekovishcheva S, Kochetova A. (2021) *A modern approach to communicative language teaching in English classes* E3S Web of Conferences. 2021;284:08005, available: https://doi.org/10.1051/e3sconf/2 02128408005;
9. Luckin, R., & Cukurova, M. (2019). Designing educational technologies in the age of AI: A learning sciences-driven approach. British Journal of Educational Technology, 50(6), 2824-2838. https://doi.org/10.1111/bjet.12861;
10. Marisya, F., Mayasari, V., Astuti, S. D., & Purwanto, M. B. (2023). *Implementation of Leadership Ethics and Transformational Leadership in Employee Performance*. Asian Journal of Applied Business and Management, 2(4 SE-Articles), 545–556. https://doi.org/10.55927/ajabm.v2i4.6714;
11. Mart C.T. (2013) *The Audio-Lingual Method: An Easy way of Achieving Speech.* International Journal of Academic Research in Business and Social Sciences. 2013;3(12):63-65. available: https://doi.org/10.6007/IJARBSS/ v3-i12/412;
12. Qinghua, Y., & Satar, M. (2020). English as a foreign language learner interaction with chatbots: Negotiation for meaning. International Online Journal of Education and Teaching, 7(2), 390-410;
13. Rad, H. S., Alipour, R., & Jafarpour, A. (2023). Using artificial intelligence to foster students' writing feedback literacy, engagement, and outcome: A case of wordtune application. Interactive Learning Environments, 1-21. https://doi.org/10.1080/10494820.2023.2208170;
14. Rintaningrum R. (2023) *Technology integration in English language teaching and learning: Benefits and Challenges*, Education.;10(1):2164690. Cogent avAIlable: https://doi.org/10.1080/2331186X .2022.2164690;

15. Roschelle, J., Lester, J., & Fusco, J. (2020). AI and the future of learning: Expert panel report [Report] digital promise. Retrieved from https://eric.ed.gov/?id=ED614308;
16. Savignon S. (2002) *Interpreting communicative language teaching: Contexts and concerns in teacher education.* Yale University Press;
17. Schmidt, T., & Strasser, T. (2022). Artificial intelligence in foreign language learning and teaching: A call for intelligent practice. Anglistik: International Journal of English Studies, 33(1), 165-184. https://doi.org/10.33675/angl/2022/1/14;
18. Singh, S. V., & Hiran, K. K. (2022). The impact of AI on teaching and learning in higher education technology. Journal of Higher Education Theory & Practice, 12(13), 135-148. https://doi.org/10.33423/jhetp.v22i13.5514;
19. Schmidt, T., & Strasser, T. (2022). Artificial intelligence in foreign language learning and teaching: a CALL for intelligent practice. Anglistik: International Journal of English Studies, 33(1), 165–184;
20. Taguchi, N. (2015). "Contextually" speaking: A survey of pragmatic learning abroad, in class, and online. System, 48, 3-20. https://doi.org/10.1016/j.system.2014.09.001;
21.Tawfik, G. M., Dila, K. A. S., Mohamed, M. Y. F., Tam, D. N. H., Kien, N. D., Ahmed, A. M., & Huy, N. T. (2019). A step by step guide for conducting a systematic review and meta-analysis with simulation data. Tropical Medicine and Health, 47, 1-9. https://doi.org/10.1186/s41182-019-0165-6;
22. Turale, S. (2020). A brief introduction to qualitative description: A research design worth using. Pacific Rim International Journal of Nursing Research, 24(3), 289–291;
23. Wang, R. (2019). Research on Artificial Intelligence Promoting English Learning Change. 325(Emehss), 392–395. https://doi.org/10.2991/emehss-19.2019.79;
24. Zhu, D. (2017). Analysis of the Application of Artificial Intelligence in College English Teaching. 134, 235–237. https://doi.org/10.2991/caai-17.2017.52.

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 17-30

NEW DIMENSIONS OF LEGAL RESPONSIBILITY AND LIABILITY IN THE ERA OF NEW TECHNOLOGIES

E. ANGHEL

Received 14.11.2025; accepted 16.12.2025
First online publication:16.12.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.279

Elena ANGHEL
Lecturer PhD at the Nicolae Titulescu University of Bucharest, Faculty of Law Bucharest, Romania
E-mail: elena.anghel@univnt.ro
ORCID ID: https://orcid.org/0009-0003-7157-5418

Abstract

In the era of accelerated digitalization, characterized by advanced technologies such as artificial intelligence and system automation, traditional legal concepts and principles require urgent adaptation and reinterpretation. Responsibility and legal liability acquire new dimensions: while in classical law liability was closely conected to human will and action, today we often face unprecedented situations in which decisions originate from autonomous systems or opaque algorithms. The attribution of fault and the establishment of liability represent major challenges. Who is responsible when an erroneous decision is generated by an automated system? How can fault be determined if the consequences cannot be associated with a person responsible for them? Can autonomous robots themselves be considered legal subjects? How is liability defined in the case of artificial intelligence generating harmful content?

This study aims to analyze how the era of new technologies compels the law to reconfigure fundamental concepts such as responsibility and liability—concepts increasingly disconnected from human will. As technology evolves at an unprecedented pace and new, complex challenges emerge daily from advanced and autonomous artificial intelligence systems, while the normative framework develops timidly at the European level, it becomes the judge's particularly difficult task to find solutions to these cases and to act with great caution, given the absence of precedents and the continuously changing evolution.

Key words: *responsibility and liability; artificial intelligence; Internet of Things; unprecedented challenges; automated systems; fault attribution; European legislative benchmarks.*

INTRODUCTION

I. RESPONSIBILITY AND LIABILITY: THE CLASSICAL PARADIGM

In its moral dimension, responsibility is essentially an attribute of human personality, being closely conected to the degree of development of self-awareness. Endowed with reason and conscience, the human being is free to choose, to decide, and to act. Only the autonomous human individual is responsible and therefore liable. Such an individual is aware of values, understands and internalizes them, then chooses among them and translates them into action. In the application of law, legally enshrined values become reference points for the individual's personality which, endowed with responsibility, will orient and assess his behavior according to the standards they contain.

For the functioning of legal liability as a specific institution of law to be connected with the general aims of the legal system, it is necessary to maintain the belief that the law can create in the consciousness of its addressees a sense of responsibility (*N. Popa, E. Anghel, C. Ene-Dinu, L. Spătaru-Negură, 2023, p. 246*).

Law becomes binding in relations among individuals not as a necessary result of the coercive power of the state, but through the adherence of the members of society to its norms. Therefore, the law must be accepted both in terms of values and norms by the members of society (*E. Anghel, 2025, p. 28*). But while other values accompany the human being from birth—freedom-value, equality-value, - responsibility must be cultivated and educated; it is not innate. "The human individual is not born with a fully formed responsible personality (…), but with the potential to be responsible, a potential which is indeed realized during his psychosocial development as a subject knowledgeable of himself and of the other" (*Gh. Mihai, 2006, p. 34*).

Analyzing its legal dimension, Dumitru Mazilu defines responsibility as "an intrinsic coordinate of human behavior, playing a decisive role in the conscious and freely consented fulfillment of legal norms and in preventing breaches of the law" (*Mazilu D., 2007, p. 144*).

In this context, I argued in a previous study (E. Anghel, 2015, p. 364-370) that the individual who is cognitively and volitionally free is responsible for his acts and only to that extent can be held liable. Social liability cannot be detached from responsibility, which constantly relates to values; the breach of value-bearing norms (which amounts to insufficient assimilation, internalization, and completion of self-awareness) triggers the liability of the person concerned.

Etymologically, the term "responsibility" derives from the Latin *spondeo*, which in Roman law designated the debtor's solemn obligation toward the creditor to fulfill the performance assumed by contract. Legal responsibility is an institution through which the legislator expresses the vocation for legal liability of certain persons for potential acts and deeds committed.

Legal liability, in its classical paradigm, is based on the fulfillment of several requirements: the premise is the existence of a legal subject - the human endowed with discernment and legal capacity, - who commits an unlawful act with the form of fault required by law, thus making it possible to establish a causal link between the act and the damage. Are these assertions still valid today, in the context of the unprecedented evolution of new technologies? Is the human dimension still a *sine qua non* condition of liability? Can responsibility exist without consciousness, without reference to values? And, above all, can an entity that lacks perception of the norm be sanctioned?

The transformations brought about by new technologies require a profound reevaluation of the concepts of responsibility and liability in law. Faced with autonomous entities such as artificial intelligence, legal liability can no longer be viewed exclusively through the lens of direct human action, but instead demands new normative mechanisms adapted to technological reality.

II. RECONFIGURING TRADITIONAL CONCEPTS IN THE AGE OF NEW TECHNOLOGIES

Artificial intelligence, autonomous robots and algorithmic decision-making challenge the traditional premises of human imputability and generate a genuine crisis of liability and fault. Although some artificial intelligence technologies have existed for more than 50 years, today the availability of enormous quantities of data and new algorithms give rise to major challenges. Society as a whole is receptive to the new technologies of the future because they make life easier (*E.E. Ștefan, 2025*).

Artificial Intelligence (AI) refers to a set of technologies designed to develop systems capable of simulating and performing functions normally associated with human intelligence. In other words, AI is the ability of a machine or program to think, learn, reason, and make decisions in order to solve problems or carry out tasks that previously required human intelligence.

Artificial intelligence involves the development of algorithms and models that enable machines to perceive their environment, process information, and act autonomously or semi-autonomously, relying primarily on machine learning. Algorithms are trained on very large volumes of data, and the system learns patterns and rules from the training data in order to provide predictions or make decisions.

Types of artificial intelligence include virtual assistants, image analysis software, search engines, voice and facial recognition systems, as well as embedded AI: robots, autonomous vehicles, drones, and the Internet of Things.

Beyond the many benefits AI can bring to our lives, it also raises significant concerns about the harm these systems may cause to essential values such as life, health, and property, particularly since such harm is often extremely difficult to prove, and liability challenging to establish.

Regarding the *Internet of Things (IoT)*, it is defined as a global infrastructure of the information society designed to provide advanced services through the interconnection of physical and virtual objects (*Recommendation ITU-T Y.2060*). IoT valorizes the identification, processing and communication of data to deliver services to various applications, while respecting security and confidentiality requirements. In the future, IoT aims to integrate technologies such as machine-to-machine communications, autonomous networks, cloud computing, artificial intelligence, and robotics - to develop applications such as intelligent transportation, smart grids, e-health or smart homes. These systems will combine connectivity and autonomy to operate with minimal human intervention, improving their performance through continuous learning.

The benefits of adopting AI systems can be extraordinary for society, fostering economic development and strengthening the EU's innovation capacity and global competitiveness. For example, in health care, researchers are studying how AI can analyze large amounts of medical data to identify patterns that could lead to new medical discoveries and improved patient diagnosis. A notable example is an AI program designed to respond to emergency calls and recognize cardiac arrest during the call more quickly and more accurately than human dispatchers. Another example is KConnect, co-funded by the EU, which develops multilingual text-search services to help people find the most relevant available medical information.

Despite this potential, however, in certain cases the specific characteristics of some AI systems can generate significant risks regarding user safety (including physical safety) and fundamental rights. One of the most difficult issues concerns the attribution of liability for decisions made by automated systems, given that the decision belongs to an algorithm, with no causal link that can be established between human intention and the outcome. The enormous volume of data involved, as well as the dependence on algorithms and the opacity of the AI decision-making process, make it difficult to predict the behavior of an AI-equipped product or to understand the causes that led to the harm.

Balancing the benefits alongside the risks posed by new technologies, this study argues for the reinterpretation and adaptation of traditional legal concepts, in a context where the present challenges us to decide whether algorithms, robots and digital entities that autonomously produce legal effects - beyond human will - may themselves become subjects of law. The wrongful act may now consist in a complex and opaque (black-box) decision-making process that generates results which can no longer be associated with human intervention. Fault can no longer be determined in the traditional sense of intent or negligence, but rather as the decision of an autonomous system that produces those results. As for the causal relationship between the act and the damage, it becomes extremely difficult to isolate and determine the level of involvement of the programmer, the operator, the user, and the autonomous system itself, within this complex network of

interacting agents. Who is liable when a decision causes harm? Is it the programmer who designed the algorithm, the system provider, or the human operator behind the algorithm - the one who validated the harmful outcome?

In complex technological networks characterized by multiple interdependencies, when damage results from the interaction of dozens of software modules, servers, automatic updates and external factors, identifying a single culpable actor becomes almost impossible. The digital environment is marked by *"liability without fault"* or *"distributed liability",* where the focus shifts away from fault and toward the fair allocation of risk among the actors involved.

Distributed liability implies a joint assumption of legal consequences, with each participant in the technological chain bearing part of the damage according to their role and level of control exercised.

Although innovative, this model raises questions regarding its compatibility with traditional civil-law principles, which require individualized liability and the personal nature of fault. In Romanian law, such a paradigm demands a rethinking of tort liability and perhaps even the introduction of an autonomous legal regime for digital liability.

In the absence of a special legal framework for artificial intelligence, damages caused by new technologies fall under the following Romanian regulations:

1. *Product liability for defective products*, governed by Law no. 240/2004 on the liability of producers for damage caused by defective products, republished, which transposes Directive 2024/2853. This regime is considered efficient for AI, as it makes no distinction between contractual and tort liability and applies regardless of whether the victim is a third party or a contracting party. However, the challenge remains proving the defect, particularly in the case of opaque algorithms (*M. Duțu, 2025*).

2. *Tort liability based on fault:* proving fault is difficult or even impossible in some cases due to the opacity and complexity of AI systems.

3. ***Contractual liability*** applies when the damage results from a contract, but its effectiveness is often hindered by the burden of proof.

4. ***Liability for things*** may apply if the system/product that caused the damage can be considered a "thing" that triggers liability for the owner under whose control it is held.

None of these regimes fully correspond to the specific features of artificial intelligence systems, as their opacity, connectivity, complexity and autonomy hinder the establishment of causation and the attribution of liability to the actors involved. Nevertheless, fault-based liability would remain the most feasible solution, both in tort and in contract liability. In the future, the Romanian legislator may opt to introduce a new special form of liability - liability for damage caused by artificial intelligence systems.

Consequently, since Member States cannot keep up with the pace of technological evolution, a unified legislative approach at EU level is absolutely necessary, one capable of establishing common European standards for citizens and businesses and ensuring legal certainty across the Union.

According to assessments by domain specialists, since 2010 more than 600 reports, frameworks, and public or private standards related to artificial intelligence and robotics have been issued. We are facing a complex, innovative, and crucial process in which the pace of regulation can scarcely keep up with the speed of technological innovation, and its intrinsic nature undergoes major transformations in the logic of expressing specificity and in the adequacy of the legal response to the implications of a major scientific and technological revolution (*M. Duțu, 2025, p. 11*).

III. EUROPEAN LEGISLATIVE LANDMARKS

The consequences and challenges of artificial intelligence transcend borders; therefore, international cooperation is essential, as AI is considered a central element of society's digital transformation. As AI has become a priority, the European Union is focused on promoting trustworthy artificial intelligence that is human-centred and grounded in ethical principles. In cooperation with international partners, the EU seeks to ensure the responsible governance of AI, in line with the values it upholds.

In 2017, during debates in the European Parliament, the possibility of granting legal personality to autonomous robots was examined, through the regulation of the concept of *"limited electronic personality."* This entailed a legal fiction: treating autonomous robots as "electronic persons" with limited legal personality for the purpose of establishing liability for the damage they cause. Although such a legal fiction would allow direct liability to be attributed to the autonomous system, the proposal was strongly criticised by experts, who argued that granting AI legal personality may dilute human responsibility (i.e., that of developers, manufacturers or users). For this reason, the European Union did not adopt this concept, opting instead for an approach based on clear human liability and traceability of algorithmic decisions.

Subsequently, in its Resolution of 20 October 2020 containing recommendations to the Commission on a civil liability regime for artificial intelligence, the European Parliament stressed that all activities, devices or processes - physical or virtual - directed by AI systems may technically be the direct or indirect cause of harm, but are nonetheless almost always the result of actions taken by someone who built, deployed or interfered with those systems. Therefore, the Parliament stated that it is not necessary to grant legal personality to AI systems: *"Any necessary modification of the existing legal framework should begin by clarifying that AI systems have neither legal personality nor human consciousness and that their sole purpose is to serve humanity."*

To effectively harness the advantages of AI while preventing potential misuse, the European Parliament has emphasised the need for uniform legislation, grounded in the principles and values of the Union, applicable to all AI systems. Each Member State may adapt its liability rules for certain actors or make them stricter for certain activities, without a complete overhaul of national legislation being required. What is essential is that liability regimes be adapted so that individuals suffering harm or whose property is damaged can be compensated.

Although the opacity, connectivity and autonomy of AI systems may in practice make it very difficult or even impossible to establish a causal link between the damage caused by AI and the human contributions involved, the European Parliament considers that, in line with generally accepted concepts of liability, it is still possible to hold accountable the various persons involved in the value chain who create, maintain or control the risks associated with an AI system.

In June 2024, the European Union adopted the world's first comprehensive AI rules. The *Artificial Intelligence Act (AI Act, 2024)* will become fully applicable 24 months after entry into force, though certain provisions, such as the prohibition of AI systems posing unacceptable risks, apply earlier.

The issue of liability has been addressed at EU level by proposing a system for classifying AI according to the risks involved. AI systems used in different applications are analysed and classified based on their level of risk to users.

AI applications involving *unacceptable risks* are prohibited within the EU, such as cognitive-behavioural manipulation of individuals or vulnerable groups (for example, voice-activated toys encouraging dangerous behaviour in children) or biometric identification and categorisation of individuals, including facial recognition in public spaces.

AI systems that negatively affect safety or fundamental rights are classified as *high-risk*, divided into two categories. The first includes AI systems integrated into products covered by EU product safety legislation (toys, aviation, machinery, medical devices, lifts).

The second concerns AI systems in specific fields that must be registered in an EU database, such as: education and vocational training; employment, worker management and access to self-employment; law enforcement; migration, asylum and border control management; and assistance in interpreting and applying the law.

All high-risk AI systems will be evaluated both before being placed on the market and throughout their lifecycle. Citizens will have the right to lodge complaints with national authorities concerning AI systems. AI-generated or AI-modified content - including images, audio and video (e.g., deepfakes), must be clearly labelled as AI-generated so that users are aware of this.

The AI Act establishes a two-tier governance system, where national authorities are responsible for supervising and ensuring compliance of AI systems, while the EU oversees the regulation of general-purpose AI models.

Within this framework, the AI Act underscores *the principle of human oversight*, requiring risk-assessment mechanisms to prevent arbitrary or discriminatory algorithmic decisions. The aim is to establish "distributed algorithmic liability," whereby each actor involved in the design and use of AI assumes a clearly defined share of responsibility.

Algorithmic liability seeks to ensure public trust in AI technologies, protect fundamental rights (especially data protection and the right to fair treatment), and prevent the impunity of automated decision-making. In my view, algorithmic liability represents the means through which the law seeks to adapt traditional principles of civil liability to the digital age, ensuring that the use of algorithms remains subject to control and does not eliminate human accountability.

The Parliament's priority has been to ensure that AI systems used in the EU are safe, transparent, traceable, non-discriminatory and environmentally sustainable. AI systems must be subject to human, not automated, oversight, in order to avoid harmful outcomes.

The European Parliament considers that the existing liability regimes of the Member States based on fault-based civil liability (subjective liability) provide, in most cases, a sufficient level of protection for individuals who suffer harm caused by the intervention of a third party, such as a hacker. Accordingly, it takes the view that the introduction of new legal rules on civil liability into domestic law is necessary only in specific circumstances, for example when the third party cannot be identified or lacks financial resources.

An analysis of the principles established by European regulations reveals two possible approaches to designing liability: *liability based on objective risk*, which entails the responsibility of the party placing an autonomous system into circulation and assuming the consequences of any damage caused, irrespective of fault; and *algorithmic, collective liability*, which is proportionally distributed among the programmer, operator, user and the technological platform.

Algorithmic liability requires identifying the persons or entities that may be held accountable for harm caused by the use of an algorithm (developers, providers, users, or entities implementing the system), while complying with several requirements: *transparency* - the algorithm must be sufficiently clear to allow understanding of how it makes decisions; *traceability of decisions* – it must be possible to reconstruct the system's decision-making logic so that the source of the error leading to the damage can be determined; *human responsibility* – even if the decision is taken by an autonomous algorithm, final liability rests with an identifiable human actor; *legal remedy* – individuals affected by an algorithmic

decision must have access to mechanisms for challenging and obtaining redress for the harm.

In the field of product safety, the European Commission is concerned with addressing the absence of provisions relating to new digital risks, such as cyber-threats that may compromise user safety, or the difficulty of predicting the behaviour of AI-based products (the "black-box effect"), which complicates tracking and understanding the causes of a defect.

At the Union level, the provisions on product safety and product liability aim to create a single market for goods, intended to ensure a high level of safety and provide compensation for damage arising from defective products. (The report *"Liability for Artificial Intelligence and Other Emerging Digital Technologies"* may be consulted at[1]:

Another benchmark in the field of liability is Council Directive 85/374/EEC of 25 July 1985 (the Product Liability Directive), which has proven for more than 30 years to be an effective instrument for compensating damage caused by defective products. Consequently, it should also be applied in cases where a party suffering harm or damage brings a civil liability action against the manufacturer of a defective AI system.

The Product Liability Directive offers a level of protection that national fault-based liability regimes alone do not provide. It introduces a system of strict liability for producers for damage caused by a defect in their products. In cases involving physical injury or property damage, the injured party is entitled to compensation if they prove the damage, the product defect (that is, that the product failed to provide the safety the public is entitled to expect), and the causal link between the defect and the damage.

Unharmonised national regimes provide fault-based liability rules under which victims of harm must prove the fault of the responsible person, the damage, and the causal link between the fault and the damage in order to successfully initiate a liability claim.

Furthermore, national liability regimes offer victims of damage caused by products and services several parallel claims for compensation, based on either fault or strict liability. These claims are often directed against different responsible persons and are subject to different conditions. For example, a victim involved in a car accident usually has a strict liability claim against the owner of the vehicle (i.e. the person who concluded the compulsory motor liability insurance), a fault-based claim against the driver under national civil law, and a claim under the Product Liability Directive against the manufacturer if the car had a defect.

[1] https://op.europa.eu/en/publication-detail/-/publication/1c5e30be-1197-11ea-8c1f-01aa75ed71a1/language-en

However, the features of new technologies make it difficult to establish the sequence of events leading back to the human behaviour involved in causing the damage, with the result that a fault-based claim under the national tort regime would be very hard to prove, leaving victims inadequately compensated.

With regard to civil liability, the challenge lies in ensuring that victims of harm caused by artificial intelligence or the Internet of Things benefit from protection as effective as that relating to traditional technologies. Thus, in complex environments involving multiple actors (including software), in order to identify the responsible party and establish the causal link between a defect and the damage suffered, the possibility of reversing the burden of proof in favor of the victim is analyzed, with liability arising as a result of the failure to comply with specific legal obligations regarding cybersecurity.

CONCLUSION

The potential of new AI-based technologies and the benefits they can bring to humanity are immense, with the capacity to improve our lives in almost every field, from transportation, education and assistance for vulnerable individuals to global challenges such as climate change, healthcare, nutrition and logistics. Artificial intelligence promises new breakthroughs in the treatment of chronic diseases, epidemic prediction, combating climate change and anticipating cyber-threats. In terms of safety, autonomous vehicles can significantly reduce accidents caused by human error.

Yet, beyond these opportunities, new technologies also pose the risk of serious harm to legally protected interests, both material and non-material. We are faced with new challenges regarding product safety and liability, such as connectivity, autonomy, data dependency, opacity, complexity of products and systems, and software updates.

The development of AI-based technologies is so dynamic that it requires a clear and predictable legal framework, capable of providing citizens with protection and trust in the face of these new digital risks. The opacity of these technologies, the multitude of actors involved and the vulnerability of AI systems to cyberattacks sometimes make it impossible to identify the person who controls the risks associated with the use of an AI system or the individual who caused the damage. The constant efforts of countries to increase the level of domestic cybersecurity are obvious in this age, when the latter cannot be separated from European and world cyber security (Iancu, E.-A., Tuşa, E., Iancu, N., Simion, E., Moise, A.-C., 2023, p. 366). Moreover, in such an unrestrained world, AI systems may at times be used precisely to undermine human dignity or European values by enabling the creation of lethal autonomous weapons, the unwarranted surveillance of individuals, or biased decision-making in areas such as health insurance (for an analyze of the crime, especially those that can be committed

through information systems referring to the decade of digitization, see Cîrmaciu, D., Iancu, E.-A., 2025, pp. 265-277).

Artificial intelligence can also be used to influence public perception and manipulate information for political, economic, or social purposes. In the context of national security, it may be employed to: generate and disseminate large-scale fake news, through natural language processing and neural networks capable of producing highly convincing fabricated messages and articles; create deepfakes - AI technologies designed to produce false videos and audio recordings that can generate propaganda materials almost indistinguishable from reality; enable facial recognition - AI-powered systems allowing the tracking of individuals in public and private spaces, raising serious concerns regarding privacy and civil liberties; facilitate behavioural surveillance - algorithms capable of analysing online behaviour to predict actions or to influence them through excessive content and advertisement personalisation (R. N. Lungeanu, 2025, p. 7).

Another challenge arises from the fact that AI-based products and services will interact with traditional technologies, resulting in increased complexity in matters of liability. For example, autonomous vehicles will coexist with traditional ones for a certain period. A similar complexity of interacting actors will occur in some service sectors (such as traffic management and healthcare), where partially automated AI systems will support human decision-making.

Given these risks, it is essential to ensure that new digital products operate safely and that, when harm occurs, injured parties receive compensation. The actors involved in the AI system must be held liable for the damage caused, in accordance with general principles of liability, according to which the person who creates or presents a risk to the public is responsible when that risk results in harm or injury.

A human-centred approach to AI means ensuring that AI applications comply with fundamental rights legislation. By integrating requirements of accountability and transparency into the development of high-risk AI systems and improving enforcement capacities, these systems will inspire the necessary trust among citizens, as underlined by the European Parliament in 2020, when it adopted the Resolution containing recommendations to the Commission on a civil liability regime for artificial intelligence.

The European Parliament has emphasised that any forward-looking legal framework on civil liability must inspire confidence in the safety, reliability, and consistency of products and services - including digital technology - so as to ensure a fair and effective level of protection for potential victims of harm, while at the same time allowing sufficient room for businesses, especially small and medium-sized enterprises, to develop new technologies, products or services.

These liability challenges must be addressed to guarantee the same level of protection for victims of AI-related harm as for those harmed by traditional

technologies, while maintaining a balance with the need for technological innovation. This will help foster trust in new emerging digital technologies and generate investment stability.

We cannot slow down the evolution of new technologies, nor can national legislation keep pace with such rapid developments, but we can remain actively engaged in regulating the use of artificial intelligence, participating in decision-making processes and monitoring its impact. It is essential for the law to preserve its protective and balanced function by identifying clear solutions for the distribution of responsibility among developers, users, institutions, or even digital entities. Ultimately, only through continuous dialogue between law, technology, and ethics can we shape a functional and equitable legal framework for the age in which we live.

BIBLIOGRAFIE

1. E. Anghel, *Principiile dreptului*, Universul Juridic Publishing House, Bucharest, 2025.
2. E. Anghel, *The responsibility principle*, in Proceedings of the Challenges of the Knowledge Society Conference (CKS) no. 5/2015, „Nicolae Titulescu" University Publishing House, Bucharest, 2015, https://cks.univnt.ro/cks_2015.html.
3. S.G. Barbu, A. Muraru, V. Bărbățeanu, *Elemente de contencios constituțional*, C.H. Beck Publishing House, Bucharest, 2021.
4. M. Bădescu, *Teoria generală a dreptului*. *Curs universitar*, 7th edition, revised and added, Hamangiu Publishing House, 2022.
5. I. Boghirnea, *Internet and artificial intelligence – as law configuration factors*, in Journal Legal and Administrative Studies, Supplement 2024, Publishing House C.H. BECK Bucharest 2024.
6. Cîrmaciu, D., Iancu, E.-A., *Challenges in the Changing World of Labor Relations. Human Resources, Finance and Crimes in the Decade of Digitalization*, published in Changes and Innovations in Social Systems, coordinated by Sarka Hoskova-Mayerova, Cristina Flaut, Daniel Flaut, Pavlina Rackova, Editura Springer Nature, Berlin, Germany, p. 265-277, 2025, DOI: https://doi.org/10.1007/978-3-031-43506-5
https://link.springer.com/chapter/10.1007/978-3-031-43506-5_15.
7. M.C. Cliza, *A Topical Discussion-Digitalisation of Public Administration and Public Services in Romania*, Perspectives of Law and Public Administration 14, no. 2 (June 2025): 283-293, DOI: 10.62768/PLPA/2025/14/2/04
8. I. Craiovan, *Teoria generală a dreptului*, the Military Publishing House, Bucharest, 1997.
9. M. Duțu, *Elemente de dreptul inteligenței artificiale* (Elements of artificial intelligence law), Universul Juridic Publishing House, București, 2025.

10. M. Duțu, *Probleme și dileme privind regimul juridic al răspunderii civile pentru inteligența artificială: O analiză detaliată*, 2025, https://www.wolterskluwer.com/ro-ro/expert-insights/raspunderea-ai-1
11. C. Ene-Dinu, *The impact of GDPR on forensic idenntification technologies based on artificial intelligence for facial recognition, fingerprints and DNA profiles comparison in modern investigations*, Romanian Journal of Forensic Science, 2025, Vol 26, Issue 141.
12. Iancu, E.-A., Tușa, E., Iancu, N., Simion, E., Moise, A.-C., *Preventing computer crime by knowing the legal regulations that ensure the protection of computer systems*, în Tribuna Juridică nr.3./2023, https://www.tribunajuridica.eu/arhiva/anul13v3.html
DOI: 10.24818/TBJ/2023/13/3.03
13. R.N. Lungeanu, *The new social reality: artificial intelligence and the necessity of aligning national legislation with societal evolution*, Vol. 5 No. 1 (2025): IJLSO DOI: https://doi.org/10.55516/ijlso.v5i1.258
14. M. Niemesch, *Teoria generală a dreptului*, ed. 3rd, revised and added, Hamangiu Publishing House, Bucharest, 2019.
15. E. Magrani, *New perspectives on ethics and the laws of artificial intelligence., in , Journal on internet regulation Volume 8 | Issue 3* DOI: https://doi.org/10.14763/2019.3.1420
16. D. Mazilu, *Tratat de teoria generală a dreptului*, 2nd edition, Lumina Lex Publishing House, Bucharest, 2007.
17. Gh. Mihai, *Fundamentele dreptului, Teoria răspunderii juridice*, vol. V, C. H. Beck Publishing House, Bucharest, 2006.
18. N. Popa, E. Anghel, C. Ene-Dinu, L. Spătaru-Negură, *Teoria generală a dreptului. Caiet de seminar, 4th edition*, C.H. Beck Publishing House, Bucharest, 2023.
19. The National Strategy on Artificial Intelligence, SIPOCA code 704, implemented by the Authority for the Digitalization of Romania for 2024–2027 (NS-AI), approved by Government Decision no. 832/2024 and published in the Official Gazette no. 730 of 25 July 2024, https://www.adr.gov.ro/wp-content/uploads/2024/06/Strategia-Nationala-pentru-Inteligenta-Artificiala.pdf.
20. E.E. Ștefan, *Vulnerabilities of new technologies in the work of public authorities and the need for cyber security*, in Sciencia Moralitas 10 (1): 376, 2025, DOI: 10.5281/zenodo.16415586
21. Council Directive 85/374/EEC of 25 July 1985 (the Directive on liability for defective products), published in OJ L 210, 7.8.1985.
22. Law no. 240/2004 on the liability of producers for damage caused by defective products, republished, in the Official Gazette no. 313 of 22 April 2008.

23. The report 'Liability for Artificial Intelligence and Other Emerging Technologies'. https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=63199.
24. Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonized rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139, and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797, and (EU) 2020/1828 (Artificial Intelligence Regulation) [Official Journal of the European Union, 12.07.2024].
25. https://www.itu.int/ITU-T/recommendations/rec.aspx?rec=y.2060
26. https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A52020IP0275
27. https://www.europarl.europa.eu/topics/ro/article/20230601STO93804/legea-ue-privind-ia-prima-reglementare-a-inteligentei-artificiale
https://op.europa.eu/en/publication-detail/-/publication/1c5e30be-1197-11ea-8c1f-01aa75ed71a1/language-en).

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 31-45

ASPECTS REGARDING OVER-INDEBTEDNESS PREVENTION FOR VULNERABLE CONSUMERS

R.D. APAN

Received 01.11.2025; accepted 12.12.2025
First online publication: 18.12.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.285

Rodica Diana APAN
Faculty of Law, Cluj-Napoca, "Dimitrie Cantemir" Christian University, Bucharest; lawyer, Cluj Bar Association
E-mail: office@cabinetavocatapan.ro
ORCID ID: https://orcid.org/0000-0002-5730-1774

Abstract

Against the backdrop of national and european concerns for the prevention of over-indebtedness, this study aims to develop, among the procedures intended to help in this regard, the procedure established by banks for vulnerable consumers unable to execute the credit agreement. Two categories of consumers, considered vulnerable, are covered by this procedure, together with the Code of Conduct for banks, established at national level, namely, consumers in payment difficulties or representing a social case. The analysis of the principles governing the procedure, its effects on the relationship between the bank (creditor) and the consumer (debtor) in this stage, as well as a schematic guide, useful for facilitating its application by banks, are the theme of this study.

Key words: *(over)indebtedness, consumer, Code of Conduct for banks, consumer in payment difficulty, consumer representing a social case, Directive (EU) 2023/2225*.

INTRODUCTION

The prevention of consumer/family (over)indebtedness is one of the greatest challenges of the socio-economic stage we are going through, because, from an economic point of view, it can generate a systemic risk for creditors and for the stability of the financial market, if it is increased and extends to a large number of debtors. Also, (over)indebtedness undoubtedly generates the social fragility of households, of certain categories of people e.g., the elderly, people

with disabilities, migrants, the unemployed, people without professional qualifications, who become the most vulnerable to poverty and social exclusion.

I – CONSUMER (OVER)INDEBTEDNESS – DEFINITION, CAUSES

(Over)indebtedness is the situation in which a natural person is unable to pay all their debts for a long period of time, because they have not paid their current debts when due. It is obvious that the natural person experiences continuous difficulties in fulfilling their financial commitments, of any nature, from any source, credit being the main source of (over)indebtedness.

In summary, the causes of (over)indebtedness of the individual and ultimately of the family are the following: -unemployment and decrease in income or work capacity; -unforeseen events, e.g. divorce, death of one of the spouses, birth of a child, illness or accident; -failure in carrying out an independent activity, entrepreneurial insolvency and/or activities for which personal guarantees were established; - encouraging lending through advertising and marketing campaigns, inciting the population to take out loans that are easy to obtain; - high interest rates, which have a negative effect especially in the case of long-term loans, such as mortgage loans; - inadequate management of the household budget; - deliberate provision by consumers of erroneous information prior to the moment of granting the loan, so that financial institutions cannot correctly assess their creditworthiness; - excessive use of credit cards, revolving loans, loans obtained on the non-bank market, especially by people with low incomes, with exaggerated interest rates; - loans used to refinance other loans, which creates a snowball effect; - the fact that people with disabilities and people at risk of social exclusion, who are susceptible to taking out loans with a high degree of risk.

An aspect with major implications in the increase in (over)indebtedness is the significant share of enforced executions promoted against individuals who have contracted financial products and services, respectively the large number of litigations having as their object the appeals to enforced execution promoted by individuals. Also, regardless of whether individuals contracted in their own name, directly for their needs or had the quality of guarantors, sureties, or avalists of credit contracts concluded by legal entities, the latter having the quality of borrowers, it was found that individuals - consumers:

- did not understand the impact of guaranteeing financial products and services on their own budget, respectively on their assets, real financial counseling prior to contracting financial products and services not actually existing;

- they did not understand the rights they benefit from, as they either did not inform themselves, or these rights were not explained to them by the representatives of the financial institutions and as a result, they did not exercise them, therefore, they did not effectively benefit from complete and effective pre-contractual information, the contracts they signed being adhesion contracts;

- they were not informed and their attention was not drawn to the risks of the guarantee, as well as to the advantages and disadvantages of concluding the contract;

- they were not aware of the fact that the obligation to inform, which the credit institutions had, was not limited to the moment of concluding the legal act, but also extends to the period of execution of the contract;

- they renounced the benefits that the law provides in certain situations for guarantors-debtors, without understanding the consequences (e.g. waiving the benefit of discussion and the benefit of division, which are a rule in cases of surety contracts concluded with individuals - personal guarantors of the borrower /professional debtor);

- they signed / endorsed non-cash payment instruments, such as promissory notes, as guarantors, without understanding the legal consequences in the event of non-execution of the loan repayment obligation by the debtor - professional;

- they were not informed that, in situations where the loan holder will not pay the amounts owed, the debts may be assigned to debt collection companies, - they do not know their rights in relation to debt collection companies;

- they do not know the implications of their registration in the Credit Bureau records, etc.

II. AWARENESS OF THE PROBLEM OF CONSUMER (OVER)INDEBTEDNESS

The opinion of the European Economic and Social Committee on "Credit and social exclusion in a prosperous society" (2008/C 44/19) shows that *Given the worrying increase in this phenomenon in recent decades, and taking into account in particular the recent enlargement of the European Union and the recent deterioration of the global situation, the EESC, which has for a long time been closely following the development of this situation and its social consequences in terms of exclusion, social justice and the prevention of the full implementation of the internal market, has decided to reopen the public debate on this issue with civil society and the other Community institutions.*

Given the worrying increase in this phenomenon in recent decades, and taking into account in particular the recent enlargement of the European Union and the recent deterioration of the global situation, the EESC, which has for a long time been closely following the development of this situation and its social consequences in terms of exclusion, social justice and the prevention of the full implementation of the internal market, has decided to reopen the public debate on this issue with civil society and the other Community institutions.

The National Bank of Romania noted in 2022 the following aspects that have since become recurring realities: - the acceleration of the inflation rate, especially in the food segment, will lead to a decrease in the purchasing power of the population and disposable income, putting pressure on the ability to cover debt

service for people who have contracted loans, - Romanian households have the highest share of spending on food and non-alcoholic beverages in the European Union (25.2 percent, compared to the EU-27 average of 15 percent), as well as one of the highest shares allocated to alcoholic beverages and tobacco - 5.5 percent. Additionally, people with lower incomes allocate a higher proportion of their spending to basic needs; thus, they will be more strongly affected.

In 2023, from a macroeconomic perspective, the National Bank of Romania, through the Financial Stability Report, highlighted a series of economic and social risks with a direct impact on the level of indebtedness of the population and the economic stability of households. In the same sense, the National Bank of Romania emphasized that the increase in interest rates and the increase in financing costs generated additional pressures on the ability of households to honor their payment obligations, especially in the case of vulnerable debtors, namely those with an indebtedness of over 45% or who benefited from payment moratoriums because of the pandemic.

Also, the analysis of the National Bank of Romania reveals that, in the perception of households, the main sources of financial difficulties are represented by utility expenses (energy, gas, water, maintenance) and food costs, confirming a significant concentration of family budgets on basic needs.

In 2024, according to the report of the National Bank of Romania, the national economy recorded a slowdown in growth and a gradual deceleration of inflation. However, the maintenance of persistent pressure on food prices continued to affect the purchasing power of the population. The food component marked an inflection point in August 2024, when drought and rising production costs led to significant price increases for vegetables, fruits, dairy products, meat and meat products. Even though annual inflation eased to 4.8% in December 2024 from 14.3% in 2023, its effects on essential consumer goods remained visible. Increased fuel excise taxes and high wage costs put additional pressure on consumer prices.

On the financial front, the National Bank of Romania indicates that household asset holdings increased by 9.4% in 2024, while the share of debt service in disposable income decreased. Thus, the aggregate debt ratio fell to 3.9% in December 2024, almost 3 times lower than the level recorded after the 2008 financial crisis.

Thus, 2024 was marked by a significant deterioration in macroeconomic balances, with economic activity growing by only 0.8%, the slowest pace in recent times, except for 2020. The budget deficit reached 9.3% of GDP, the highest in the European Union, and a significant fiscal imbalance is expected to remain in 2025, in the absence of firm budgetary consolidation. In parallel, the purchasing power of the population was eroded by the persistent effects of inflation and the decline in the pace of economic growth, while the trade and budget deficits amplified pressures on internal balances.

ASPECTS REGARDING OVER-INDEBTEDNESS PREVENTION FOR VULNERABLE CONSUMERS

In 2025, from an economic point of view, the National Bank of Romania noted the following aspects regarding a series of developments and risk factors that reinforce the vulnerability trends of households and companies, which were also reported in previous reports. The indebtedness of the non-governmental sector continued to increase, reaching 770.7 billion lei, representing 43% of GDP in March 2025, with an annual growth of 7.6%, one of the fastest in the European Union, but still maintaining the lowest degree of financial intermediation in the EU.

In terms of debt repayment capacity, the population recorded an improvement in credit quality, with the non-performing loan rate standing below 3% in March 2025, compared to 3.3% in the previous year, while for non-financial companies, the non-performing loan rate increased to 4.4% from 3.8% in the previous year. At the same time, the probability of repayment of consumer loans is estimated to increase from 2.94% to 3.1% by March 2026. In its report, the National Bank of Romania highlights a sharp polarization of the population's wealth, given that only 0.6% of depositors hold 28% of total bank deposits, although 68% of people over 15 years old have at least one bank account. This concentration accentuates the financial vulnerability of a significant part of the population to inflationary shocks and rising living costs.

Awareness of the problem of (over)indebtedness of the population and the solutions found to this problem are found with utmost relevance not only on the European agenda, but also on the agenda of governments in the member states, reflected in regulations and practices aimed at preventing and reducing consumer indebtedness.

This represents a constant concern at European level, a necessity that includes real milestones to prevent consumer (over) indebtedness, which particularly aim to improve the following aspects:

-problems in mortgage markets in the European Union related to irresponsible lending practices and the possibilities for market participants, including credit intermediaries and non-bank financial institutions, to behave irresponsibly.

- the need to improve consumers' ability to make informed decisions about loans and responsible debt management, meaning that EU Member States should promote measures that support consumer education on responsible borrowing and debt management, meaning relation to mortgage credit agreements. It is important to provide guidance to consumers taking out a mortgage for the first time, to identify examples of good practice to be used in the field to facilitate the future development of measures aimed at raising consumer financial awareness.

- the need to promote, both by Member States and by consumer organizations, measures aimed at supporting consumer education on responsible borrowing and debt management practices, regarding mortgage credit agreements.

- given the significant risks associated with foreign currency loans, it is necessary to provide for measures to ensure that consumers are aware of the risk

they are taking, and that the consumer has the possibility to limit his exposure to exchange rate risk during the term of the loan.

- the need to provide advice in the form of a personalized recommendation, advice that represents a distinct activity, which can, but does not necessarily have to, be combined with other aspects related to the granting or intermediation of credits. The establishment of *guarantees regarding the advice provider, if the advice is described as independent.*

- the need for education, information and financial counseling actions to prevent consumer (over)indebtedness, which consumer associations aim to carry out, represents a pressing issue that results strongly from the data of an indisputable situation in this field, at the national level.

The opinion of the European Economic and Social Committee on "Credit and social exclusion in a prosperous society" (2008/C 44/19) shows that, *In the absence of any Community guidelines in the field, the various Member States have developed their own national systems that attempt to prevent over-indebtedness of individuals and families, treat cases of over-indebtedness, help individuals or families get out of debt and provide them with assistance.*

In this context, procedures have been established at national level to prevent (over)indebtedness, one of which is developed below.

III PROCEDURE ESTABLISHED BY BANKS FOR VULNERABLE CONSUMERS UNABLE TO EXECUTE THE CREDIT AGREEMENT

III.1. Code of conduct and principles of good practices of banks in relation to vulnerable consumers in payment difficulties or representing a social case during the execution of the credit agreement concluded with them

(i) One of the instruments designed to help (over)indebted consumers is the Banking Industry *Code of Conduct.* All credit providers on the Romanian banking market have adopted this code, so its provisions apply to any (over)indebted consumer in payment difficulties or representing a social case, regardless of which credit institution the credit was contracted from. The exception is loans contracted from non-banking credit institutions that are not members of the Romanian Association of Banks – ARB.

Conceived also as an instrument to protect consumers of financial services, the Banking Industry Code of Conduct dedicates a separate chapter to procedures created to support debtors in payment difficulties or representing a social case.

Since the adoption of the Code, the ARB has indicated that it *"establishes a general framework for the conduct of banks in relation to debtors in a situation of payment difficulty or for whom the occurrence of such a situation is imminent, as well as in relation to debtors representing social cases.*

Therefore, this Code supports debtors who are either in payment difficulties or are about to find themselves in such a situation in the shortest

possible time, as well as debtors who represent social cases, by providing specific principles that guide the relationship between these categories of debtors and the lending institutions from which they have contracted loans.

It is obvious that, by adopting these principles, banks also recognize the special attention that is necessary to pay to their partners – consumers in particular, difficult situations, because these dilute the possibilities of consumers to execute the credit contract or may even generate its non-execution. Or the reason for the conclusion by the parties of the contract in general, as well as the credit contract in particular, is the intention to produce legal effects. So that any situation that constitutes barriers to the successive execution of the credit contract by the consumer needs to be brought to the attention of the bank, and the parties to carry out an objective analysis, based on good faith, and to seek solutions, to continue the execution of the contract.

Also, since the launch of the Code, the ARB has indicated key elements of its content, through which the relationship between banks and consumers will be based on cooperation and thus help prevent imminent payment difficulties, support those with established payment difficulties, as well as those who represent a social case.

These key elements consist of the following:

- ✓ *"Debtors are encouraged (i) to proactively communicate the situations/changes in their life situation they are facing, (ii) to respond promptly to the bank's requests, especially regarding the provision of information for resolving the case, including information about their financial situation, and (iii) to be open to discussing the various solutions proposed by the bank."*
- ✓ *"Working with consumer debtors and providing support and advice in order to identify solutions to overcome the impasse they find themselves in."*

(ii) As a priority, prior to analyzing the key elements, it is necessary to define, in accordance with the provisions of the Code, the following concepts that delimit its scope of application:

(i) *Debtor – consumer-client of a bank, who is characterized by the following:*

- ✓ has taken out one or more loans from the respective bank,
- ✓ acts in good faith, by demonstrating willingness to provide the bank with documents and information that prove that they are in payment difficulties or that they represent a social case,
- ✓ demonstrates willingness to identify, together with the bank, an appropriate solution for his situation.

In the meaning of the Code, the concept of *Payment Difficulty* designates the situation of the Debtor significantly impaired from a financial point of view compared to the moment of conclusion of the credit agreement/agreements. What

characterizes the impairment of the financial situation? In that the Debtor does not have sufficient assets using which he can ensure the repayment of the credit/credits without causing a severe deterioration in his living conditions and those of his family members.

The sources of impairment of the financial situation are listed by way of example and not limitation in the Code, and may come from: loss of employment, significant decrease in income and/or simultaneous increase in payment obligations related to loans, including due to exchange rate fluctuations, increase in interest rates, or changes in other financial parameters.

It is obvious that other causes may also cause the deterioration of the Debtor's financial situation, such as inflation and rising utility prices.

In the meaning of the Code, the concept of *Social Case* designates the situation of the Debtor in Payment Difficulty or for whom this condition is imminent, this time as a result of exceptional events occurring on a personal and/or financial level, both in the case of the debtor and/or in the case of a member of his family, for example: death, serious or incurable illness, partial or total loss of work capacity, events of maximum severity. The Bank, in accordance with its internal rules, may adopt exceptional measures to support the respective Debtor.

III.2. Key elements in the relationship between the bank and the consumer launched by the Code of Conduct

A first key element in the principles is the bank's collaboration with the debtor.

The Code launches the concept of quality of cooperation and considers that it depends on and influences the effectiveness of banks' efforts to manage situations of Payment Difficulty and Social Cases.

The content of the cooperation concept includes the following actions:

a) Debtors are encouraged to proactively address banks, revealing the situations/changes in their life situation they are facing, to promptly respond to the bank's requests, especially in terms of providing relevant and accurate information for the successful management of the situations they are in, in order to resolve the case, including information about their financial and social situation;

b) Whenever a Debtor considers that the information received from the bank is unclear or ambiguous or that the solutions offered by the bank and/or its recommendations do not respond to his specific situation, he is encouraged to request clarification from the bank's staff or from a specialized third party, including consumer protection associations.

We note that the principles provide for the possibility of involving consumer associations in information activities and finding solutions for Debtors in Payment Difficulty or representing a Social Case. This provision in the principles indicates the important role that, in the understanding of the banks,

consumer associations have in providing independent services of "advice to Debtors on debt matters".

To take a step forward, we believe that the following are urgently required:

(i) establishing communication and relationship procedures between bank/non-bank credit providers and consumer associations, *so that the Debtor is directed to independent debt counseling, within consumer associations, in a timely manner to stop/limit the worsening of indebtedness, because debt counseling does not exclude and does not overlap with the counseling provided by bank/non-bank credit providers, regarding the credit agreement;*

(ii) *Identifying the stages in the life cycle of the credit agreement* concluded with bank credit providers where independent debt counseling services, provided by consumer associations, are imminent and effective, because time is running out to the detriment of the Debtor in a state of established or imminent difficulty, or in a social case situation (e.g. after the first non-payment of the credit installment when due, prior to the start of forced execution, etc.)

(iii) Debtors must be open to discussing various solutions applicable to the case or proposed by the bank..

*The second key element in the principles is Communication with the Debtor in Payment Difficulty or Representing a Social Case***,** and this will have the following characteristics:

- proactive and accessible, both in language and content, as well as in communication medium, throughout the entire period of the credit agreement;
- adequate and proportionate to the need for information, including where the Bank mandates a third party to maintain contact with the Debtor.

The Code provides for the specific elements of this communication, but we note that these are true obligations on the bank, highlighted in communication between the bank and the consumer-debtor, as follows:

a) The Bank will contact the Debtor in the event of a payment delay of more than 30 days, in order to:

- identifying the causes of the payment delay and understanding the specific situation of the Debtor;
- providing complete information on the current status of payments/payment delays, respectively regarding the possible consequences related to the persistence and/or amplification of payment delays;
- identifying the most appropriate solutions for paying payment obligations/supporting the Debtor, in order to avoid the process of enforcing real and/or personal guarantees.

b) The Bank will provide information to the Debtor, clearly and in plain language:

- ✓ regarding the importance of the Debtor's cooperation with the Bank to resolve the payment difficulty situation.

- ✓ regarding the consequences of non-payment, including the accumulation of penalty interest and the effects of declaring early maturity, respectively initiating enforcement proceedings.
- ✓ regarding the rights and obligations of the Debtor, as mentioned in the provisions of the legislation in force and reflected in the contractual documentation.
- ✓ as detailed as possible regarding the possible solutions to be implemented for the payment of payment obligations.
- ✓ supporting the Debtor, including from the perspective of the consequences on the total amount that will be owed by him.

A third key element in the principles is the continuous training and specialization of bank staff.

In this regard, the obligation of banks to ensure continuous training and specialization of their personnel is established. `

We also mention that banks have the possibility to apply other principles than those expressly provided for in the Code, of course, we appreciate, if they are in the interest of the consumer-debtor.

III.3. Summary of the principles of conduct applied by banks in their relations with vulnerable consumers

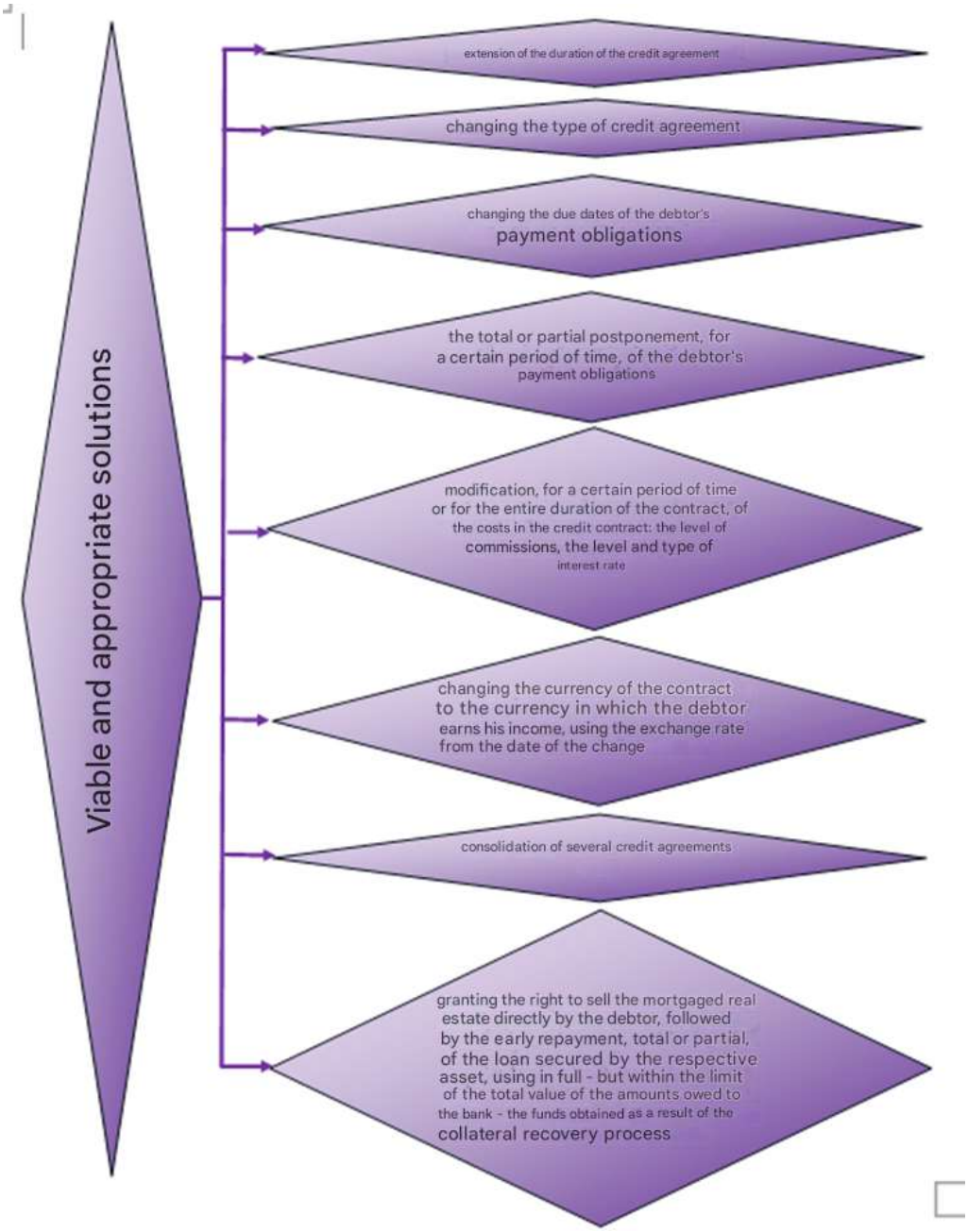
For a useful approach to the code of conduct, by the practitioners in the field of banks, the principles are objectified, in synthesis, in the following aspects presented in schemes-guide 1 – 4

Pro-active communication of the debtor with the bank, Preventive measures recommended to the credit provider, Evaluation of the debtor to propose a solution and Presentation of possible solutions based on the results of the evaluation.

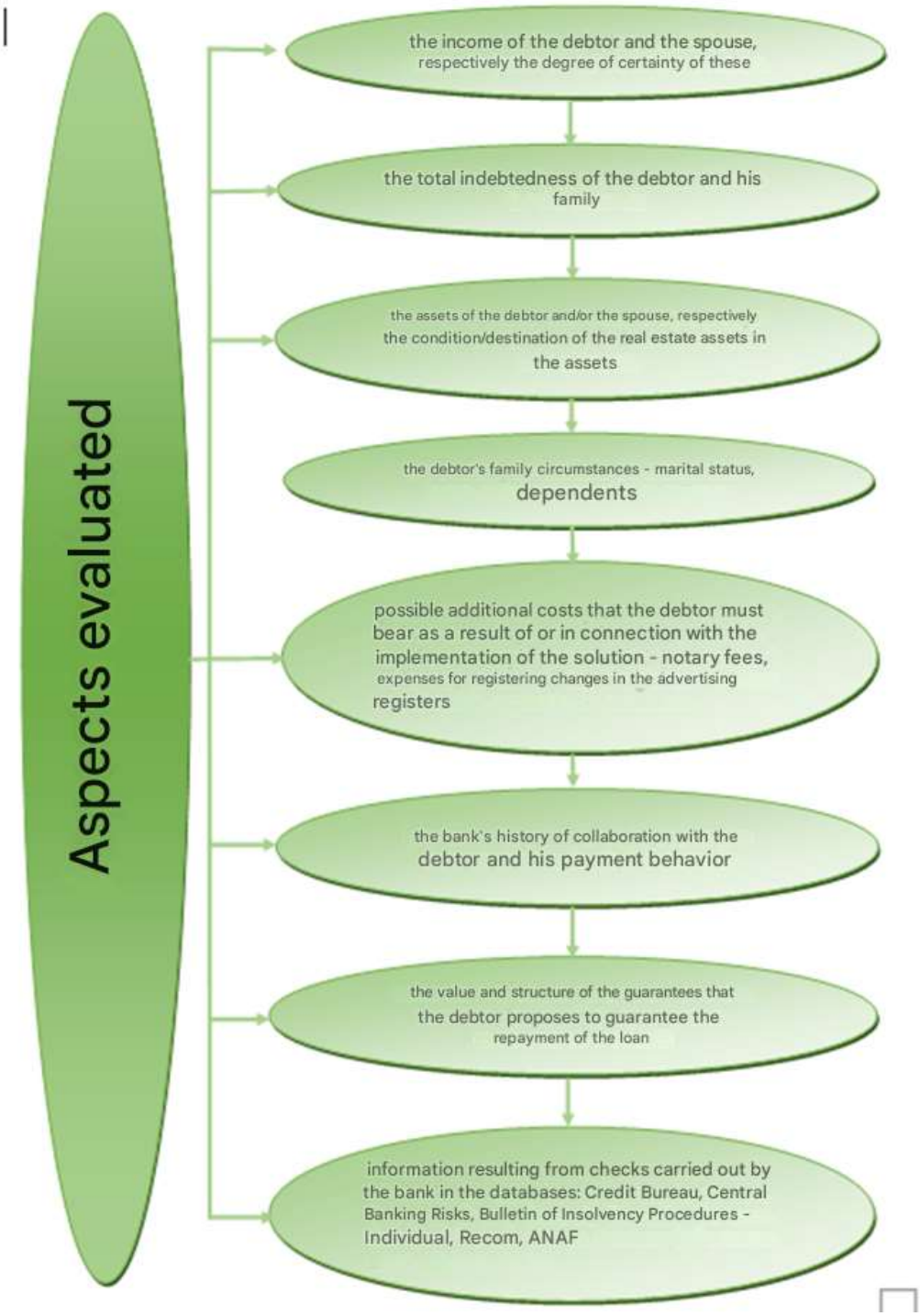
The Debtor can resort to all these means if his situation falls within the scope of the Code, namely if he is in payment difficulty or represents a social case.



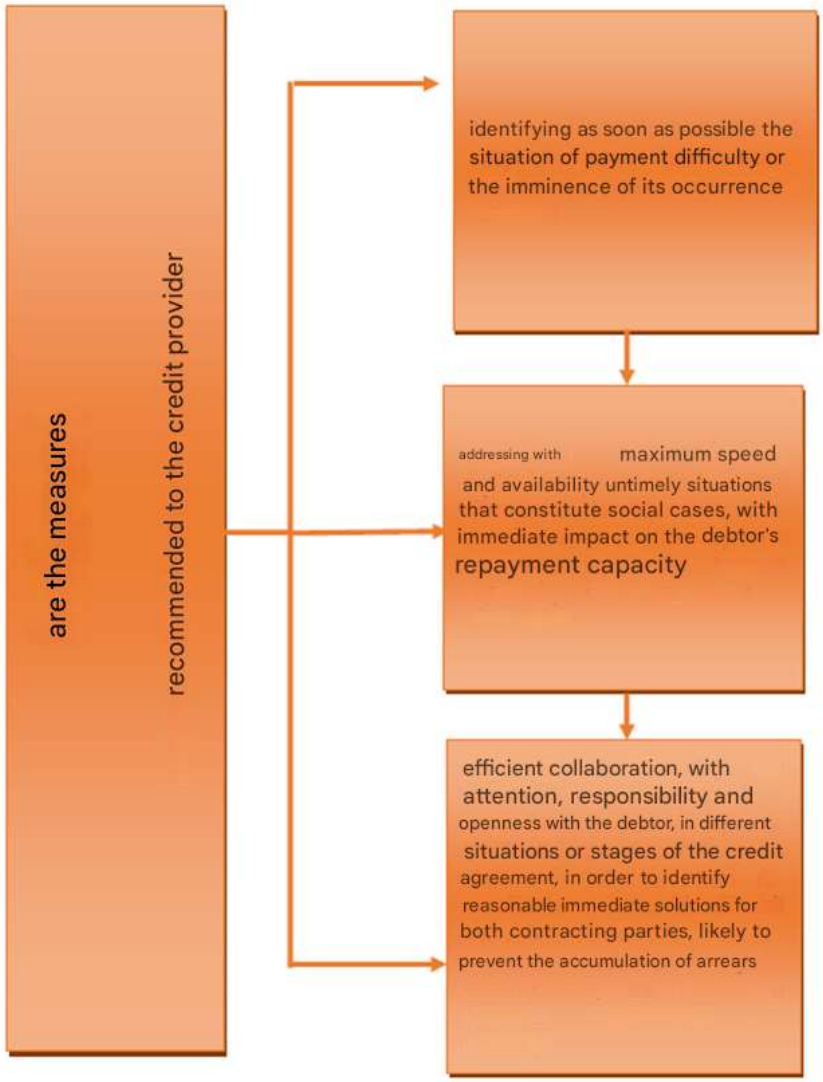
Pro-active communication of the debtor with the bank



Recommended measures for the credit provider in relation to the debtor



Debtor assessment to propose a solution by the creditor



Possible solutions for the debtor based on the assessment results.

CONCLUSION

The analyzed procedure is of great utility, first of all for detecting vulnerable consumers from the two categories – consumers in payment difficulties or representing a social case, who can no longer repay the credit granted by the bank. Finding solutions to avoid deepening the consumer's indebtedness, within the contractual relationship of cooperation between the bank (creditor) and the consumer (debtor), is the essence of this procedure. Its applicability depends on the bank, which, having appropriately trained personnel, must proactively adapt

to the consumer's specific situation, his financial possibilities and needs and support him in finding bilaterally accepted solutions. To the same extent, the applicability of the procedure depends on the consumer who had to notify the bank of the situation created and collaborate in documenting it. Only the actions of both parties generate a functional procedure, which achieves the goal for which it was created.

A new frontier in diversifying the means of preventing over-indebtedness will be debt counseling, regulated in art. 36 of Directive (EU) 2023/2225 of the European Parliament and of the Council of 18 October 2023 on consumer credit agreements, which repeals Directive 2008/48/EC in the field of consumer credit, which, along with the amendments in its content, reforms the regulation of consumer credit.

BIBLIOGRAFIE

1. D. Korczak, *Debt Advice and over-indebtedness in Europe,* Money Matters no. 16/2019;
2. J.Goicovici, *Dreptul consumatiei*, Sfera Publishing House, 2006;
3. R.M.Necula, *Executarea silita a contractelor de credit incheiate cu consumatorii*, Universul Juridic Publishing House, 2020;
4. I.Turcu, *Noul Cod Civil. Legea nr. 287/2009. Cartea V. Despre obligații (art. 1164-1649) Comentarii și explicații*, C.H. Beck Publishing House, 2011;
5. I.Turcu, *Contractele bancare în Noul Cod Civil. Comentarii și explicații*, CH Beck Publishing House, 2013;
6. C. Ciornei, *Asistență socială a persoanelor vârstnice în România postdecembristă*, Prouniversitaria Publishing House, 2025;
7. U. Reifner, *Consumer Lending and Over Indebtedness among German Households*, https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:044:0074:0083:EN:PDF
8. Eurofound (2013), *The over-indebtedness of european households: updated mapping of the situation, nature and causes, effects and initiatives for alleviating its impact,* https://ec.europa.eu/info/sites/default/files/final-report-on-over-indebtedness-of-european-households-synthesis-of-indings_december2013_en.pdf
9. Eurofound. (2020). *Tackling household over-indebtedness. Luxembourg:* Publications Office of the European Union, https://www.eurofound.europa.eu/en/publications/2020/addressing-household-over-indebtedness
10. Opinion of the European Economic and Social Committee *on Credit and social exclusion in a prosperous society* (2008/C 44/19) https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:52007IE1459&from=PT
11. Study on Europen consumers' over-indebtedness and its implication, *Final Report*, June, 2023, https://commission.europa.eu/publications/study-european-

consumers-over-indebtedness-and-its-implications-annexes-final-report_en, accessed 30.02.2025
12. European Union: New Directive on Credit Agreements Strengthens Consumer Credit Protection, https://www.loc.gov/item/global-legal-monitor/2023-12-28/european-union-new-directive-on-credit-agreements-strengthens-consumer-credit-protection/ accessed 30.02.2025
13. European Parliament (2023). Review of the Consumer Credit Directive Parlamentul European. (REFIT). https://www.europarl.europa.eu/legislative-train/spotlight-JD21/file-revision-of-consumer-credit-directive-%28refit%29 , accessed 02.08.2025;
14. Code of Conduct and Principles of good banking practices and conduct of banks in relation to consumer debtors facing situations of payment difficulty or representing a social case https://www.arb.ro/wp-content/uploads/7-Cod-de-conduita-ARB.pdf accessed 10.09.2025;
15. National Bank of Romania, Registers and Lists https://www.bnr.ro/Registre-si-Liste-717-Mobile.aspx#IC accessed 02.08.2025;
16. National Bank of Romania - Financial Stability Report, June 2022, p.40, https://www.bnr.ro/PublicationDocuments.aspx?icid=19966) accessed 02.08.2025;
17. National Bank of Romania - Financial Stability Report, June 2025, pp. 5-16. https://www.bnr.ro/uploads/2025-06raportasuprastabilit%C4%83%C8%9Bii financiare-iunie2025_documentpdf_545_1751378181.pdf accessed 15.08.2025;
18. Romanian Association of Banks, Press Release - Code of Conduct, *https://www.arb.ro/wp-content/uploads/Comunicat-de-Presa-Cod-de-Conduita.pdf* accessed 15.08.2025,
19. List of credit institutions that are members of the Romanian Banking Association, https://www.arb.ro/despre-arb/membri-arb/, accessed 01.09.2025;
20. https://www.caleaeuropeana.ro/eurostat-345-dintre-romani-se-afla-la-limita-saraciei-sau-excluziunii-sociale-fiind-cel-mai-ridicat-procent-la-nivelul-ue/ accessed 01.09.2025.
21. https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=OJ:L_202302225 accessed 30.09.2025.

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 46-56

REFERENDUM AS AN INSTRUMENT OF DEMOCRACY IN A STATE GOVERNED BY THE RULE OF LAW: AN ANALISYS THROUGH THE LENS OF THE ROMANIAN CONSTITUTIONAL COURT'S CASE-LAW

V. BĂRBĂȚEANU

Received 12.12.2024; accepted 10.02.2025
First online publication:15.02.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.238

Valentina BĂRBĂȚEANU
University "Nicolae Titulescu" Bucharest
E-mail: valentina_barbateanu@yahoo.com
ORCID ID: https://orcid.org/0009-0005-1949-8683

Abstract

The paper intends to highlight the importance of the referendum in a democratic State and to stress the need that its organization and conduct have to be in accordance with the standards required by a State governed by the rule of law. The role of the Constitutional Court will also be depicted and its case-law will be briefly presented in what concers the most relevant aspects of the referendum as an instrument used by the citizens in order to participate in the decision-making process at the State level.

Key words: *referendum, rule of law, democracy, constitutional court, constitutional review.*

INTRODUCTION

The management of contemporary state-organized society requires a complex institutional architecture, rigorously organized, which has to be able to ensure the efficient functioning of the state mechanism. In those states that proclaimed in the very Fundamental Law their social character, with the intention of following the wellfare of their own citizens, the state power must act in such a way as to allow the constant development of social life, by enacting measures that tend to ensure a decent standard of living for their citizens, by establishing the highest possible benchmarks for the protection of fundamental human rights and freedoms and by developing social policies that come in the benefit of citizens as much as possible. According to Article 1 Paragraph (3) of its Constitution, Romania is a social state. At the same time, the text provides that it is also a democratic and constitutional state. These three characteristics define the current political and legal physiognomy

of the Romanian state, necessarily imprinting on it a behavior that empowers these features.

I. CHARACTERISTICS OF THE STATE GOVERNED BY THE RULE OF LAW

Antagonistic and courageous reply to the despotic or absolutist state, the state governed by the rule of law has as its ultimate goal not only to ensure the authority of the law, but also so that the rulers, who hold the power, to be subject to the law and limited by legal norms (*Ioan Muraru, Elena-Simina Tănăsescu,, 2019, p.7).* The definition of the concept of the rule of law was achieved including thanks to the case-law of the Constitutional Court, which, for example, by Decision no. 70 of April 18, 2000, published in the Official Gazette of Romania, Part I, no. 334 of July 19, 2000, or Decision no. 17 of January 21, 2015, published in the Official Gazette of Romania, Part I, no. 79 of January 30, 2015, held that this implies the subordination of the state to the law. Moreover the law has to have the capacity to censor political options and, in this framework, to weigh the possible abusive, discretionary tendencies of the state's structures. Also, the rule of law ensures the supremacy of the Constitution in the normative ensemble, in addition with the correlation and compliance of laws and all other normative acts with the Supreme Law. At the same time, the rule of law enshrines a range of guarantees, including jurisdictional ones, which ensure the respect of the rights and freedoms of citizens due to the self-limitation of the state and consequent inclusion of public authorities' activity in the coordinates of the law.

This last idea, according to which the entire activity of state institutions must be carried out in accordance with legal norms, is undoubtedly the most obvious expression of the rule of law character of the Romanian state. In consideration of this, the Parliament itself, as the supreme legislative body, must adopt laws that make it possible to meet the demands of the rule of law. In the doctrine, However, a warning was formulated in the juridical doctrine, in the sense that the definition of the rule of law as a set of limitations aimed to prevent the possible arbitrary actions of the authorities presents, indeed, the advantage of framing *ab initio* the actions of the state within the limits of the law, but the only effective guarantee in this aspect is the very principle of legality. But it can be easily perverted from a valid and effective formal rule into a simple formalism emptied of content *(Muraru, Tănăsescu, 2019, p.8).*

The counterweight to this risk resides in the constitutional review of laws, which is an essential dimension of the rule of law. Its purpose is to guarantee the supremacy of the Constitution, to contribute to the defense of the values enshrined in it and to increase the level of protection of rights and freedoms, by creating a normative system whose degree of compliance with the provisions of the Fundamental Law is as high as possible. As early as 1885, Georg Jellinek, in the work "A Constitutional Court For Austria", came with the idea of review of the constitutionality of laws exercised by a specialized court distinct

from the judicial authorities of the state. This theory was later defined by Hans Kelsen, who defined conceptually the so-called "European model" of constitutionality review of laws, characterized by the establishment of a single constitutional court, which would rendre generally binding decisions, by which to eliminate from the legal system the provisions of law contrary to the Supreme Law *(Hans Kelsen, "La garantie juridictionnelle de la Constitution", 1928)*.

II. CHARACTERISTICS OF THE DEMOCRATIC STATE

In the context of the rule of law, the third feature that defines the Romanian state, namely the democratic character, appears as a natural complement to the other two, the social character and the rule of law, forming the structure of resistance on which all other elements of the the state are based. Under this aspect, Article 2 Paragraph (1) of the Constitution establishes the benchmarks in which democracy is exercised, generically understood as the power of the people to self-govern.

The aforementioned constitutional provisions enshrine, on the one hand, representative democracy, that means that citizens take part in the exercise of state power by electing representatives, who form an electoral body that will exercise the prerogatives of power in the name and for the entire people *(I. Deleanu, 2006, p. 103 and 104)*. Thus, the election of the members of the Parliament and of the President of Romania is done within a transparent and fair electoral process, where every citizen posessing the right to vote has the opportunity to express his option regarding the persons to whom he or she will entrust the exercise of sovereignty.

On the other hand, Article 2 Paragraph (1) of the Constitution enshrines another facet of democracy, known, in legal doctrine, as participatory democracy. Thus, citizens have the opportunity to express themselves directly and to contribute to making of major decisions of the State through the referendum, which constitutes the method of consultation of the entire people regarding various problems of the country, of national interest. In addition, through Article 74 Paragraph (1) and Article 150 Paragraph (1) of the Constitution, along with the instruments specific to direct and representative democracy - respectively the referendum and the elections at national and local level -, the Romanian constituent legislator also established the citizens' legislative initiative, as a way of expressing participatory democracy *(Valentina Bărbățeanu, 2016, p. 19)* [1] , Likewise, the referendum that can be organized at the local level, so that the members of a local community could express their opinion on issues of narrower interest, limited to the level of a certain administrative-territorial unit, but of no less importance for those residents *(Elena Emilia Ștefan, 2022, p. 74-84)*.

[1] https://www.ccr.ro/buletinul-curtii-constitutionale

III. THE REFERENDUM, A DIRECT WAY OF ACHIEVING DEMOCRACY

From the perspective of the topic of this paper, it should be underlined that it is important to legally regulate the referendum in such a way as to achieve the purpose for which it was conceived. As follows from Article 2 Paragraph (1) of the Constitution, the referendum is the main instrument of direct democracy, a means of consultation through which the People have the opportunity to directly exercise the national sovereignty *(Valentina Bărbățeanu, 2018)*.

In Romania, the Constitution requires the organization of a referendum in two situations: in order to finalize the procedure for revising the Constitution by popular vote (Article 151 Paragraph (3)) and when the dismissal of the President of Romania is sought, for committing serious acts of violation of the Constitution (Article 95 Paragraph (3)), which can only be achieved through the vote of the citizens, due o the fact that through the popular vote he or she was elected to office. The Fundamental Law also regulates the possibility of convening a consultative referendum, wher the people can express their opinion on issues of national interest (Article 90).

The above-mentioned provisions contained in the Fundamental Law are detailed at a legal, infra-constitutional level, by Law no. 3 of 2000 on the organization and conduct of the referendum[2], which establishes the procedural rules that must be respected on the occasion of all three types of referendums. Also relevant from the point of view of the rule of law is the fact that, in addition to the norms that discipline their organization and conduct, a system of control of the compliance with the law of the operations corresponding to the referendum was established. Thus, by Article 146 Letter i) of the Constitution, the Constitutional Court was given the competence to oversee compliance with the procedure for its organization and conduct and to confirm its results. As guiding principles of the philosophy considered with regard to the referendum, the Court has held, in its case-law, that the main feature of the referendum lies in its function of legitimizing power, duet o the fact that the popular will validates the acts that are subject to its approval. At the same time, however, the Court has stressed that the referendum does not constitute an alternative to parliamentary democracy and it is useful only to the extent that it does not question the effectiveness of the Parliament as a representative assembly of the People and does not destabilize its authority, but only reflects the will of the People, giving voice to its choice on specific issues of particular importance for the State[3].

IV. REFERENDUM REGULATIONS AT THE INTERNATIONAL LEVEL

National regulations draw their essence from the generic rules proclaimed at the international level. Thus, the Universal Declaration of Human

[2] Published in the Official Gazette of Romania, Part I, no. 84 of 24 February 2000
[3] Decision 334 of 26 June 2013, Official Journal no. 407 of 5 July 2013

Rights provides in Article 21 that any person has the right to participate in the governance of his or her country, directly or through freely elected representatives. In the same sense is Article 25 Letter a) from the International Covenant on Civil and Political Rights according to which every citizen has the right and the opportunity to take part in the management of public affairs, either directly or through freely elected representatives.

Also, with particularly important and strong reverberations on the Romanian system are the statements of the European Commission for Democracy through Law (Venice Commission) comprised in the Code of Good Practices in Referendum Matters, adopted at the 70th Plenary Session, in Venice, on March 16-17, 2007. According to that, referendum is considered to be European electoral heritage. The document regulates the rules relating to voting, the drawing up of electoral lists, the way of organizing the vote, the rights of national minorities regarding voting, the validation and consequences of the referendum *(Marian Enache, Ștefan Deaconu, Valentina Bărbățeanu, 2022, p.209)*.

Thus, for example, in the mentioned document, the Venice Commission showed that the law must provide that a minimum of access to private audiovisual media is ensured for the participants in the referendum, as regards the campaign for the referendum and for publicity. Also, the financing of political parties and the referendum campaign must be transparent (Pct. I.2.2.f. și g. of the Code of Good practices). The Code stipulates that during the entire period of the referendum, the public administration authorities must respect their obligation of neutrality, which constitutes an element of ensuring the free expression of the will of the voters (Pct. I.3.1.a. of the Code of Good practices). Likewise, the issue to be voted on must be clear. It must not mislead, it must not suggest an answer, the voters must be informed about the effects of the referendum, the participants in the polls must be able to answer the questions only with "yes", "no" or with a blank vote. The authorities must provide objective information. This implies that the text submitted to the referendum, accompanied by an explanatory report or a balanced material belonging to the partisans and opponents of the proposal, must be made available to the voters with sufficient time in advance. Information must be accessible in all official languages of the State and in the languages of national minorities (Pct. I.3.1.c. și d.).

A rule that the Constitutional Court of Romania respects and has been many times put in the position of verifying is the one according to which the fundamental aspects in the matter of referendum law must not be able to be modified at least one year before the referendum. Altenatively, they must be regulated by the Constitution or at a higher level than ordinary law Pct. II.2.a. și b. of the Code of good conduct.

The recommendations of the Venice Commission reflect the existence of another ideological register in which the referendum should be understood, namely that resorting to the means of direct democracy, such as the referendum, is not always completely lacked of dangers regarding the restriction of citizens' rights, the abuse of some authorities or the distortion of the goal of the referendum. That is precisely why the use of the referendum must be carefully considered by the state authorities and the process of its implementation by the civil society as a whole must be carefully observed *(Marian Enache, Ștefan Deaconu, Valentina Bărbățeanu, 2022).*

V. THE ROLE OF THE CONSTITUTIONAL COURT REGARDING THE REFERENDUM

The Constitutional Court presents a report to the Parliament regarding the respect of the procedure for the organization and holding of the national referendum and it also confirms its results. The Court publishes the result of the referendum in the Official Gazette of Romania, Part I, as well as in the press (Article 4 Paragraph (1) and (3) of Law no. 3 of 2000)).

The referendum is considered valid only if at least 30% of the number of people registered in the permanent electoral lists participate in it, the decision being taken with at least 25% of the votes of those registered on the permanent electoral lists (Article 5 Paragraph (2) and (3) from Law no. 3 of 2000).

As the only authority of constitutional jurisdiction in Romania, the Constitutional Court exercises – among other powers - the constitutionality review of laws before their promulgation, through the *a priori* constitutionality review, but also after they enter into force and begin to produce legal effects, by means of *a posteriori* review of constitutionality. If the first one is a prophylactic control, the purpose of which being to prevent the contamination of the legislative system with legal provisions contrary to the Constitution, the second one has a sanctioning purpose, having the effect of removing from the legislative system the provisions of the laws or Government ordinances that form the object of the the review. It is undeniable the role that the Constitutional Court has had over the last decades in terms of clarifying various aspects related to the organization and conduct of the referendum. By means of the decisions it rendered regarding various provisions of Law no. 3 of 2000 or the laws that successively amended and supplemented the said law, it managed to contribute to the outline of a cohesive and coherent normative framework, in accordance with the constitutional provisions, but also with the democratic standards imposed by the Venice Commission. At the same time, it issued a multitude of valuable judgments that directed legal thinking towards an authentically democratic vision and channeled the Parliament's legislative creation towards a standard as close as possible to the requirements of the rule of law.

Thus, for example, the Court noted that the provisions of the Fundamental Law do not create a hierarchy between the two instruments due of which the State power is enacted, namely the representative bodies at the national level, elected by citizens by vote, on the one hand, and the referendum, on the other hand. They cannot be considered to have a subsidiary nature to each other. Moreover, the referendum is not an alternative for parliamentary democracy, and its abusive use can lead to undermining the legitimacy and role of the Parliament as a representative body of the people. This is the reason why Law no. 3 of 2000 provides for the Parliament's obligation to submit a point of view regarding the organization of a consultative referendum organized at the call of the President of Romania in accordance with Article 90 of the Constitution, in the view of the Guidelines regarding the organization of the referendum, adopted by the Venice Commission[4].

Taking into account the recommendations made to the States by the Venice Commission regarding the stability of the legislation in the matter of the referendum, the Court held that, in principle, the stability of the law is an important element of the credibility of the electoral process, and the frequent modification of the rules and their complex nature can disorient the voter, so frequent changes or changes shortly before the referendum (less than a year) of the relevant laws should be avoided.

This problem was raised in particular with reference to the quorum for validating the referendum and the voting majority, which are elements that belong to the very essence of the institution of the referendum, are obviously fundamental aspects in the matter of referendum law. Thus, by Decision no. 334 of June 26, 2013, the Court held that changing the quorum for participation in the referendum is the prerogative of the legislator, but the Constitutional Court must ensure that this instrument is not used for purposes other than those that the constituent legislator had in mind when consecrating the referendum, as a legal institution essential in a state of law anf form of direct participation of citizens in the decision-making process. The Court must ensure the observance of the principles regarding the legal stability of the laws in the matter of the referendum, as well as that of the loyal consultation of citizens having the right to vote, principles that presuppose the creation of all the conditions for voters to aknowledge the issues subject to the referendum, the legal consequences of lowering the participation threshold to the vote, as well as the effects that the result of the referendum produces on the general interests of the community.

Since the participation threshold represents an essential condition for the referendum to be able to express in a real and effective way the will of the citizens, constituting the premise of an authentically democratic manifestation of

[4] Decision no. 334 of June 26, 2013, Official Gazette no. 407 of July 5, 2013

sovereignty, in accordance with the principle established in Article 2 of the Basic Law, the Court came to the conclusion that it must find a right balance between the need to protect the citizen's right to participate in the referendum, as a fundamental right, and the desire of a parliamentary majority to impose its political will on the state at one given point.

As such, the Court found that the Parliament can intervene in the matter of the referendum legislation, provided that it is not subjected to strictly conjunctural changes, based on claims of opportunity or political understanding, which favors one or the other of the political forces represented in the Parliament which forms the parliamentary majority at a given time. The Court appreciated that if a law concerning the substance of the referendum right, adopted by a parliamentary majority at a given time, manages to gather majority parliamentary support for one whole year, it can be assumed that it truly reflects an electoral majority and that democracy could not be affected in any way, as well as the character of Romania as a State governed by the rule of law and democratic principles.

The Court stated that even if it is indisputable that the Parliament is the supreme legislative body, its legislative behavior must be subject to the principle of constitutional loyalty, which requires the collaboration of all the powers of the State, without the use of disproportionate or abusive means to achieve political goals. The preservation of the constitutional and democratic character of the state obliges the Constitutional Court, as the supreme guarantor of the Constitution, to prevent the consequences of the untimely change of the legal provisions in the matter of the referendum and to comply with the principles of legal stability (which implies clarity, predictability and accessibility), of fair consultation of citizens with the right to vote, of the freedom of elections and of the interpretation in good faith of the letter and spirit of the Constitution. All these principles are structural elements/values of the general principle of legal security, unanimously accepted within the framework of constitutional democracy.

Consequently, the level of the participation quorum, which is the very formal condition according to which the Constitutional Court is entitled, pursuant to Article 146 Letter i) of the Constitution, to ascertain the validity and confirm the results of the referendum, is not a simple technical or procedural aspect, but is a substantial aspect, for the clarification of which it is necessary to determine the intention of the constituent legislator, using a systematic interpretation of the Constitution. Therefore, the new regulations, which were, at that time, the object of the review exercised by the Constitutional Court, must not determine a state of uncertainty regarding a defining element of this procedure, since the options of the ordinary legislator regarding the establishment of the quorum for participation in referendum can fluctuate in value depending on the will of the political majority in Parliament and its conjunctural interests and this kind of circumstance

is likely to create a general state of uncertainty regarding the validity of the referendum.

The Court finally found that, in order to ensure compliance with the general principle of legal stability in the matter of referendum, in accordance with the recommendations of the Code of Good Practices in the matter of the referendum, adopted by the Venice Commission, with Protocol no. 1 in addition to the European Convention on the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights, the provisions of the Law amending and supplementing Law no. 3/2000, which changed the participation quorum level, were constitutional, but could not be applied to referendums organized within one year from the date of entry into force of the amending law.

Another interesting issue submitted to the analysis of the Constitutional Court concerned the typology of the act by which the competent authorities, as the case may be, order regarding the organization of a certain type of referendum and establish the date of the said referendum. Thus, the Court found enconstitutional a law that intended to amende Law no. 3 of 2000 and to attribute to the Government the competence to establish, by decision, the date of the organization of the referendum for the revision of the Constitution, although this is an exclusive right of the Parliament (Decision of the Constitutional Court no. 612 of October 3, 2017, Official Gazette No. 922 of November 23, 2017).

Through the cited decision, the Court noted that Law no. 3 of 2000, in the form in force at that time (and which, by the way, has been preserved until now, precisely as a result of the decision of the Constitutional Court finding the unconstitutionality of the amending provision), specified the type of normative act establishing the organization of the referendum and its date, as well as the authority that will issue it, depending on its constitutional legitimation regarding the triggering of the referendum. Thus, the object and date of the national referendum are established by law, in the case of the referendum on the amendement of the Constitution, by decision of the Parliament, in the case of the referendum on the dismissal of the President of Romania and by decree of the President of Romania, in the case of the referendum on issues of national interest.

The differentiation that Law no. 3 of 2000 makes it between the three types of referendum under the aspect of the normative act which, in the procedure of its organization and development, establishes the object and the date on which it will take place, is justified through the prism of the constitutional provisions that confer the power to trigger a referendum, respectively to the President of Romania, by decree, regarding the referendum on issues of national interest, and to the Parliament, by decision, in the case of the dismissal of the President of Romania, respectively by law, in the case of revision of the Basic Law. For the coherence of the procedure, it is rational that the same authority that initiates the

organization of the referendum should also be the one that establishes the date and object of the referendum.

For the hypothesis under discussion in that case, that of the referendum organized for the revision of the Constitution, the Court held that it is the Parliament that adopts, with a majority of two thirds or, as the case may be, three fourths of the number of deputies and senators, the project or the revision proposal of the Constitution. In order to become definitive, the revision must be approved by referendum, thus receiving full legitimacy through the general will of the people. That is why, in order to ensure a complete procedural mechanism, which gives effectiveness to the legislative demarch to adopt the revision law, including the regulation of its final stage, the Parliament is entitled to establish, through a distinct law, the date of the referendum, thus determining the moment when the law it passed would be subject to popular approval.

Contrary to this hypothesis, in the case of the President's dismissal from office, the Parliament sets the date of the referendum through a decision, by virtue of its constitutional powers. On the other hand, in the case of amending the Constitution, as the fundamental law of the state, the normative act relating to the organization of the referendum should also be a law. Therefore, the Court found that the provision contained in the single article point 2 of the criticized law, with reference to Article 6 Paragraph (5) the second sentence of Law no. 3 of 2000, according to which the Government establishes by decision the date of the referendum and brings it to public knowledge, immediately, through mass communication means, contravenes the provisions of Article 151 Paragraph (3) from the Constitution.

CONCLUSION

The referendum is the most direct mechanism for exercising democracy, citizens having the opportunity to be directly involved in decision-making process, their vote being necessary for the confirmation of acts with a particularly large and important impact in Romanian society, namely the dismissal from office of the President of Romania and the amendemen of the Constitution. Also, the referendum allows citizens to express their opinion on issues of interest to the whole society and which can have a considerable influence on state life. The present work aimed to present part of the referendum issue, especially from the perspective of the Constitutional Court's contribution to improving the legislation that regulates its organization and conduct. The final goal was to maintain the legal regulation of the referendum within the standards of the rule of law, as a specific instrument for democratic states. However, it is essential to remember that the referendum cannot replace the Parliament, as the representative decision-making body of the people. Precisely for this reason, the Constitution conferred different effects on the various types of referendum, namely a mandatory effect regarding the revision of the Constitution and the dismissal of

the President from the office, but only an optional effect regarding the consultative referendum. The case-law of the Constitutional Court, developed in consideration of the rules imposed by the Venice Commission in the Code of Good Practice regarding the referendum, played an important role in configuring the legal framework in which this instrument of democracy can be used in a State governed by the rule of law.

BIBLIOGRAFIE

1. Constitution of Romania; Law no. 3 of 2000 on the organization and conduct of the referendum, published in the Official Gazette of Romania, Part I, no. 84 of 24 February 2000; Code of Good Practices in Referendum Matters, adopted at the 70th Plenary Session, in Venice, on March 16-17, 2007;
2. Valentina Bărbățeanu, *"The Constitutional Court and participatory democracy or the involvement of citizens in the legislative process*", Bulletin of the Constitutional Court no. 1/2016 https://www.ccr.ro/buletinul-curtii-constitutionale/;
3. Valentina Bărbățeanu, *"The Referendum, Reflected In The Romanian Constitutional Court's Case Law"*, published in the e-book of the "Challenges of the Knowledge Society" Conference, Bucharest, 2018;
4. I. Deleanu, *Institutions and constitutional procedures - in Romanian and comparative law*, Ed. C.H. Beck, Bucharest, 2006;
5. Marian Enache, Ștefan Deaconu, Valentina Bărbățeanu, *Electoral System and the referendum in the jurisprudence of the Constitutional Court*, C.H.Beck Publishing House, 2022;
6. Ioan Muraru, Elena-Simina Tănăsescu, *The Constitution of Romania. Commentary on articles*, C.H.Beck Publishing House, Bucharest, 2019;
7. Elena Emilia Ștefan, *"Termination of the mayor's mandate through a local referendum"*, Public Law Review no. 4/2022;
8. Decisions of the Constitutional Court of Romania: Decision no. 70 of April 18, 2000, published in the Official Gazette of Romania, Part I, no. 334 of July 19, 2000;
2. Decision no. 17 of January 21, 2015, published in the Official Gazette of Romania, Part I, no. 79 of January 30, 2015;
3. Decision 334 of 26 June 2013, Official Gazette of Romania no. 407 of 5 July 2013;
4. Decision of the Constitutional Court no. 612 of October 3, 2017, Official Gazette No. 922 of November 23, 2017.

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 57-69

CONSIDERATIONS REGARDING THE CONSTITUTIONAL PROTECTION OF SEVERAL SOCIAL RIGHTS

S. BELEA

Received 25.03.2025; accepted 10.06.2025
First online publication: 11.06.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.257

Simion BELEA
„Technical University of Cluj-Napoca, North University Centre – Baia Mare"
Faculty of Letters, Department of Social Assistance
E-mail: simionbla@yahoo.com
ORCID ID: https://orcid.org/0000-0003-2298-6926

Abstract

The protection of social rights, particularly for vulnerable individuals, represents a fundamental aspect of the contemporary constitutional law across all states. Social rights are among the human fundamental rights and entail the state's obligation to eliminate economic and social inequalities to ensure the citizens well-being. This paper aims at analysing the protection of social rights at the international level, as well as the European Union as a supranational legal source. In its final section, the paper examines the protection of these rights at the national level, with reference to specific articles of the Romanian Constitution that safeguard citizens' social rights.

Key words: *constitution, citizen's rights, right to work, discrimination, sociology, social protection.*

INTRODUCTION

The constitution theory laid the foundation of modern legal thought which transitions from the recognition of rights in vertical relationships (authority – freedom) to horizontal relationships (freedom – freedom). The Swiss philosopher Jean-Jacques Rousseau argued that if people are sovereign, then the law and constitution must be a multilateral expression of their power. It is the constitution which legitimises a legal system and expresses the general will of the people. Since Rousseau onwards, law has become and has been understood as an expression of the general will, giving individuals the ability to express

themselves, and participate in governance for the first time *(Rotaru, 2023, 825-874).* The constitution serves as a reference for all legal acts, as it must align with the will of the people. People communicate and they do this through the law. The sovereignty resides with the people, being indivisible and inalienable.

The Declaration of Human Rights is a revolutionary milestone for the overall society, establishing the principle of equal rights for everyone. Although, it may be needed for a century to pass to see the effective application of these principles, after two World Wars that left behind a tragic page in history, 1789 represents a vital foundation of constitutionalising fundamental rights and is an essential reference for every constitutional text. To define the concept of 'constitution' it is necessary to establish the historical foundations of the state theory to explain further the concept of constitutionalisation. The constitutionalisation of citizens' rights underlines the necessity of ensuring that relationships identified by the social rights are protected by strong legal guarantees. The constitution represents a supreme source of law within the legal system, to which all other legislative acts must conform. The term *Constitution*[1] has come to acquire a plurality of meanings, being shaped by the historical, political, social, and cultural contexts. On the other side, from an axiological perspective, particularly after the Enlightenment[2] and the French Revolution, the term *constitution*[3] emphasizes a fundamental specific law, one which establishes a

[1] The term 'constitution' drifted from the latin 'constitutio' which refers to an important law, usually issued by the emperor, and it is still used in the Canon Law to indicate the important decisions taken by the Pope, such as the apostolic constitution which establishes the regime that needs to be followed during the period where the chair of the Pope is vacant until a new Pope is chosen.

[2] This is the term applied to the XVIII century European and American thought. The intelectual and scientific events from the XVII century, the discoveries of Isaac Newton, the rationalism of Rene Descartes, the scepticism of Pierre Bayle, the pantheism of Benedit the Spinoza and empiricism of Francis Bacon and John Locke – have promoted the faith in natural laws and in the universal order, as well as the confidence in the rational human being and its inovative abilities, which managed to influence the whole society of XVIII century. Source: https://ro.wikipedia.org/wiki/Iluminism Accessed at 20th November 2024.

[3] Constitution – fundamental legal act which constitutes a set of rules and norms with a supreme legal force, norms which regulate the social relations within the area of state establishment and use of state power, establishing at the same time the limits of this power, the fundamental rights and freedoms of citizens. The constitution represents the legal act which contributed to the regulation of society organisation. Source: https://dreptmd.wordpress.com/cursuri-universitare/drept-constitutional/capitolul-4-constitutia-in-sistemul-juridic-normativ/ Accessed at 20th of July 2024. The legal concept of constitution can be explained in two ways: material and formal. From the material perspective, the constitution is a set of laws and rules, which regardless their nature and

system of separation of powers. The earliest studies on constitutionalism date back from the period of Enlightenment and rapidly became a means of politically articulating liberal principle, also known as '*constitutionalism'*, which has evolved over the past two centuries. Limiting state power and democratisation constitute two key elements of contemporary constitutionalism in relationships between individual and authority (form of the state) but also in the relationships between supreme constitutional bodies and political governance. These mark the transitioning from the parliamentary state to a constitutional legislative state. The constitutionalisation of individual rights highlights the necessity of ensuring that social rights exist within a framework of strong legal guarantees. Thus, social rights are protected when enshrined in legal documents within the national legal framework. These are rights that involve a financial cost, which are ultimately supported by society, leading to inevitable tensions between beneficiaries and taxpayers (although the latter may also benefit from certain public services). The constitutional state is one whereby constitutional values have supreme authority and remain resilient to changes in parliamentary majorities, although their interpretation may vary. Its development has led to a gradual departure from the traditional theory of legislative supremacy within the European sphere, towards a system in which the fundamental human rights and the relationships between constitutional bodies are subject to legal constraints as well as judicial oversight.

I. THE RECOGNITION OF SOCIAL RIGHTS AT THE INTERNATIONAL AND EUROPEAN LEVELS

The recognition of social rights at the international level was primarily found in the Universal Declaration of Human Rights, adopted by the United Nations in 1948[4]. The declaration contains a significant catalogue of fundamental rights, among which social and economic rights (including the right to work and fair remuneration) rights which according to the UN Charter, are connected to the development of a social and international order. Despite its non-binding nature, the Declaration was a constant reference, essential for subsequent legal acts which defined the centre of social rights that were recognised to the individual *(Rotaru, 2023, 205-221).* Among these, is the International Covenant on Economical Social and Cultural rights from 1966 [5] which elaborating upon the rights

form, have the main objective: the constitution, competency and the functioning of the state's bodies, and how the government and citizens relate to each other.

[4] The Resolution nr 217-III from the 10th of December 1948.

[5] The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multilateral treaty, adopted on the 16th of December 1966 by the United Nations General Assembly through the G.A Resolution 2200A (XXI). This came into force on the 3rd of January 1976. It commits its parties to work together towards the granting of social, economic and cultural rights (ESCR)

mentioned in the Universal Declaration, identifies a minimum protection standard of these rights, although it does not establish a mechanism of judicial enforcement of these rights. Oversight is provided by the United Nations Economic and Social Council which conduct reviews of reports submitted by contracting states and can provide general recommendations. At the regional level, the most advanced protection instrument for human rights is the European Convention on Human Rights[6] signed on the 4th of November 1950 and ratified by all the states – members of the European Council. The European Convention on Human rights not only focuses on civil and political rights, but also addresses fundamental rights such as the trade union freedom, without forgetting Article 4 which prohibits forced labour and slavery. The most significant element of this document is the establishment of the European Court of Human Rights [6], providing a justiciable mechanism, allowing both the state and individuals to challenge violations of their rights, including the social ones.

a) Regional documents on the social rights of citizens

The African Charter of Human and People's Rights[7] provides protection for the right to work in Article 15, the right to health in Article 16, and the right to education in Article 17. Another important step in the protection of social rights is the European Social Charter[8] which was signed on the 18th of October 1961 in Torino by the member states of the European Council. This was later revised in 1966 and enumerates a list of fundamental social rights, including the right to

---

towards teritories and individuals who are not self-governing. This includes the right to work, right to health, right to education and right to a decent standard of living. Source:https://ro.wikipedia.org/wiki/Pactul_interna%C8%9Bional_pentru_drepturile_economice,_sociale_%C8%99i_culturale. Accessed on the 20th of November 2024.

[6] In January 2020, the European Court of Human Rights (ECHR), also known as the Strasbourg Court' was developed in order to hear applications of complaints regarding the human rights from the member states of the European Council. The Court's mission is to ensure that the human rights of the European Convention of Human Rights and the Suplimentary Protocol are respected by the state members. Source: https://ro.wikipedia.org/wiki/Curtea_European%C4%83_a_Drepturilor_Omului Accessed at 20th of December 2024

[7] The African Charter of Human and People's rights also known as the Banjul Charter is a convention developed by the African Union in Nairobi on the 27th of June 1981, within the Justice Ministers Conference of the Organisation of African Unity.

[8] The European Social Charter is a European Council treaty, adopted in 1961 in Torino and revised in 1996 in Strasbourg. The revised version came into force in 1999 and slowly replaces the initial treaty which came into force in 1965. Source: https://it.wikipedia.org/wiki/Carta_sociale_europea. Accessed at: 20th of November 2024

work, the right to social security and social protection. Although, it is a document which lacks direct legal enforceability and does not provide a jurisdictional protection of the rights specified above (*F. SUDRE,1996,739*)[9], it relies instead on a controlling system of reporting, triggered by complaints, and monitored by the *Committee of Independent Experts*[10], (*F. Akandji-Kombe, 53/2003, 113 ff.).* The main purpose of this is to promote the uniformity of the state systems and encourage harmonization among the internal systems with the principles established in the Charter. At a European level, the document has a fundamental impact on the protection of social rights, as its key dispositions can be highlighted within the national systems through two essential mechanisms:

- Firstly, the member states of the Charter are forced to follow the established rights and ensure an effective application of these rights through measures which facilitate their application, further suggesting that the document can be invoked in the National Courts if the state is not accomplishing its duties and not aligning with the rights enshrined by the Charter (action of ascertaining the abstention of actioning).
- Secondly, complying with the principles developed by the Charter can be ensured through the conform interpretation technique[11]. The European Social Charter safeguards and upholds a varied list of economic, social, and cultural rights, such as the right to work, fair working conditions, the right to adhere, collective bargaining – in Articles 12-14, protection for vulnerable groups in articles 15-17 and 19, and access to living conditions in Article 31.

[9] The Charter recognises the human rights and human freedom and establishes a control mechanism to guarantee that the member states respect and follow them. Recently, through Law nr.74/1999, Romania ratified the European Social Charter, developed at Strasbourg on the 3rd of May 1996. Similarly, Romania signed the Charter on the 14th of May 1997, being the tenth member state and the first from the Central and East Europe that took responsibility to ratify this treaty, considered to be the reference document of the XXI century concerning social rights.

[10] A system completed in the 1998 which focuses on the collective complaints and allowing organisations to file complaints to the European Committee for Social rights. Since its establishment, it has made important decisions such as the Complaint Example nr.8/2000, CQAE c. Greece, that led to the Committee's decision to extend the application domain of the right to work from the article 2 of the Charter, for a general presentation of the Committee's decision.

[11] Similarly, the National Legislature often made reference to the Charter, and its dispositions to interpret the state's regulations, or to modify the national dispositions which are not compliant with the objectives and principles established by the Charter.

- The Protocol of San Salvador[12], within the Inter-American human rights system, protects a range of economic, social, and cultural rights.

b) States Responsibility

The economic, social, and cultural rights established in the regional and international human rights' instruments are legally binding. The member states have the legal duty to respect, protect and fulfil these rights. Under the International Covenant on Economic, Social and Cultural Rights (ICESCR)[13], and the Optional Protocol on economic, social and cultural rights which was established according to the Declaration and Action Programme from Vienna[14], the states have the obligation to undertake progressive realisation of these social, economic, and cultural rights, being required to take the necessary steps towards their fulfilment, even if full implementation is constrained by economic limitations. The progressive realisation is supported by the participant state. Non-discrimination in economic, social, and cultural rights must be implemented immediately, states being obligated to repeal laws, policies and practices that impede their realisation and take reasonable measures to prevent discrimination in the public sphere. All member states (regardless their economic situation or lack of resources) must ensure compliance with the rights, and equitable allocation of resources, subjecting government budgetary decisions to legal scrutiny. The legislative measures alone, are insufficient to ensure compliance with the ICESCR and it is expected that states offer judicial appeals, among the implementation of administrative, financial, educational, and social measures.

---

[12] The American Convention on Human Rights (ACHR) also known as the Pact of San Jose, is an international agreement that protects human rights. It was adopted in 1969 by the American Nations at San Jose, Costa Rica. It came into force after the 11th ratification (that of the Grenada ratification) which was submitted on the 18th of July 1978.

[13] The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multilateral treaty adopted by the United Nations General Assembly (GA) on 16 December 1966 through GA. Resolution 2200A (XXI), and came into force on 3 January 1976.

[14] Between the 14-25th June 1993, in Vienna took place the World Conference of the United Nations on Human rights. At the end of this conference, the representatives of 171 states voted and granted a Declaration and a Program of action for promoting and protecting the individual's rights. The Declaration and the Vienna Programme consolidated the universal principle of human rights and the states obligation to respect them. This document illustrates a whole section on education regarding human rights, and highlighting its importance. Furthermore, paragraph 78 reads: The World's Conference of Human Rights considers that the education and public information on the human rights are essential in order to establish and promote stable relationships between communities; and to promote mutual communication, understanding, tolerance and peace.

II. SOCIAL RIGHTS ENSHRINED IN THE ROMANIAN CONSTITUTION

The Constitution of Romania contemplates and regulates various rights classified by the legal scholarship as social rights. The main reason for attributing the qualification of *'social'* to these rights is found in the necessity of distinguishing them from the so-called *'freedom rights',* which have been present in all liberal constitutions for a long time.

The areas that are particularly protected by constitutional dispositions concern: education (Art. 32), health (Art. 34), labour (Art.41), social assistance (Art.47), family (Art.48). In this respect, reference is being made to:

- Article 32 bearing the marginal title *'Right to Education'*:

(1) The right to education is ensured by compulsory general education, secondary and professional/vocational education, higher education, as well as other forms of instruction and professional development.

(2) Education at all levels is taking place in the Romanian language. Under the conditions developed by the law, education may also be conducted in an internationally used language.

(3) The right of individuals belonging to national minorities to learn their native language and the right to be educated in this language are guaranteed; the methods in which these rights are exercised shall be established by the law.

- Article 34 bearing the marginal title 'Right to Healthcare Protection':

(1) The right to healthcare protection is guaranteed

(2) The state is obliged to take reasonable measures to ensure hygiene and public health

(3) Organising medical assistance and the system of social insurances for illness, accidents, maternity, and rehabilitation, controlling the medical professions and paramedical activities, and other measures for the protection of physical and mental health shall be established by the law.

- Article 41 bearing the marginal title of '*Labour and social protection of labour':*

(1) The right to work cannot be refused/restricted. The choice of occupation, profession, or trade, as well as the choice of workplace is free.

(2) Employees are entitled to measures of social protection. These include but are not limited to workplace health and safety, employment regime for women and young workers, establishment of a national minimum gross wage, weekly rest days, paid annual leave, work under special or

exceptional conditions, professional training and other specific situations determined by the law.

By regulating the freedom of labour for everyone and their right to choose their profession and workplace, the Constitution primarily focused on ensuring that every person who can work, is given the opportunity to work as they deem appropriate. By acknowledging the status of 'employee' and contributing monthly to the social insurance funds, the employed person is entitled to a series of social protection measures, bearing in mind that the justification and the fundamental principle underlying the development of social insurance funds is that of solidarity among the contributing members[15].

- Article 47 bearing the marginal title of '*Standard of Living':*

(1) The state is obliged to undertake measures for economic development and social protection to ensure citizens a decent standard of living

(2) Citizens are entitled to the right to have a pension, paid maternity leave, medical assistance in public healthcare institutions, unemployment benefits as well as other forms of public or private social insurances, established by the law. Citizens are also entitled to social assistance measures, according to the law.

Article 47 of the Constitution nominates several areas in which citizens are entitled to rights, areas which, from a large legal perspective have a connection to the concept of a decent standard of living. The nomination includes the following: the right to a pension, paid maternity leave, access to public healthcare, unemployment benefits and other social insurance forms ensured by the law. This article allows the law to identify and nominate additional forms through which certain groups of people may receive social assistance. Although we are debating a right guaranteed by the Constitution of Romania, article 47 should not be interpreted as an exclusive obligation for the state, which would exempt an individual of any effort in creating their own social environment for development.

[15] Similarly, the same article establishes the fundamental right for collective negotiation, as well as the compulsory behaviour of negotiation and contracts between employers and trade union organisations, An interdependent and united state is created starting from these three fundamental rights (the right to work, right to benefit from social assistance and the right to collective negotiation). The state and its representative authorities and institutions are under the constitutional obligation to safeguard and guarantee the fair remuneration of work, and protect in difficult situations the employees who contributed on a monthly basis to the funds for social protection.

- Article 48 bearing the marginal title *of 'Family': 'Family is founded on the freely consented marriage between spouses, on their equality, and on the right and duty of parents to ensure the upbringing, education and instruction of their children.'*

As mentioned above, a fundamental key of social rights is that they activate the states' obligations, which, among recognition, 'guarantees the non-violation of human rights' and takes responsibility for 'eliminating the economic and social barriers, that limit the citizens freedom, prevent the full development of the human being.'

III. THE RIGHTS 'FOR FREEDOM'

The right to choose a profession or workplace is recognised in Article 15 which states:

'Every person has the right to work, and the right to a freely chosen or accepted occupation.'

Equality of rights is, in itself, an equality of opportunity which is granted by the Constitution to all citizens[16]. This is also reflected in paragraph (1) of the Article 16, which guarantees the equality before the law and public authorities, without any privilege or discrimination. The content of paragraph (1) is correlated with Article 4, paragraph (2), which determines the criteria on non-discrimination such as race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, wealth or social origin[17]. The right to life and physical and mental integrity are highlighted in Article 22 such as:

(1) 'The right to life, as well as the right to physical and mental integrity are guaranteed.

(2) No one shall be subjected to torture or to any form of inhuman or degrading punishment.'

Furthermore, article 49 emphasises on the protection of children and young individuals:

---

[16] Article 16 – Equality of rights

(1) Citizens are equal before the law and public authorities, without privileges and discrimination.

(2) No one is above the law.

(3) The public, civil or military functions can be taken according to the law, by individuals who have a Romanian Citizenship and residence in the country. The Romanian State guarantees the equality of opportunity between women and men for these functions.

[17] Sourcehttps://lege5.ro/Gratuit/gq4deojv/egalitatea-in-drepturi-constitutia?dp=gqztemrwgeyto . Accessed at: 20 th of October 2024.

(1) Children and young individuals benefit from a special regime of protection and social assistance in their exercise of their rights.

(2) The state grants allowances for children and benefits for the care of ill or disabled children. Other forms of social protection for children shall be established by the law.

(3) The exploitation of minors, their use in activities which may harm their health, morality or which endanger their life or their normal development, are prohibited.

(4) Minors under the age of 15 years old cannot be employed as salaried workers.

(5) Public authorities have the duty to ensure conditions for the free participation of the youth in the political, sport, social, economic, and cultural life at the national level.

The protected categories include all people with disabilities, severe pathologies, and other forms of psychological impairments. To protect these individuals from discrimination in the workplace, specific legal protections for protected categories exist in the Constitution of Romania.

IV. THE PROTECTION OF INDIVIDUALS WITH DISABILITIES

Individuals with disabilities benefit from special protection. The state ensures the implementation of a national policy of equality and equal opportunities, prevention, and treatment of the disabled, aiming to enable the effective participation of individuals with disabilities in the community life, whilst also respecting the rights and responsibilities of parents. Each state has programs in the field, for example the Social Security Disability program in the United States that provides cash benefits to people who meet the legal definition of disability in the Social Security Act (*David A. Weaver, 2020, p. 51*). Studies of claimants who filed claims for acquired disability to obtain a new status of beneficiary and incapacitated for work highlight key barriers to the approval process, such as: high costs for obtaining medical results, long time to establish the file, stigma about receiving disability benefits (*Lila Rabinovich, Doerte Junghaenel, Tabasa Ozawa, 2025, p.*2)

The main issue in the constitutional study of disability is the way in which the provisions of the fundamental charter address the individual living with a disadvantaged condition, that distinguishes their existence and places them in a position that is different from the others. Therefore, the condition of disability must be examined considering the equal social dignity, the personalism principle,

and the concept of substantive equality. It is convenient to preliminarily break down the constitutional dimension of disability into two complementary themes: the relational and the individualist perspective[18]. The constitutional framework governing the regulation of disability is also limited by the inability of reshaping the structure of constitutional rights, particularly for individuals with disabilities. This is reflected by the constitutional prohibition of discrimination against people with disabilities in comparison to others, based on their presumed minority status within social or personal conditions. Similarly, and in contradiction with the above, the essential recognition of the differential element of disadvantage to support individual self-determination freeing them from the disadvantages which may arise from their condition. Nevertheless, an individual with disability is first and foremost, a person and therefore, must be able to aspire to their rights, both as an individual and as part of their social groups in which their personality develops. To an extent compatible with their condition, it is just to expect that they fulfil the obligatory duties of civil, social, and economic solidarity.

CONCLUSION

I noticed that social rights are both 'fundamental rights' and 'human rights', and in order to be effectively applied, two structural conditions should be met: 1) They must be developed and regarded as 'indivisible', 'interdependent' and 'interconnected' with other fundamental rights (both civil and political) as established in the 1993 Vienna Declaration, the outcome of the 1993 World Conference on Human Rights; and 2) they also must be 'contextually rooted' in a social and institutional space which nowadays can only be 'multilevel', however which at the same time, cannot overlook the regulatory and implementation powers of the state. In essence, the future of social rights will depend on the capacity to manage public budgets appropriately. The Constitution of Romania is characterised by the presence of a wide range of social rights which serve to define our state, Romania - as a social one. In conclusion, we can argue that all social rights share the typical status of fundamental rights and have the advantage of a primary legal rank that for many of them, equates to genuine inviolability.

BIBLIOGRAFIE

1. Azzena Luisa „*L'integrazione attraverso i diritti",* Torino, Giappichelli, 1998;
2. Barbera Marzia, *Dopo Amsterdam. I nuovi confini del diritto sociale comunitario*, Brescia, Promodis Editrice, Italia, 2000;

[18] The large literature on the personalist principle and its importance within the Consitution will be mentioned below if useful for solving the problem, such as understanding the way in which subjects confront themselves with a disability.

3. Gómez Fernández Juan Francisco, *El sistema de protección de los derechos sociales en el marco del Consejo de Europa,* in F. Facury Scaff, R. Romboli, M. Revenga (a cura di), Problemi e prospettive in tema di tutela costituzionale dei diritti sociali: prima giornata internazionale di diritto costituzionale: Brasile, Spagna, Italia, Giuffré, 2009, p. 75;
4. Moroianu-Zlătescu, Irina. (2015*). Evoluția protecției și promovării drepturilor persoanelor cu dizabilități în România*, Institutul Român pentru Drepturile Omului, Bucureşti. OCDE (2019). https://irdo.ro/irdo/pdf/189_ro.pdf accesed March 24, 2025;
5. Raţ Cristina Popescu, L., & Ivan, V. (2019). *The Romanian welfare system: From the shadow of equality to the dazzle of dualisation.* In Routledge Handbook of European Welfare Systems, Routledge, pp. 445-465;
6. Lila Rabinovich, Doerte Junghaenel, Tabasa Ozawa, *Understanding disability benefits decision-making among adults with self-reported work disabilities: A qualitative study*, Disability and Health Journal, Volume 18, Issue 1, 2025, DOI: https://doi.org/10.1016/j.dhjo.2024.101681
7. Rotaru, Ioan-Gheorghe, (2023). "*The Transylvanian Diet: A Precedent to Human Rights and Religious Freedom - 400 Years Prior to the Universal Declaration of Human Rights*", In Shaping a World of Freedoms: 75 Years of Legacy and Impact of the Universal Declaration of Human Rights, Nelu Burcea and Liberato C. Bautista (eds.), New York, United Nations Plaza, UNEQUAL World Research Center, pp. 205-221;
8. Rotaru, Ioan-Gheorghe,(2023*) "A look at how the concept of human rights has evolved over time"*, Journal For Freedom of Conscience (Jurnalul Libertății de Conștiință), Vol. 11 No. 2 (2023), pp.825-874. DOI: https://doi.org/10.5281/zenodo.10557901
9. Sciarra, Silvana, *Social Rights. Riflessioni sulla Carta europea dei diritti fondamentali*, în ADL Argomenti di diritto del lavoro, 2001;
10. Șchiopu Silviu-Dorin, *"The right of access to justice in the light of the law on some measures to prevent and combat the effects of covid-19 pandemic"*, Jus et Civitas – A Journal of Social and Legal Studies 8(72)(2):1-7, January 2022. DOI:10.51865/JETC.2021.02.01
11. Weaver, D. A. (2020). *Social Security Disability Benefits: Characteristics of the Approved and Denied Populations.* Journal of Disability Policy Studies, *32*(1), 51-62. DOI: https://doi.org/10.1177/1044207320933538
12. The Constitution of Romania;
13. The European Social Charter;
14. The United Nations General Assembly;
15. The African Charter of Human and People's rights;
16. The American Convention on Human Rights (ACHR);
17. The European Committee for Social rights;

18. The International Covenant on Economic, Social and Cultural Rights (ICESCR);
19. Resolution 2200A (XXI), and came into force on 3 January 1976;
20.https://u-pad.unimc.it/retrieve/de3e5026-cc19-83cd-e053-3a05fe0a1d44/CINELLI.pdf;
21.https://dreptmd.wordpress.com/cursuri-universitare/drept-constitutional/capitolul-4-constitutia-in-sistemul-juridic-normativ/;
22.https://ro.wikipedia.org/wiki/Pactul_interna%C8%9Bional_pentru_drepturile_economice,_sociale_%C8%99i_culturale;
23.https://ro.wikipedia.org/wiki/Curtea_European%C4%83_a_Drepturilor_Omului;
24.https://lege5.ro/Gratuit/gq4deojv/egalitatea-in-drepturi-constitutia?dp=gqztemrwgeyto;
25.https://en.wikipedia.org/wiki/International_Covenant_on_Economic,_Social_and_Cultural_Rights;
26.http://european-convention.eu.int/- ;
27.https://ro.wikipedia.org/wiki/Iluminism;
28.https://giurcost.org/studi/CostanzoBelem.htm ;
29.http://europa.eu.int/constitution/index_en.htm-.

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 70-84

ADMINISTRATIVE AND TAX PRINCIPLES: A COMPARATIVE ANALYSIS FROM A HUNGARIAN PERSPECTIVE

M.K. BOBONKA

Received 10.11.2025; accepted 10.12.2025
First online publication: 18.12.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.288

Miklós Kornél BOBONKA
Doctoral Candidate University of Debrecen Marton Géza Law Schoool, Hungary
E-mail: bobonka@yahoo.de
ORCID ID: https://orcid.org/0009-0006-3186-4575

Abstract

Since the separation of general administrative and tax administration procedures in Hungary, fundamental principles have been given particular emphasis in all areas. Although the General Administrative Procedure Act aimed to streamline processes and reduce the volume of regulations, it nevertheless placed significant importance on these principles, some of which are derived directly from the Fundamental Law of Hungary. The entire tax administration procedure is also permeated by an emphasis on these principles. This study compares the fundamental principles of the two areas. To this end, it first presents the general functions and common theoretical framework of the principles, then systematically examines the principles of both procedural regimes and finally draws conclusions from the comparison.

Key words: *function of principles, principles of administrative procedure, principles of tax procedure, procedural rights, administrative procedure.*

INTRODUCTION

One of the main functions of principles is to promote the understanding, proper interpretation and application of legislation, but in certain cases they may even fill gaps in the law, which may result in the modification or even undermining of the rules of positive law (*Kilényi, 1970, 7-8*). Additionally, due to their long historical development (*Varga-Patyi, 2019, 89–157*), principles now play a significant role in internationalisation (Árva, 2018).

It is important to note that the fundamental principles form a consistent whole within the legal system. While it is generally the theoretical basis of the

regulations that determines their content and specifies their characteristics rather than the differences between the principles, it is nevertheless worth reviewing the principles below.

It is also important to note the increasingly prevalent legislative technique that pays particular attention to the hierarchy of legal sources. According to this technique, if a higher-level legal act establishes a generally applicable principle, it does not need to be repeated 'word for word' in the given 'subject-specific' legal act at a lower level, but rather it can be 'derived' from the higher-level act. 'Subject-specific' legislation can therefore be derived from it. Thus, it can be concluded that there are general principles and those found exclusively in administrative and tax administration procedures, the latter being fundamental procedural rights and obligations.

Without an understanding of the basic principles and fundamental procedural rights and obligations, the 'spirit' of legislation, including administrative and tax legislation, cannot be grasped. Their purpose is to link the provisions of the legislation in question to the Fundamental Law of Hungary. They are binding on everyone and must be applied alongside the relevant rules in each procedure; in other words, they have normative content. In terms of content, they always take precedence over detailed rules and also set limits on their application. Failure to take into account the principles set out in the basic principles when conducting proceedings may affect the legality of decisions and lead to legal action being taken.

This is why it is important to clarify the system of principles, as well as the relationship between administrative and tax administration principles and fundamental procedural rights and obligations, during the research. This should highlight those that were incorporated into the legislation after 1 January 2018.

Although administrative procedural codes have always contained provisions on fundamental principles, tax administration legislation has not. The following analysis of the current procedural codes compares the 'fundamental principles', seeking to answer the question of whether it is justified to regulate the fundamentals of tax administration procedures in a separate code based on different principles.

It is also important to highlight the unique situation that arose after 1 January 2018. The legislator adopted a solution that departed from the previous regulatory concept of tax administration. From now on, the rules governing tax administration procedures will be found in Act CLI of 2017 (hereinafter: Air.), Act CL of 2017 (hereinafter: Art.), Act CLIII of 2017, and certain substantive tax laws. Two of the aforementioned laws are particularly noteworthy.

Two of the laws mentioned in the previous paragraph are particularly noteworthy. One is Act CLI of 2017 (Air.), which is a general law applicable to tax administration as a whole. This includes not only the procedures of the state tax and customs authorities, but also those of the municipal tax authorities, as set

out in Section 5 of Act CLI of 2017. Its primary purpose is to provide a consistent framework for the rules and provisions of tax administration. The legislator's aforementioned decision to separate tax administration from general public administration was undoubtedly welcome, as it served to simplify matters. However, in my opinion, this positive effect was unfortunately undermined, as the other piece of legislation — the new Art. — was created in parallel with the Air, thus 'splitting' the basic tax administration rules into two laws. Consequently, the plan and concept of a completely 'unified' tax administration procedural code could not be realised.

The new Art. contains detailed rules on tax administration and related provisions on individual legal institutions and procedures, but these are also procedural in nature. It is therefore clear that, since 1 January 2018, there have been two basic laws relating to tax administration, which together form the basis for and provide the framework for tax procedures (*Kővágó, 2017, 2*).

Additionally, it is important to note that it is difficult to determine the relationship between the two pieces of legislation in legal terms, i.e. which is the general rule, and which is the special rule. This section will analyse the principles, fundamental procedural rights and obligations, and the comparison with the General Administrative Procedure Act (*hereinafter: Ákr*.) will be analysed in relation to the Air.

I. BASIC PRINCIPLES OF ADMINISTRATIVE PROCEDURE

I.1. The system and role of the basic principles of administrative procedure

Legal principles and general legal principles are generally applicable in European Union (*Árva, 2005, 21-32*) and Member State laws. These laws formulate legal provisions at a general level that can be used to assist with specific individual cases.

The legal principles applicable in public administration include the binding nature of public administration, proportionality, legal certainty, protection of legitimate interests, prohibition of discrimination, fair administration, effective enforcement, legal remedies and contractual and non-contractual liability.

These basic principles impose requirements on the administrative authority and can be invoked independently. This normative system of rules provides guidance on the interpretation of individual provisions and is intended to inform legislation and the application of the law by the authorities. It should also be noted that the legal development work of administrative courts is setting new standards for the legal practice of administrative authorities (Barabás, 2013).

In connection with the declaration of the basic principles at the legislative level, Act IV of 1957 on the general rules of administrative procedure was amended and consolidated by Act X of 1981, which came into force on 1 January 1982. This act was subsequently amended by Act LXXXVII of 1981. Act I of 1981, which came into force on 1 January 1982, summarised the basic principles

of administrative procedure in Section 2 in order to promote the uniform and effective application of the law.

The Fundamental Law of Hungary granted constitutional status to certain administrative principles, including those relating to administrative authority procedures (*Patyi & Varga, 2019, 168–169*). One such principle is the right to proper administration, as defined in Article XXIV of the Fundamental Law. According to this article, everyone has the right to have their affairs handled by the authorities without partiality, fairly and within a reasonable timeframe. The authorities are legally required to justify their decisions. Everyone has the right to compensation for damage unlawfully caused by the authorities in the performance of their duties, as defined by law.

Section 1 of the Ákr. clearly refers to this, stating that, in accordance with Articles XXIV and XXVIII of the Fundamental Law, all participants in administrative proceedings shall act in accordance with the applicable rules and apply the principles and basic rules set out in this chapter at all stages of the proceedings. It is important to emphasise in this context that the legislator places greater emphasis on the fact that these basic principles must be applied throughout administrative procedures and refers to their ultimate origin. This obligation applies not only to the authorities applying the law, but also to clients and other parties involved in the proceedings. The new Code of Administrative Procedure (Ákr.) therefore regulates these principles transparently so that all parties can clearly understand them. This legislative intent also demonstrates a commitment to 'service-oriented administration'.

It should also be emphasised that it is impossible to set out all the essential elements of the many types of procedure in a single law. Therefore, the drafters of the Act sought only to formulate the rules that are common to all procedures. They left the determination of necessary deviations and supplementary procedural rules to sector-specific legislation (*Boros, 2019, 35*).

The explanatory memorandum to the Act states that it reconsiders the system of administrative procedural law, breaking with the three-tiered regulation which, in addition to the generally applicable rules of the previous procedural law (hereinafter: 'Ket.'), permitted procedures excluded from Ket.'s scope, procedures conducted according to different rules and procedures to which Ket. applied only as background legislation. In contrast, the Ákr specifies in detail the procedures to which it does not apply, including tax and customs administration procedures. This allows these laws to establish their own comprehensive procedural rules and system of principles. These include procedures which, by their nature, are governed by a specific set of rules that cannot be regulated by the rules of a general procedural law applicable to all other procedures. The special nature of tax and customs administration procedures, similar to the German field of law known as 'sui generis', is justified by the need to conduct these procedures using sui generis legal institutions, concepts, and procedural logic (Hajas, 2016, 49).

During the codification process, the legislator relied on the traditional system of administrative procedural law principles. However, they also wanted to renew and reformulate this system. With this in mind, the Ákr. sets out the fundamental requirements and main principles that govern the authority's activities, emphasising that these activities are bound by law and that clients' interests must be upheld without harming the public interest.

The system of principles is also of paramount importance given the role of the principles. The Ákr. first declares that the 'system' and content of the principles must be expressed throughout the administrative procedure. It should be emphasised that the code imposes this quasi-obligation on all participants in the procedure. On the part of the authority, compliance with the principles primarily serves to protect the client (Patyi-Boros, 2012, 199–252). To facilitate this, the individual principles will be regulated separately, transparently, and in a list-like manner in the following sections.

Legal literature offers several solutions for grouping the Ákr.'s principles. This study discusses the principles in the order specified by the legislation, which lists them under the following headings:

- the principle of legality;
- the principle of ex officio;
- the principle of efficiency;

Principles relating to the client;

- the principle of good faith; and
- the principle of trust.

I.2. Certain fundamental principles of the Ákr.: the principle of legality

The essence of the principle of legality (Section 2 of the Ákr.) is difficult to grasp, but can be summarised by saying that the administrative authority is obliged to comply with, and ensure compliance with, the provisions of the law in the course of its proceedings. In theoretical terms, it is most closely related to the rules of official jurisdiction. Several other principles are closely associated with it, including the principles of exercising rights for their intended purpose, professionalism, simplicity, cooperation with clients, good faith, equality before the law, equal treatment, non-discrimination, conducting proceedings without bias, complying with procedural deadlines, and conducting proceedings within a reasonable time (Balogh-Békési, 2019, 28).

In essence, the principle of the proper exercise of rights stipulates that administrative authorities must exercise their powers within the confines of the law and must not abuse them. The proper exercise of rights is therefore closely linked to the prohibition of abuse of rights. Abuse of rights is a collective term. This is because it is impossible to provide an exhaustive list of the types of conduct that fall under this category due to the large number of procedures and laws involved.

The following section sets out a fundamental obligation for law enforcement authorities when exercising their powers. The concept of professionalism must include that of legality. For a procedure to be considered professional, it must comply with the provisions of the current legislation and assume its legality as a basic principle. In a broader sense, legality supplemented by the relevant procedural techniques is synonymous with professionalism.

The legal obligation of simplicity is embodied in the efficient organisation of public administration bodies, alongside modern management techniques and the use of modern technical tools. The latter primarily refers to the achievements of electronic administration, which the authority must utilise to organise its work as efficiently as possible.

Furthermore, it is crucial that all of this is carried out to the satisfaction of clients and other parties involved in the proceedings, while taking into account the unique characteristics of each case. Further consideration reveals the key point of cooperation with the client. Here, we must refer again to the change in concept, in which the legislator paid great attention to the equality of the parties involved in the proceedings and to developing the image of the authority providing the service. Section 6 of the Ákr emphasises the requirement of good faith together with the principle of trust, which I will discuss below.

The principle also encompasses the requirements of equality before the law and equal treatment. These give rise to two sub-principles: the prohibition of unjustified discrimination and the principle of impartiality. In this context, the legislator deviates from the aforementioned concept, which states that it is unnecessary to reiterate a general principle contained in a higher-level legal act (in this case, the Fundamental Law) in a lower-level legal act (Ákr.). The principle of equality before the law is also set out in the opening sentence of Article XV(1) of the Fundamental Law. The same principle appears as a general clause on equality before the law in Article XV(2) of the Fundamental Law. The Ákr therefore emphasises this principle separately. According to this principle, the state may not discriminate between citizens in the same situation, either in legislation or in the application of the law (e.g. the functioning of public authorities), thereby expressing that the laws of the state apply equally to everyone.

The 'reasonableness' aspect is also important. Several factors, such as the nature and complexity of the case and the number of parties involved, may influence whether a procedure is considered to have been conducted within a 'reasonable time'. While it is difficult, and sometimes impossible, to define the exact duration of a reasonable time, perhaps the essence of it can be captured by saying that it is the shortest possible time interval, depending on the type of procedure in question.

I.3. Certain fundamental principles of the Ákr.: the principle of ex officio

In administrative authority procedures, executive power is exercised in specific cases. To exercise this power, a "necessary and sufficient" legal

framework must be in place. For this reason, the Ákr. explicitly states that the authority's procedure is ex officio.

The ex officio principle, or officiality, somewhat conflicts with procedures initiated upon request, but it must be clearly understood that the authority must also be present in these procedures. Furthermore, the contents of the request do not always restrict the authorities when exercising the available options in proceedings. There are two exceptions to this: proceedings that can only be initiated upon request cannot be initiated ex officio, and the restriction to the client's request means that the client cannot be granted anything not covered by the request.

The principle of ex officio applies throughout the entire procedure, meaning that the procedure can be initiated ex officio and the facts of the case can be established ex officio. The latter is related to the evidence phase and, as András Patyi and Zs. Varga point out *(Patyi-Varga, 2019, 174–175*), this is a specific element not found in civil or criminal proceedings. Certain legal remedy procedures and instruments may also be initiated ex officio, as may enforcement proceedings in certain cases.

I.4. Certain fundamental principles of the Ákr.: the principle of efficiency

The two main components of the principle of efficiency are cost-effectiveness and the requirement for proceedings to be concluded swiftly. These two components are closely interrelated. Zs. Varga and András Patyi (*Patyi-Varga, 2019, 204*) consider this principle to be part of the right to a fair trial.

Efficiency measurement (which focuses on optimising the relationship between costs and revenues in a given activity) is an achievement and corollary of the modern state and democracy. In public administration, it involves critically evaluating and measuring the cost/benefit ratio of 'public services'. In public administration, we can distinguish between external efficiency, which is a ratio derived from a comparison of work expended and results relating to performance evaluation, and internal efficiency, which relates to internal rules of procedure, work schedules, organisational culture and structure, and document management systems.

I.5. Certain basic principles of the Ákr.: principles relating to the client

In terms of the applicable principles, the Ákr. sets out basic requirements for clients and other participants in proceedings. On the one hand, there are the so-called active rights, such as the right to make statements, the right to comment and the right to information (*Balogh-Békési, 2019, 31–32*), which require interactivity on the part of the client. On the other hand, clients can learn about and exercise their rights and obligations 'from within the line of defence'. If these requirements are not met, the acting authority can be held accountable. It is worth mentioning that, in addition to the right to make statements and access relevant case-related information, clients may dispose of their statements. However, the right to refuse to make a statement has not been declared at the level of fundamental principles

(*Árva, 2019, 11–13*). The rules of language use can also be mentioned here. Although these are not included in the principles, they still apply to the client (*Gerencsér, 2017, 445–462*). Administrative bodies are also liable, as mentioned by Patyi András and Varga Zs. (*Patyi-Varga, 2019, 186*), in connection with the principles. However, this is not expressly included in the principles.

The principles outlined above can only be fully realised, however, if the administrative body acting on them also displays the partial principles that encourage action (i.e. 'promotes' or raises awareness of them).

I.6. Certain principles of the Ákr.: the principle of good faith and the principle of trust

The law emphasises the requirement for clients to act in good faith and cooperate. This principle originates from Roman law, as several administrative authors (*e.g. Kilényi, 1961, 520; Balogh-Békési, 2019, 20*) have pointed out. We can therefore speak of a principle attached to civil law. According to the generally accepted view today, a person acts in good faith if they are unaware of and could not reasonably be expected to be aware of, the contrary reality. Conversely, a person is considered to be acting in bad faith if they are aware of, or ought to be aware of, a reality that contradicts appearances. Administrative literature distinguishes between the narrower and broader meanings of the principle. In the narrower sense, a person is considered to be acting in good faith if they 'did not know that their conduct was unlawful for a justifiable reason and in a manner that cannot be attributed to them' (*Balogh-Békési, 2019, 20*). In a broader sense, the principle refers to the requirement of diligence and integrity, which can generally be expected and demanded of everyone. Another important message of this principle is that mutual and general cooperation between the parties is necessary to perform tasks effectively.

The principle embodies the fundamental social and moral imperative that no one should aim to deceive the authorities through their conduct. This is the only way to guarantee that proceedings are conducted on a factual and lawful basis, and that a 'fair' decision is reached where appropriate.

The basic principle also mentions the principle of trust, which assumes that the client is acting in good faith and to the best of their knowledge and conscience. The authority must prove the contrary. When regulating the principles of good faith and trust, the Ákr. uses the term 'all participants' rather than 'other participants in the proceedings'. This emphasises that the basic principle applies to all participants in the administrative procedure, including the authorities contacted or involved in the procedure, where applicable.

II. THE PRINCIPLES OF TAX ADMINISTRATION

II.1. The system of fundamental principles of tax administration

With regard to tax administration procedures, it can be stated that the relevant special rules were re-established at the legislative level after the repeal of the old Art. 1868 came into force on 1 January 1991.

According to the detailed justification of the law, under the heading 'Principles', the law outlines its purpose and the specific principles that underpin the entire orderly process of taxation. It is unnecessary here to regulate general principles and requirements of law enforcement, such as the right to a legal remedy, the right to use one's native language, or the requirement for proceedings to be conducted expeditiously.

As the rules of the former Act (Áe.) were to continue to apply in tax matters, the old Art. only contained principles in its introductory provisions, setting out requirements to be applied at all stages of the taxation process.

Certain constitutional principles and other general legal principles have specific features in the field of taxation by their nature. Of course, fundamental provisions are not only contained in the introductory provisions; many other provisions also have a guaranteeing significance, such as the rules on tax secrecy.

These principles were also adopted by Art., which came into force on 1 January 2004. As its detailed justification emphasised, in addition to the points made in the previous paragraph, the principles established in the course of taxation and tax collection had stood the test of time as they had not been amended in the previous 13 years, only being supplemented by new ones.

As explained above, the Administrative Procedure Code (Ákr.) lost its legal basis on 1 January 2018, meaning that only the Air. is applicable in tax administration procedures. For this reason, the Air. must provide exhaustive provisions on the normative requirements to be followed when applying the law, on which the procedures may be based.

As an independent procedural code, the Air. comprehensively regulates the basic principles in a sui generis manner, in the absence of underlying legislation. It contains all the basic principles applicable to tax administration procedures in terms of procedural law.

Under the heading 'Principles', the Air sets out normative requirements applicable to the tax authority, taxpayers, and other participants in the procedure. These requirements must be followed by all parties throughout the application of the law and at all stages of the procedure. Some principles express the rights and obligations of taxpayers or other participants in the procedure, while others embody general legal principles relating to the exercise of the tax authority's powers(*Cîrmaciu, 2010, 95; Cîrmaciu, 2024, 559*). The principles of tax administration can be classified in several ways. In his study, Péter Bordás (Bordás, 2025, 18) mentions that a distinction can be made between socio-

political and legal principles, as well as constitutional, substantive, and procedural principles, similar to administrative procedural law.

The Air. specifies the following principles in a separate provision:

- the principle of legality,
- the principle of professional and efficient procedure,
- the prohibition of discrimination and "partiality",
- the principle of individual assessment,
- the principle of fair procedure,
- obligation to provide information, promotion of the exercise of taxpayers' rights,
- the principle of comprehensibility,
- requirement of good faith, principle of cooperation.

II.2. Basic principles of Air. principle of legality

The law expressly emphasises the principle of legality. On this basis, the tax authority and the taxpayer are both equally obliged to comply with the law. This means that the tax authority may only act in accordance with the provisions and procedures set out in the legislation. If it detects an error or omission by a taxpayer during its proceedings, it may only apply the legal consequences set out in the legislation; it may not act arbitrarily.

From the taxpayers' point of view, the basic principle also stipulates that they may only act within the framework set out in the legislation. In other words, they must pay particular attention to this when fulfilling their obligations and exercising their rights.

II.3. Certain fundamental principles of Air: the principle of professional and efficient procedure

This principle reflects the intention to reduce bureaucracy throughout public administration. The fundamental objective is to ensure that tax procedures are organised and conducted in a way that minimises the administrative burden and associated costs for both the tax authority and the taxpayer. It is also important to emphasise that, in accordance with this principle, the authorities must not exceed the limits of legality and professionalism.

II.4. Certain principles of air: prohibition of discrimination and 'partiality'.

Both positive and negative discrimination are prohibited by law. Based on this general principle, the tax authority is obliged to act without discrimination. This does not conflict with the exercise of fairness if the law expressly authorises the tax authority to apply it. Csaba Szilovics (*Szilovics, 2018, pp. 235–236*) links this principle to the principle of fair procedure, discussing the prohibition of discrimination within its framework. He also notes that Article 24 of the OECD Model Convention (*Szmicsek, 2012, 421–447*) defines the principle of non-discrimination in taxation, which applies to both domestic and foreign taxpayers.

II.5. Certain principles of Air: the principle of individual assessment

The Air introduces the principle of individual assessment as a new fundamental principle. One of the fundamental tasks of the tax authority is to gather all the necessary evidence to decide on a given case. The authority must then evaluate the evidence according to its weight, carefully and thoroughly considering the specific circumstances of the case and clarifying the facts before making a well-founded decision.

II.6. Basic principles of Air: principle of fair procedure

The law establishes fairness as a general procedural norm. This emphasises the importance of thorough and factual case management when interpreting and enforcing legal provisions uniformly. The new sections 198–201 also refer to fairness, demonstrating the interdependence of the two tax procedure codes and referring back to the previous principle. At the same time, they create the possibility for the tax authority to 'compensate' for the strictness of the law in individual cases, provided that the conditions are met.

II.7. Certain fundamental principles of Air: the obligation to provide information and the promotion of taxpayers' rights

This principle is very important as part of the new legislative concept, as the service-oriented tax authority must provide taxpayers with adequate information to promote and support their lawful behaviour and compliance. The law also stipulates that the tax authority must issue warnings. This ensures that taxpayers can exercise their rights under the law and is therefore an important part of taxpayer rights. Csaba Szilovics points out that it is a complex right in which the operation of the tax office is manifested through cooperation with the taxpayer and the aforementioned obligation to provide information (*Szilovics, 2018, 230*).

Taxpayer rights also include protection of tax secrecy and general rights unrelated to tax administration, such as the right to a legal remedy, fair procedure and prohibition of self-incrimination. The latter becomes particularly important in relation to criminal proceedings (*Árva, 2025, 7–21; Szilovics, 2018, 231–236*).

II.8. Certain fundamental principles of Air: the principle of comprehensibility

The emphasis on comprehensibility is important not only for tax authorities, but for almost all public authorities. Within the framework of tax administration, it ensures that the tax authority strives for comprehensibility and uses simple language when communicating with taxpayers during tax administration procedures. This principle goes hand in hand with the previous one, playing a key role when the tax authority provides information to taxpayers (e.g. on how and by when they must fulfil their tax obligations). As a result, the tax authority has a synthesising role: it must not only inform taxpayers of their legal obligations but also do so concisely. Interpreting tax legislation often requires special expertise, which is why the legislator could not formulate the requirement for 'simplicity' as a general expectation. However, 'clarity' is a

requirement and, at the same time, expresses the need for which the tax authority must comply in today's world.

II.9. Certain fundamental principles of Air: the requirement of good faith and the principle of cooperation

Exercising rights in good faith means taxpayers can use the options available to them under the law in a way that aligns with its purpose and content. In other words, taxpayers must exercise their rights in accordance with their intended purpose. Through their conduct, they must strive to fulfil their tax obligations appropriately and fairly in all aspects of tax administration procedures. This rule is particularly important in audits, where it helps to clarify the facts and provide evidence.

Within the framework of the obligation to cooperate, taxpayers must assist the tax authorities in performing their duties and must not hinder their implementation.

CONCLUSION

COMPARISON OF GENERAL ADMINISTRATIVE AND TAX ADMINISTRATION PRINCIPLES

The following quote serves to confirm the validity of this comparison: "Taxation and related phenomena are intrinsically linked to other branches of public administration and social phenomena and therefore can only be discussed in conjunction with them" (Hóman, 2002, 235).

Air. first contains the principle of legality, thus providing a framework for this chapter. This principle also appears in the Ákr, under the name of the principle of lawfulness. However, its content is somewhat different, as this requirement is imposed on the authority and also lists additional principles, some of which are regulated in separate points (the principles of efficiency, "cooperation" and good faith).

A comparison of the legal texts of the Air and the Ákr reveals that the Ákr's principles of legality, efficiency, good faith and trust can be likened to the Air's principles of legality, professional and efficient procedure, prohibition of discrimination and 'partiality', and the obligation of good faith and cooperation.

Regarding these fundamental principles, it should be noted that the Ákr. makes it the duty of the authority to cooperate with the client. The Air differs slightly in that it defines facilitating the tasks of the tax authority as the duty of taxpayers and other participants in the procedure.

The requirement to conduct proceedings within a reasonable timeframe, to utilise advanced technologies, and the principle of trust, which prohibits any conduct intended to mislead the authority or unnecessarily prolong the proceedings, are all provisions that are unique to the Ákr.

Unlike the Ákr., the Air does not stipulate the requirement of a simple procedure. However, this is offset by the new principle of comprehensibility,

which has been in force since 1 January 2018 and is only included in the Air. This principle promotes the use of simple language in communication with taxpayers. The Air's obligation to provide information and the principle of promoting the exercise of taxpayer rights are comparable to the Ákr's customer-related provisions. Notably, the Ákr specifically mentions the customer's right to make statements and comments, unlike the Air.

Regarding the differences between the two codes' principles, it is worth noting that only the Air includes the principle of individual assessment, which requires the tax authority to make a decision based on establishing the true facts of the case. Furthermore, the Air also includes fair procedure as a special principle of tax administration.

However, in addition to the Air., the Ákr. contains principles that are not found in the former. One such principle is the principle of ex officio. The Ákr. also emphasises clients' right to make statements and comments, and it mentions the principle of trust, too.

When we compare the similarities and differences in the basic principles, we can conclude that, on the one hand, they arise from the fact that the Ákr. is a general law, while the Air. – in comparison, and in terms of its content – can be considered more of a lex specialis. Secondly, the basic purpose and objective of the codes differ. Regarding the latter, it is worth noting that the tax authority's primary task is to ensure the most comprehensive collection of budget revenues possible. However, the service-oriented nature of the tax authority can only be realised in certain areas, as debtors will never view the authority in this way during enforcement proceedings. For this reason, the primary legislative requirement is to 'strengthen' the service-oriented nature of the services provided to taxpayers. This difference can also be attributed to the fact that, as previously mentioned, the Ákr. makes it the authority's obligation to 'establish' cooperation with the client, whereas the Air. considers the facilitation of the tax authority's tasks to be the obligation of taxpayers and other participants in the procedure. This is based on the fundamental principle of self-assessment.

A key message of the basic principles is that they must be applied by all participants at any stage of the process. However, these principles also reflect and enforce constitutional and procedural values, the nuances of which are reflected in court practice.

BIBLIOGRAFIE

1. Árva, Zs., A közigazgatási hatósági eljárás alapelvei nemzetközi kontextusban [The basic principles of administrative authority proceedings in an international context], In Csáki-Hatalovics, Gy. (ed.), *Eljárásjogi kodifikáció - nemzetközi hatások: tanulmányok* [*Codification of procedural law - international influences: studies]*. Budapest Patricinium, 2018, ISBN:9789634132042 115-128;

2. Árva, Zs., Az igazságszolgáltatással kapcsolatos jogok az Európai Közösségi jogban [Rights related to the administration of justice in European Community law], *Jogelméleti Szemle*, 2005, 6 (3) 21-32;
3. Árva, Zs., New Administrative Proceedings – More Effective Consumer Protection. Acta Universitatis Sapientiae Legal Studies, 2019 (8), 5-21. DOI: 10.47745/AUSLEG.2019.8.1.01;
4. Árva, Zs., The Limits of ne bis in idem in Administrative Matters. *Krytyka Prawa*, 2025, 2, 7-21;
5. Balogh-Békési, N., A közigazgatási eljárásjog alapelvei, hatálya: II. fejezet [The Basic Principles of Administrative Procedure Law, Scope: Chapter II], in Boros, A. - Darák, P. (eds.) *Az általános közigazgatási rendtartás szabályai. [The Rules of General Administrative Procedure]*. Budapest, National University of Public Service, Faculty of Political Science and Public Administration, 2019, 25-32;
6. Barabás, G. et. al, *Nagykommentár a közigazgatási hatósági eljárás és szolgáltatás általános szabályairól szóló 2004. évi CXL. törvényhez*. [*Comprehensive commentary on Act CXL of 2004 on the general rules of administrative authority procedures and services]*. CompLex, Budapest, 2013. Online;
7. Bordás, P., Az adóigazgatási alapelvek szerepe a hatósági eljárásban és a pénzügyi bíráskodásban. Kúriai döntések [The role of tax administration principles in administrative proceedings and financial adjudication. Supreme Court decisions], *Bírósági Határozatok*, 2023, 71, 1369-1376. Online: https://kuria-birosag.hu/hu/kuriai-dontesek/bordas-peter-az-adoigazgatasi-alapelvek-szerepe-hatosagi-eljarasban-es-penzugyi (18 June 2025);
8. Boros, A., A közigazgatási eljárási jog [Administrative Procedural Law], in Jakab, A. – Fekete, B. (eds.): *Internet Legal Encyclopedia*, http://ijoten.hu/szocikk/kozigazgatasieljarasi-jog (2019);
9. Cîrmaciu, D., *Dreptul finanțelor publice*, Editura Universității din Oradea, 2010;
10. Cîrmaciu, D., *Romania: The relationship between tax legislation, tax competition and sovereignity*, in Economic Governance. The impact of the European Union on the regulation of fiscal and monetary policy in Central European countries, Budapest, Studies of the Central European Professors Network, CEA Publishing, 2024;
11. Gerencsér, B., Összehasonlító nyelvjog [Comparative Language Law], in Csink, L.–Schanda, B. (eds.): Összehasonlító módszer az alkotmányjogban [Comparative Method in Constitutional Law], Budapest, Pázmány Press. 2017;
12. Hajas, B., Általános közigazgatási rendtartás – Ket. kontra Ákr. [General Administrative Procedure – Ket. v. Ákr.], *Új Magyar Közigazgatás*, 4(3),18-25., 2016;

13. Hóman, B., *A történelem útja* [*The Path of History]*, Budapest, Osiris Publishing, 2002;
14. Kilényi, G., *Az államigazgatási eljárás alapelvei [The Basic Principles of Administrative Procedure]*, KJK, Budapest, 1970;
15. Kilényi, G., Az ügyfél jóhiszeműségének vizsgálata az államigazgatási eljárásban [Examination of the client's good faith in administrative proceedings], Állam- és Igazgatás, 11(7). 520-530., 1961;
16. Klicsu, L., *Közteherviselés az új Alkotmányban* [*Public Burden Sharing in the New Constitution]*. Pázmány Law Working Papers, 2011/3, 1-8;
17. Kővágó, Z., Az adózás rendjének újraszabályozása [The re-regulation of the taxation system], *Adóvilág*, 21(13-14), 2-11., 2017;
18. Patyi, A. - Boros A., Az ügyfélre és más eljárási szereplőkre vonatkozó általános szabályok [General rules applicable to clients and other parties to proceedings], in: Patyi, A. (ed.), Hatósági eljárásjog a közigazgatásban [Administrative procedural law in public administration], Dialóg Campus, Budapest-Pécs, 2012;
19. Patyi, A. - Varga Zs. A., *Fundamentals and principles of administrative procedural law*. Dialóg Campus Budapest, 2019;
20. Szilovics, Cs., Adózói jogok és kötelezettségek szabályozásának elméleti és gyakorlati problémái [Theoretical and practical problems in the regulation of taxpayers' rights and obligations], *Jura*, 2, 230-231., 2018;
21. Szmicsek, S. (ed.), Modellegyezmény a jövedelem és a vagyon adóztatásáról [Model Convention on Income and Capital Taxation]. OECD, Budapest, 2012;
22. https://www.oecd.org/content/dam/oecd/hu/publications/reports/2010/08/model-tax-convention-on-income-and-on-capital-condensed-version-2010_g1g10b68/9789264178724-hu.pdf (19 June 2022).

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 85-100

JUDICIAL FACTOR'S PARTICIPATION IN PRELIMINARY PROCEEDINGS – A COMPARATIVE PERSPECTIVE

T. BOJANOWSKI

Received 22.10.2024; accepted 12.02.2025
First online publication:15.02.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.241

Tomasz BOJANOWSKI
University of Cardinal Stefan Wyszynski in Warsaw
Faculty of Law and Administration
E-mail: tomaszbojanovski@gamil.com
ORCID ID: https://orcid.org/0000-0001-8294-0968

Abstract

The subject of the article is the analysis of the role of the judicial element in preparatory proceedings. The author presents the issue of the preparatory proceedings model, addressing historical and comparative aspects. Subsequently, the article discusses various configurations of the judicial element in preparatory proceedings, namely the model with an investigative judge, the model with a judge for preparatory proceedings, and the model involving court participation. The advantages and disadvantages of these models are highlighted, along with examples from selected countries. In conclusion, the author provides a summative evaluation, identifying what they consider the optimal model and procedural solution, and emphasizes the need for a reassessment of current practices.

Key words: *Preliminary proceedings, criminal procedure, pre-trial model, judge, prosecutor***.**

INTRODUCTION

Law, as a normative system, must constantly adapt to changes occurring in the world. These changes may stem from various sources – social, political, sociological, economic, or technological – yet the law is obliged to keep pace with them. However, not every branch of law is equally receptive to such changes. Criminal law serves as a notable example.

In the context of globalization, the capitalist economic framework, and the development of international organizations such as the Council of Europe and the European Union on the European continent, a process of legal unification has emerged (*J. Osiejewicz 2016, p. 7-16*). This process is largely guided by treaty

law, although not all states participate to the same extent (*M. Wąsek-Wiaderek 2011, p. 7*). Undoubtedly, civil and administrative law (both substantive and procedural) undergo rapid harmonization. Conversely, the situation is markedly different in criminal law, which remains a particularly sensitive domain. This underscores that shaping criminal policy remains a prerogative of sovereign states (*J. Kanz 2015, p. 33-36*).

It appears that states are reluctant to further delegate competencies in the field of substantive and procedural criminal law. Nonetheless, within the framework of the European Union, they have already opted to do so. This development is evidenced by a series of provisions found in EU regulations and directives. On one hand, the necessity of such measures is underscored, particularly in terms of procedures aimed at prevention, counteraction, and prosecution of offenders. On the other hand, there is a clear concern regarding threats to the sovereignty of member states.

The process of unification is significantly influenced by public sentiment. In the first decade of the 21st century, these sentiments were pro-European, arguably pushing towards federalization (*G. Pastuszko, 2023*). However, the situation has changed dramatically in recent years. While the achievements and existing institutions of European procedural criminal law are not disputed, proposals for creating a European Code of Criminal Procedure have been postponed indefinitely or even abandoned altogether (*Kruszyński, Pawelec, 2009, p. 95-118*).

It is worth noting that during the evolution of legal systems, fundamental institutions of democratic states governed by the rule of law have emerged. In the context of criminal proceedings, particular attention must be given to the involvement of judicial authorities during the preliminary stage of proceedings, an integral feature of this phase since the 19th century (*J. Zagrodnik, 2013, s. 238*).

Moreover, this issue holds such significance for the protection of human rights and freedoms that it has been enshrined in treaty law. This includes the requirement for judicial approval for the imposition of pretrial detention during preliminary proceedings, as stipulated in Article 5(1) of the European Convention on Human Rights[1] and Article 9 of the International Covenant on Civil and Political Rights[2]. Consequently, all states party to these international agreements endorse this solution. In some states, this principle is embedded at the constitutional level, such as in Article 13 of the Constitution of the Italian Republic and Article 104 of the Basic Law of the Federal Republic of Germany. However, the minimum standard is regulation within statutory law, as found in the

[1] The Convention for the Protection of Human Rights and Fundamental Freedoms, drafted in Rome on 4 November 1950, as amended by Protocols Nos. 3, 5, and 8, and supplemented by Protocol No. 2, Official Journal of 1993, No. 61, item 284.

[2] The International Covenant on Civil and Political Rights, opened for signature in New York on 19 December 1966, Official Journal of 1977, No. 38, item 167.

Codes of Criminal Procedure of countries such as France, Austria, Germany, Romania, Hungary, and Poland (*B. Gronkowska, T. Jasudowicz, K. Balcerzak, M. Balcerzak, 2004, p. 13*).

The aim of this article is to present the concept of the preliminary proceedings model in the continental legal system and to analyze selected variants of judicial participation during this stage of proceedings from a comparative perspective. The study will employ methods typical of legal science, including formal-dogmatic, theoretical-legal, historical-legal, comparative, and axiological approaches.

I. THE MODEL OF PRELIMINARY PROCEEDINGS IN THE CONTINENTAL LEGAL SYSTEM

The discussion should begin by noting that the existence of two legal systems – common law and civil law – profoundly influences the approach to the model of preliminary proceedings (*C. Kulesza, 1991, p. 19*). In the common law system, criminal procedural law does not delineate specific stages of criminal proceedings. From this, it can be inferred that preliminary proceedings, as a distinct phase, do not exist. Instead, the proper criminal proceedings commence in court (*K. Eichstaedt, 2016; K. Eichstaedt Warszawa, p. 13*). Investigative and inquiry activities are carried out as part of criminal prosecution but are not considered an integral component of criminal procedure *(C. Michalczuk 2005 p. 180-187*).

The situation is different in the civil law system. Here, preliminary proceedings exist as a distinct and integral stage of criminal proceedings. This structure allows for the definition of forms and the scope of this phase of the process (*A. Kaftal, 1989, p. 54*).

This distinction opens up a range of considerations concerning the shape of preliminary proceedings and the influence of this stage on judicial proceedings. It is essential to begin by defining the concept of a model, which can be understood as a set of fundamental elements of a system that distinguish it from others (*K. Eichstaedt, 2016; K. Eichstaedt, 2009, p. 13; S. Waltoś, 1968, p. 9; C. Kulesza, 1991, p. 15; A. Kaftal 1989 p. 53*). The elements comprising the framework of preliminary proceedings include its objectives (in relation to the objectives of the criminal process), functions, scope, forms, phases, participating bodies and their mutual relationships, oversight, and in democratic states governed by the rule of law, the involvement of judicial authorities during preliminary proceedings. Each of these elements can be regulated differently and thus influences the final shape of the model (*B. Bieńkowska, P. Kruszyński, C. Kulesza, P. Piszczek, 2004, p. 302-324*).

Before undertaking the task of modeling this stage of the process, the legislator must address two key issues:

1. Whether the purpose of preliminary proceedings is to conduct an exhaustive and comprehensive investigation of the case, potentially delaying its conclusion, i.e., the filing of an indictment by the public prosecutor with the court;
2. Whether to shift this burden to the judicial stage and limit preliminary proceedings to gathering only the most essential information for the public prosecutor, sufficient to file an indictment (*A. Murzynowski, 1968, p. 96*).

Beyond these fundamental issues, the proposed model of preliminary proceedings should appropriately balance conflicting procedural principles and strive for both substantive and formal justice (*M. Siewierski, 1961, p. 10*). At the same time, it should introduce solutions that ensure cases brought to court are both formally and substantively prepared (*L. Schaff, 1961, p. 132*). Finally, it is essential to ensure that the provisions of the criminal procedure code comply with constitutional norms and international law (*J. Zagrodnik, 2013, p. 238*).

The legislator must resolve at least four fundamental questions regarding the functioning of the preliminary proceedings model:
1. Who will conduct and direct preliminary proceedings—the court (investigating judge), the prosecutor, or the police?;
2. What powers will the body conducting the preliminary proceedings possess, particularly regarding the collection and preservation of evidence and the application of coercive measures, including pretrial detention?;
3. Who will oversee the preliminary proceedings—should this responsibility rest with the body conducting and directing the proceedings, or should these competencies be divided?;
4. How to regulate the relationships between the bodies involved in preliminary proceedings—the court, the prosecutor's office, and the police (*T. Grzegorczyk, J. Tylman, 2022, p. 807–922; K. Eichstaedt, 2016*).

The last of these issues leads directly to the central theme of this study: the role of judicial authorities in preliminary proceedings. As previously mentioned, adopting the continental model opens the door to discussions about the scope and shape of judicial involvement. However, before exploring the available options, it is essential to emphasize that any regulation should also reflect the legal traditions and culture of a given country. For instance, in Eastern European states after World War II, models were imposed that significantly limited the role of judicial authorities, reducing their participation to a purely superficial presence (*R. A. Stefański, 2010, p. 158*).

II. VARIANTS OF JUDICIAL AUTHORITY PLACEMENT IN PRELIMINARY PROCEEDINGS

As previously mentioned, democratic states governed by the rule of law inherently endorse the involvement of judicial authorities in preliminary proceedings within the criminal process. However, the manner in which this issue is regulated is not uniform. Furthermore, two critical aspects influence the

placement of judicial authority in preliminary proceedings: organizational and systemic distinction, and the scope of activities assigned to the judiciary.

Regarding the first aspect, criminal procedure theory has developed three possible approaches to incorporating judicial authority into preliminary proceedings:

1. The investigating judge serves as the body conducting and directing preliminary proceedings while also supervising them;
2. A judge is delegated to perform a conventional role as an investigator in preliminary proceedings, functioning as a preliminary proceedings judge;
3. The court performs specific actions prescribed by statute during preliminary proceedings (*K. Eichstaedt, 2016; K. Eichstaedt, 2009, p. 13; S. Waltoś, 1968, p. 9; C. Kulesza, 1991, p. 15; A. Kaftal, 1989 p. 53*).

The second aspect is closely related to the first and involves determining the range of activities performed by the judiciary. It should be noted that no universally binding classification of judicial actions exists within the doctrine. However, the most practical classification divides judicial actions into decision-making, supervisory, and evidentiary activities (*K. Malinowska-Krutul, 2008 p. 65-66*), as this creates three distinct sets of actions. Another distinction often cited is between control-decisive actions, decisive-investigative actions, and investigative actions (*M. Kurowski, P. Sydor 2011 p. 98-108*). This latter classification is based on the premise that the legislature may partially introduce the concept of an investigating judge into the criminal procedure system, authorizing them to perform specific investigative tasks (*M. Kurowski, P. Sydor, 2011, p. 98-108*).

The range of judicial activities during preliminary proceedings varies across countries, depending on the adopted model of preliminary proceedings, the role assigned to the judiciary, and the chosen organizational solution. For instance, in Western European countries, courts in certain circumstances conduct witness and suspect interrogations. Conversely, under the Polish legal system, courts are prohibited from interrogating suspects (*K. Eichstaedt, 2016; K. Eichstaedt, 2009; K. Eichstaedt, 2008*).

The author will concentrate on discussing the organizational and systemic solutions using selected examples while partially addressing the catalog of judicial activities.

II.1 THE INSTITUTION OF THE INVESTIGATING JUDGE

The institution of the investigating judge traces its origins back to the European inquisitorial process (J. *Głębocka, 2023, p. 16-17*). However, it first emerged in its modern form during the era when the mixed criminal process began to gain prominence, specifically in the Napoleonic Code of Criminal Procedure of 1808 (*Code d'Instruction Criminelle*). In the 19th century, this institution was adopted by other European nations (e.g., Austria, Germany, and Russia) and became a hallmark of criminal procedure (*J. Głębocka, 2023, p. 16-*

17), demonstrating the leading role of French jurists in shaping procedural criminal law.

The classical concept of the system incorporating the investigating judge divides the pre-trial phase into two forms: a formalized investigation conducted by the investigating judge and a less formal inquiry led by the police. Originally, the inquiry was intended to precede the judicial investigation. However, in the French model, these two forms operate on a horizontal level, with prosecutors referring cases to the judiciary after completing the inquiry, despite the theoretical primacy of the investigation. This shift is tied to the replacement of the Code d'Instruction Criminelle by the Code de Procédure Pénale of December 31, 1957, which has undergone numerous amendments. These reforms have distorted the judicial investigation and intensified debates about abolishing the investigating judge (*J. Głębocka, 2023, p. 127*).

The changes discussed have not been confined to France but have influenced procedural frameworks across Europe. Notably, some models, such as the Spanish one, retain closer alignment with the classical concept of the investigating judge (*P. Kruszyński, M. Warchoł, 2010, p. 71-80*). Nevertheless, an analysis of the organizational framework where a judicial body oversees the pre-trial proceedings remains most illustrative when using the French model as a reference. This model strives to maintain the institution of the investigating judge while adapting it to contemporary challenges in criminal justice.

Given the focus on the role of the investigating judge, this discussion will omit a broader examination of the inquiry phase, instead addressing the judicial role within it. The investigating judge serves as the authority conducting and overseeing pre-trial investigations in the form of judicial inquiries. In France, there are two types of judicial investigations: mandatory for felonies and discretionary for misdemeanors. Investigations can be initiated upon the prosecutor's request, defining the scope of the case. Additionally, the investigating judge supervises other procedural bodies, including the prosecutor and the judicial police.

The investigating judge is expected to perform all investigatory acts personally. However, due to practical limitations, they may delegate specific tasks to the judicial police, a provision frequently utilized in practice. Furthermore, the Code de Procédure Pénale reserves certain actions, such as interrogating suspects and civilian parties, exclusively for the investigating judge. In effect, the judge's role focuses on compiling case files and issuing judicial decisions (*J. Głębocka, 2023, p. 166*). This places the judge in a jurisdictional, supervisory, and guarantor capacity rather than functioning as a traditional investigator.

The trend of curtailing the powers of the investigating judge continues. However, the legislature has not yet abolished this institution or replaced it with a "judge of inquiry." For instance, during judicial investigations, the prosecutor acts as a party to the proceedings and is entitled to appeal orders issued by the

investigating judge to the investigative chamber (*K. Eichstaedt, 2016; J. Głębocka, 2023, p. 224*).

The investigating judge is responsible for decisions regarding the conclusion of an investigation. While obligated to inform the prosecutor and transmit case files to all parties, these parties may request further investigative actions, which the judge is not bound to honor. The judge also performs decision-making functions (e.g., pre-trial detention) and supervisory tasks concerning actions by other pre-trial bodies. Decisions made by the investigating judge during an investigation may be appealed to the investigative chamber. It is noteworthy that in France, pre-trial detention decisions fall under the jurisdiction of a specialized judicial body—the judge of freedoms and detention (*J. Głębocka 2014, p. 275.*).

As previously mentioned, judicial participation extends to the less formal inquiry phase. While this phase aims to expedite case referral to the courts, it does not preclude judicial involvement (*G. Stéfani, G. Levasseur, B. Bouloc, 2006, p. 400*), which can impact procedural efficiency.

An investigating judge may conduct an in flagrante delicto inquiry (*J. Głębocka, 2023, p. 155*) if they accompany the prosecutor to the crime scene, at which point the prosecutor may delegate the investigation to the judge. However, changing the entity conducting this type of proceeding does not alter its character or procedural sequence, as the prosecutor remains responsible for deciding its outcome.

Turning to the preliminary inquiry (the primary form of pre-trial proceedings), its purpose diverges from that of the judicial investigation. In France, the prosecutor conducts preliminary inquiries to determine whether to refer the matter to an investigating judge or to terminate the proceedings. Given its informal nature, this phase generally avoids coercive measures or actions infringing on citizens' rights (with the exception of detention) (*M. Czajka, 2004 s., 528*). However, the judicial police may undertake such actions with the consent of the affected person or judicial approval from the judge of freedoms and detention upon the prosecutor's request (*S. Guinchard, J. Buisson, 2010, p. 664-665*). Specific actions within the preliminary inquiry are reserved solely for the prosecutor or the court (*J. Głębocka, 2023, p. 138*).

This framework highlights that the preliminary inquiry aims to swiftly assess the case and decide whether to escalate it to the investigating judge or prosecutor, setting it apart from the judicial investigation. While these provisions may seem appropriate, the prosecutor's misuse of these rules to bypass judicial investigations is a concerning trend. French legislators face a critical decision on whether to retain and modernize the institution of the investigating judge or replace it with a judge of inquiry. Regardless of the choice, a comprehensive reform will be necessary.

Despite the institution's decline, the investigating judge continues to exist in jurisdictions beyond France and Spain, including Greece, the Netherlands, Belgium, and several South American countries (*A. Pol, 2010, p. 156-164*). It is worth noting that the contemporary role of the investigating judge significantly deviates from its 19th-century foundations.

II.2 JUDGE ASSIGNED TO THE ROLE OF A JUDGE FOR PRE-TRIAL PROCEEDINGS

Another option developed within the framework of a democratic state governed by the rule of law is the delegation of a judge to the notional role of an "investigator." The legal doctrine refers to such a judge as one responsible for pre-trial proceedings or a judge for investigation/inquiry, tasked with performing decision-making, evidentiary, and supervisory activities specified by law. It should be emphasized that the concept of this institution originated in German legal thought; therefore, the institution in question should be analyzed within the context of the German model.

In the 19th century, the German criminal procedure model was based on judicial inquiry and the classic institution of the investigative judge, described in the doctrine as "a prosecutor equipped with full judicial independence." (*K. Bader Tübingen, 1956, p. 6*) However, this institution was not well-regarded. Consequently, during the 20th century, and specifically with the amendment of the Code of Criminal Procedure in 1974, significant changes were introduced to optimize and expedite pre-trial proceedings. The institution of the investigative judge was abolished, and investigative powers, consistent with the principle of separation of powers, were transferred to the prosecution office (*G. Prechtel München, 1995, p. 11*).

The German legislator abandoned the division of proceedings into forms and introduced a unified investigation entrusted to the prosecution office (*P. Girdwoyń, 2004, p. 3-12*), which is described in legal literature as the "master of the investigation." This is also reflected in the so-called general investigative clause, under which the prosecution may undertake any actions necessary to fulfill its statutory duties (*P. Girdwoyń, 2006, p. 60-61*). In this context, the key issue was defining the role of the court in pre-trial proceedings (*Ł. Wiśniewski, 2011, p. 56-67*).

The strong position of the prosecution required an equally robust role for the court. The German legislator introduced a judge supervising pre-trial proceedings, i.e., an judge of inquiry (*P. Girdwoyń 2006, p. 60-61*). This is a judge delegated to carry out activities related to pre-trial proceedings in the lowest-level court within whose jurisdiction a specific action is to be performed. It should be noted that in German pre-trial proceedings, the judge cannot act on their own initiative—an application by the prosecutor or a party is necessary (*P. Girdwoyń, 2006, p. 62-63*). As a result, this judge functions as a jurisdictional and supervisory authority safeguarding human rights and freedoms, while also

performing evidentiary activities in specific situations (*Ł. Wiśniewski, 2011, p. 56-67*).

In a democratic state governed by the rule of law, including within German pre-trial proceedings, only an judge of inquiry, endowed with judicial independence, is authorized to authoritatively intervene in the rights and freedoms of individuals (*M. Zöller München, 2010, p. 1063*). Thus, the legislator entrusted this judge with decisions regarding coercive measures, such as pre-trial detention or so-called corrective and protective measures. However, certain actions, generally reserved for the judge, may be undertaken by the prosecutor in situations where the delay in seeking the judge of inquiry's decision could thwart the objective of the action (e.g., exhumation or procedural wiretapping). Such actions by the prosecution, or in certain cases by investigative officers, are subsequently subject to approval by the judge.

Decision-making activities requiring the court's consent in normal circumstances include: recording and listening to conversations conducted in private homes; seizing items in a newsroom, publishing house, printing house, or radio station; revoking a driver's license as a protective measure; typical seizure of items; detention of postal parcels; recording and listening to telecommunication transmissions; application of operational technical means; searches; and the activities of undercover agents.

During the pre-trial stage, the judge of inquiry acts as a collaborator with the prosecution office and the police (*K. Nehm, 2001, p. 279*). Therefore, in specific cases, the judge should perform certain actions, for instance, when there is a risk of losing evidence or preserving a suspect's confession to the alleged offense (*S. Hüls, 2007, p. 294*). Evidentiary activities conducted by the judge of inquiry may be read during subsequent stages of the proceedings (*P. Girdwoyń, 2006, p. 62-63*).

Interestingly, the evidentiary actions of the judge of inquiry are in contrast to judicial independence, as the judge cannot refuse to perform them (*S. Hüls 2007 p. 294*). Examples include interrogating the suspect or conducting an inspection. These actions deviate from the model of pre-trial proceedings, which is fundamentally conducted for the prosecutor, thereby facilitating the principle of immediacy throughout the entire criminal process (*Ł. Wiśniewski, 2011, p. 56-67*). Despite the controversies, these solutions serve as an essential safeguard ensuring the proper course of criminal proceedings at later stages.

Among the court's decision-making activities, those related to the conclusion of proceedings should be highlighted. For example, with the court's and the suspect's consent, the prosecution may temporarily refrain from filing public charges if the offense constitutes a misdemeanor and simultaneously oblige the suspect to fulfill specific conditions or recommendations, provided there is no public interest in prosecution, and the level of culpability is minimal (*M. Lemke, K. Julius, C. Hehl, H.J. Kurth, E. Rautenberg, D. Temming, 2001, p. 567; R.*

Rother, 2001 p.97; P. Girdwoyń, 2006, p. 132). The prosecution, with the court's consent, is also authorized to discontinue pre-trial proceedings when conditions justify waiving punishment (*P. Girdwoyń, 2006, p. 133; P. Girdwoyń, 2004, p. 9-12*). Additionally, German law includes provisions allowing non-prosecution of perpetrators of terrorist offenses who, on their own or through a third party, disclose circumstances enabling the prevention or detection of such offenses. Decisions on this matter are made by the Federal Prosecutor General with the consent of the Federal Supreme Court (A. R. Światłowski 1998 p.79).

Furthermore, the victim has been equipped with the so-called complaint enforcement mechanism (*P. Girdwoyń, 2006, p. 62-63*). In cases where proceedings are discontinued, the victim may appeal the decision to the superior prosecutor. Following another unfavorable decision, the victim may demand the case be referred to the court by filing a complaint with the competent court. In such cases, the court may request the case files from the prosecution, conduct additional evidentiary actions independently or through the judge of inquiry, and may either uphold the decision or find the complaint justified, which then binds the prosecution (*Ł. Wiśniewski 2011, p. 56-67*).

In summary, German pre-trial proceedings fall under the jurisdiction of the prosecution, which requires the assistance of judicial police and is supervised by a judicial body. While the court lacks initiative – its actions must be triggered by a prosecutor's or party's application (*K. Eichstadt a 2009, p. 22-33*) – the judge of inquiry plays a crucial role in securing the proper course of pre-trial proceedings and evidence for judicial proceedings while acting as a safeguard of human rights and freedoms. Although the doctrine does not regard this institution as ideal, it fulfills its duties (*H. Kintzi, 2004, p. 83*). It requires some optimization, but the legislative practice of other European countries (moving away from the judge of inquiry in favor of a judge for pre-trial proceedings) confirms that the reforms initiated in 1974 were appropriate. A similar institution exists, for instance, in Italy, Switzerland, and Portugal.

II.3 COURT UNDERTAKING SPECIFIC DECISION-MAKING, SUPERVISORY, AND EVIDENTIARY ACTIONS

There are also practical solutions that explicitly indicate that specific actions during the preparatory proceedings must be performed by the court. For example, in Austria, this responsibility lies with a judge of the district court (of a higher level)[3]. In contrast, the situation in Poland is somewhat different. As a rule, it should be the court appointed to hear the case in the first instance, but the Code of Criminal Procedure provides numerous exceptions. Under this framework, judicial actions in preparatory proceedings are carried out by a single judge.

[3] C. Kulesza, Przemodelowanie procesu karnego, https://www.gov.pl/attachment/063450d5-7475-4306-bdc6-3c70c0138f43 [acces: 03.12.2024].

This implies that a judge of a criminal court, who primarily performs adjudicative functions, carries out specific actions during the preparatory proceedings. The judge's participation in the preparatory proceedings is incidental. Moreover, as in the model assuming the operation of a preparatory proceedings judge, the court has not been granted initiative powers; its role is essentially passive (*J. Izydorczyk, 2002, p. 92*). It acts as a guarantor body that generally carries out decision-making, supervisory, and evidentiary actions.

It is worth noting a distinctive feature of the Austrian model that clearly differentiates it from others. The court is not merely an auxiliary body to the prosecution. If, during evidentiary activities, circumstances arise that are significant for assessing the justification of suspicion, the court may, ex officio or upon request, conduct further evidence collection. Evidentiary actions are conducted personally by the judge and cannot be delegated to the police (*E. Fabrizy, 2008, p. 231).* Additionally, the model provides a broadly defined catalogue of evidentiary actions, including, for instance, procedural experiments, adversarial examinations of witnesses and suspects, and the examination of anonymous witnesses. Furthermore, in cases involving a public interest in the form of particularly serious crimes or the suspect's profile, the court conducts certain evidentiary actions upon the prosecutor's request, provided it determines that the statutory prerequisites are met. If these prerequisites are not met, the request is denied by an order, and the actions are not carried out (*E. Fabrizy, 2008, p. 231*).

This definition of the court's role in preparatory proceedings may stem from the fact that Austria only abandoned the institution of judicial investigation in 2004[4]. The situation in Poland is somewhat different. While in earlier times the Polish model of preparatory proceedings was also based on the institution of an investigative judge (1918–1949), changes related to World War II led to the Sovietization of Polish law (*R. A. Stefański, 2010, p. 158*). Consequently, the Soviet model of preparatory proceedings was introduced, in which the prosecutor played the primary role, and the involvement of the judiciary and the rights of the parties were limited (*J. Koredczuk, 2016*).

It was only with the adoption of the new Code of Criminal Procedure that a path was opened for the introduction of a preparatory proceedings model that meets the standards of a democratic state governed by the rule of law. However, it should be noted that despite numerous changes, which should be evaluated positively, elements characteristic of the Soviet model remains in the Polish system (*P. Kruszyński, M. Warchoł, 2008*). There are also numerous other problems that have been highlighted for years, and despite subsequent amendments, they persist—issues such as the scope of preparatory proceedings,

[4] C. Kulesza, Przemodelowanie procesu karnego, https://www.gov.pl/attachment/063450d5-7475-4306-bdc6-3c70c0138f43 [acces 03.12.2024].

the roles and tasks of various authorities, and the speed of proceedings (*J. Grajewski, 2008 p. 89-96; J. Tylman, 2009, p. 125-144; J. Błachut, S.Majcher 2007, p. 67-149*).

It is important to emphasize that the changes occurring in the Polish model of preparatory proceedings are appropriate as they expand the scope of the court's actions. However, certain shortcomings remain evident. Following the Austrian model, the judge should have broader powers to conduct examinations, including interrogating the suspect. All decision-making actions that infringe on human rights and freedoms, such as searches or the monitoring of correspondence and shipments, should be reserved for the court. Consideration should also be given to expanding the range of supervisory actions.

The outlined model assumes the absence of a distinct judicial body responsible for actions in preparatory proceedings. As noted above, this does not preclude the actual role and effectiveness of the court. Legal traditions and historical conditions are crucial for shaping the model, as demonstrated by Austria and Poland. Ultimately, it must be acknowledged that practical procedural solutions shape the model of preparatory proceedings.

CONCLUSION

From the above analysis, it follows that the involvement of the judiciary in preparatory proceedings is obligatory in a democratic state governed by the rule of law. This is confirmed by international law as well as an extended analysis of the solutions adopted in various countries.

As indicated above, there are numerous possibilities for situating the court within the preparatory proceedings, depending on the chosen concept. It seems that the institution of the investigative judge, responsible for conducting preparatory proceedings, is in significant decline. However, it continues to exist in several countries, and although it diverges from its classical forms, it is not definitively determined that it will be completely abolished. While it has its merits, fulfilling its statutory tasks requires revision and adaptation.

The most effective solution appears to be the institution of the preparatory proceedings judge. Introduced in Germany 50 years ago, it replaced the investigative judge and fundamentally changed the nature of European preparatory proceedings. The German legislator identified elements of the model that required improvement and indicated the desired direction of changes. A unified preparatory proceeding was introduced, primarily led by the prosecutor, although in practice, most cases are handled by the police. Within this framework, a judicial component was incorporated, with a clearly defined role—primarily jurisdictional and supervisory, but with certain powers to conduct evidentiary actions in specific cases. This reform has been implemented in other countries over the years.

Criminal procedure theory also recognizes a solution that does not designate a specific body to carry out judicial actions but rather refers to the court acting as a single judge. This solution meets international standards but raises practical concerns. Specifically, the judge is ordinarily engaged in adjudication during judicial proceedings, and involvement in preparatory stage activities diverts them from their daily responsibilities. Consequently, it is difficult to speak of the judge's operational efficiency given their incidental participation.

*Nonetheless, each of the three discussed solutions fulfills the principle of judicial protection of human rights and freedoms. It is essential to identify the strengths and weaknesses of each model and strive to eliminate the latter. Criminal procedure must respond to contemporary challenges, prevent and combat crime. It seems that the police possess the best tools for this purpose, but they must simultaneously be supervised by the prosecutor and controlled by an independent judge***.**

BIBLIOGRAFIE

1. Bader K., *Staatsanwaltschaft und Rechtspflege* [in:] *Juristenzeitung. 11. Jahrgang der deutschen Rechts-Zeitschrift und der süddeutschen Juristen-Zeitung*, red. K. Bader, Tübingen 1956.
2. Bieńkowska B., Kruszyński P. (ed.), Kulesza C., Piszczek P., Wykład prawa karnego procesowego, Białystok 2004.
3. Błachut J., Majcher S., *Szybkość postępowania przygotowawczego w świetle badań aktowych, [in]: Zagubiona szybkość procesu karnego. Światło w tunelu*, S. Waltoś, J. Czapska (eds.), Kraków 2007.
4. Czajka M., [in]: A. Machowska, K. Wojtyczek, (eds.), Prawo francuskie, t. I, Zakamycze 2004.
5. Eichstaedt K., *Czynności sądu w postępowaniu przygotowawczym* [in:] System Prawa Karnego Procesowego. Tom X. Postępowanie przygotowawcze, P. Hofmański, R. A. Stefański (eds.), Warszawa 2016.
6. Eichstaedt K.*, Czynności sądu w postępowaniu przygotowawczym w polskim prawie karnym*, Warszawa 2008.
7. Eichstaedt K., Rola sądu w postępowaniu przygotowawczym a instytucja sędziego śledczego, Warszawa 2009.
8. Fabrizy E., *Die Österreichische Strafprozessordnung mit dem neuen Vorferfahren und dem wichtigsten Nebengesaetzen. Kurzkommentar, 10 Auflage*, Wien 2008.
9. Girdwoyń P., Pozycja i zadania prokuratury w systemie prawnym Republiki Federalnej Niemiec, Wojskowy Przegląd Prawniczy Vol. 3/2004, p. 3-12.
10. Girdwoyń P., Zarys niemieckiego procesu karnego, Białystok 2006.
11. Głębocka J., *Francuska procedura karna* [in:] *Proces karny – rozwiązania modelowe w ujęciu prawnoporownawczym,* ed. P. Kruszyński, Warszawa 2014.

12. Głębocka J., Model francuskiego postępowania karnego w ujęciu porównawczym, Warszawa 2023.
13. Grajewski J., *Niektóre problemy nadzoru nad postępowaniem przygotowawczym i zakresu wpływu sądu na przebieg procesu karnego, in; Skargowy model procesu karnego. Księga ofiarowana Profesorowi Stanisławowi Stachowiakowi*, eds. A.Gereckiej- Żołyńskiej, P. Góreckiego, H.Paluszkiewicz, P. Wilińskiego, Warszawa 2008.
14. Gronkowska B., Jasudowicz T., Balcerzak K., Balcerzak M., Neminem captivabimus nisi iure victum. Prawo do wolności i bezpieczeństwa osobistego. Ochrona praw osób pozbawionych wolności, Toruń 2004.
15. Grzegorczyk T., Tylman J., Polskie Postępowanie Karne, Warszawa 2022.
16. Guinchard S., Buisson J., Procédure pénale, Paris 2010.
17. Hüls S., *Polizeiliche und staatsanwaltliche Ermittlungstätigkeit. Machtzuwachs und Kontrollverlust*, Berlin 2007.
18. Izydorczyk J., Praktyka stosowania tymczasowego aresztowania na przykładzie Polski centralnej, Wydawnictwo Uniwersytetu Łódzkiego 2002.
19. Kaftal A., Model postępowania przygotowawczego de lege ferenda w procesie polskim, „Studia Pranicze" 1989.
20. Kanz J., Pojęcie suwerenności we współczesnym prawie międzynarodowym, Warszawa 2015.
21. Kintzi H., *Die Tätigkeit des Ermittlungs-richters im Ermittlungsverfahren und Richtervorbehalt, „Deutsche Richterzeitung"* nr 3/2004.
22. The Convention for the Protection of Human Rights and Fundamental Freedoms, drafted in Rome on 4 November 1950, as amended by Protocols Nos. 3, 5, and 8, and supplemented by Protocol No. 2, Official Journal of 1993, No. 61, item 284.
23. Koredczuk J., Ewolucja modelu postępowania przygotowawczego w polskim prawie kar-nym procesowym, (in:) System Prawa Karnego Procesowego. Tom X. Postępowanie przygotowawcze, P. Hofmański, R. A. Stefański (eds.), Warszawa 2016.
24. Kruszyński P., Pawelec S., Europejski kodeks postępowania karnego, „Przegląd Sądowy" 1/2009/1 s. 95-108.
25. Kruszyński P., Warchoł M., *Pozycja sędziego śledczego na tle modeli postępowania przygotowawczego*, Cz. 1 Pal.2008, z. 3-4 i cz.2, Pal. 2008, z. 5-6.
26. Kruszyński P., Warchoł M., Sądowa kontrola postępowania przygotowawczego w Polsce i za granicą — uwagi praktyczne na tle instytucji sędziego śledczego [in:] Konferencja Nowy model postępowania przygotowawczego — sędzia śledczy. Warszawa, 22 marca 2010 r., P. Zieliński (ed.) Warszawa 2010.
27. Kulesza C., Przemodelowanie procesu karnego, https://www.gov.pl/attachment/063450d5-7475-4306-bdc6-3c70c0138f43 [acces 03.12.2024].

28. Kulesza C., Sędzia śledczy w modelu postępowania przygotowawczego na tle porównawczym, Białystok 1991.
29. Kurowski M., Sydor P., "Śledcze" czynności sądowe w postępowaniu przygotowawczym w aspekcie praktycznym, „Przegląd Sądowy" 2011, nr 1, pp. 98-108.
30. Lemke M., Julius K., Hehl C., Kurth H.J., Rautenberg E., Temming D., Heidelberger Kommentar zur Strafprozessordung, Heidelberg 2001.
31. Malinowska-Krutul K., Czynności sądowe w postępowaniu przygotowawczym, „Prokuratura i Prawo" 2008, nr 10.
32. Michalczuk C., Struktura sądownictwa karnego w Wielkiej Brytanii, „Prokuratura i Prawo", nr 7-8/2005, pp. 180—187
33. The International Covenant on Civil and Political Rights, opened for signature in New York on 19 December 1966, Official Journal of 1977, No. 38, item 167.
34. Murzynowski A., *Uwagi na temat modelu postępowania przygotowawczego*, „Państwo i Prawo" 1968, z. 7.
35. Nehm K., *Umfang der Bindung des Ermittlungsrichters an Anträge der Staatsanwaltschaft* [in:] *Strafverfahrensrecht in Theorie und Praxis. Festschrift für Lutz Meyer-Goßner zum 65. Geburtstag,* A. Eser (ed.), München 2001.
36. Osiejewicz J., Harmonizacja prawa państw członkowskich Unii Europejskiej, Warszawa 2016.
37. Pastuszko G., Tendencje federalizacyjne Unii Europejskiej, Warszawa 2023.
38. Pol A., Informacja na temat pozycji procesowej, zakresu działania, kompetencji i uprawnień sędziego śledczego w Grecji, Hiszpanii, Holandii i Portugalii, „Zeszyty Prawnicze BAS", 3(27)/2010, s. 156-164
39. Prechtel G., *Das Verhältnis der Staatsanwaltschaft zum Ermittlungsrichter*, München 1995.
40. Rother R., Ochrona pokrzywdzonego w postępowaniu karnym w Niemczech, „Prokuratura i Prawo" 2001 Nr 9.
41. Schaff L., Zakres i formy postępowania przygotowawczego, Warszawa 1961.
42. Siewierski M., Koncepcje kodyfikacyjne postępowania przygotowawczego, „Problemy Kryminalistyki" 1961, nr 29.
43. Stéfani G., Levasseur G., Bouloc B., Procédure pénale, Paris 2006.
44. Stefański R.A., Krytycznie o obecnym modelu postępowania przygotowawczego, [in:] Węzłowe problemy procesu karnego, P. Hofmański (ed.) Warszawa 2010.
45. Światłowski A. R., Nieformalne i paraformalne porozumienia w praktyce niemieckiego procesu karnego, „Prokuratura i Prawo" 1998, Nr. 1.
46. Tylman J., *Zasada bezpośredniości na tle zmian w polskim prawie karnym procesowym.,* [in]: Rzetelny proces karny. Księga jubileuszowa Profesor Zofii Świdy, J. Skorupka (ed.), Warszawa 2009.

47. Waltoś S., Model postępowania przygotowawczego na tle porównawczym, Warszawa 1968.
48. Wąsek-Wiaderek M., Unijne i krajowe prawo karne po traktacie lizbońskim – zarys problematyki, "Palestra" 1-2/2011.
49. Wiśniewski L., Sędzia dochodzenia w niemieckim postępowaniu karnym, „Państwo i Prawo" 2011/12, s. 56-67.
50. Zagrodnik J., Model interakcji postępowania przygotowawczego oraz postępowania głównego w procesie karnym, Warszawa 2013.
51. Zöller M. *Strafprozessordnung: mit Gerichtsverfassungsgesetz und Nebengesetzen. Kommentar*, J.-P. Graf (ed.), München 2010.

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 101-112

NEWS ON CRIMINAL LIABILITY FOR OFFENSES RELATED TO DRUGS AND PRODUCTS SUSCEPTIBLE TO HAVING PSYCHOACTIVE EFFECTS, OTHER THAN THOSE PROVIDED FOR BY THE REGULATIONS IN FORCE

B. BUNECI

Received 10.11.2025; accepted 15.12.2025
First online publication: 18.12.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.287

Bogdan BUNECI
Associate Professor
Ecological University of Bucharest –
Faculty of Law
E-mail: bogdanbuneci@yahoo.ro
ORCID ID: https://orcid.org/0009-0009-1087-3263

Abstract

Recent reforms in criminal liability for drug and psychoactive substance offenses show a clear trend toward tougher criminal policy, combining repressive measures with rehabilitation and prevention tools. Increased penalties for traffickers, the introduction of aggravating circumstances, and the criminalization of related acts reflect a strategy of reduced tolerance for the phenomenon, while mandatory treatment and psychological counseling programs mark a step toward addressing public health in the context of addiction.

However, the intensity and frequency of legislative changes may affect legal certainty and consistency in law enforcement. Repeatedly tightening sanctions and restricting access to alternative measures risks exacerbating prison overcrowding and creating an imbalance between the repressive and rehabilitative aims of the law. A sustainable criminal policy must ensure the proportionality of penalties, the effective implementation of reintegration programs, and the predictability of the regulatory framework in order to maintain confidence in justice and reduce the incidence of crime in the long term.

Key words: *drugs, psychoactive substances, criminal policy, criminal liability, rehabilitation, proportionality of penalties, legal certainty.*

Bogdan BUNECI

INTRODUCTION

The phenomenon of illicit drug trafficking and consumption is one of the most dynamic and complex forms of crime in Romania, with profound implications at both the social and criminal policy levels. Recent statistics indicate an increase in the number of users, especially among young people, as well as a diversification of the types of substances on the market, including high-risk drugs, very high-risk drugs, and new psychoactive substances. This dynamic has led to the adaptation of investigation strategies and intensified cooperation between law enforcement agencies, both domestically and internationally, given the transnational nature of trafficking networks.

At the same time, the phenomenon raises a public health issue, prompting authorities to strike a balance between criminal repression and the implementation of policies to prevent and reduce the risks associated with consumption.

Law No. 143/2000 on the prevention and combating of illicit drug trafficking and consumption is the basic legislative act on the prevention and combating of illicit drug trafficking and consumption. It was adopted in a context where the phenomenon was relatively limited in Romania, and criminal policies were focused almost exclusively on severely punishing traffickers and users.

Law No. 194/2011 on combating operations with products likely to have psychoactive effects, other than those provided for by the legislation in force, establishes the legal framework applicable to products likely to have psychoactive effects, similar to those caused by narcotic or psychotropic substances or preparations, plants or substances under national control, other than those subject to the legal regime established by the legislation in force, and establishes measures to prevent, control, and combat consumption in order to protect the health of the population from their negative effects.

Over the years, the legislation has undergone multiple changes aimed at responding to new challenges, such as the emergence of psychoactive substances, the expansion of organized crime, and the need to align with European Union standards.

In recent years, through legislative acts such as Law No. 45/2023, Law No. 58/2024, Law No. 234/2024, and Law No. 172/2024, important clarifications and adjustments have been made to both Law No. 143/2000 and Law No. 194/2011, changes that reflect a trend towards refining the legislative framework in order to ensure a proportionate and effective criminal response, in line with social realities and national and European case law.

I. LAW No. 143/2000 – BASIC REGULATIONS ON DRUGS

Law No. 143/2000 on the prevention and combating of illicit drug trafficking and consumption constitutes the legislative foundation in this area. The normative act regulates:

- Classification of narcotic or psychotropic plants and substances or mixtures containing such plants and substances as high-risk drugs (listed in Tables I and II of Law No. 143/2000), high-risk drugs (listed in Tables I and II of Law No. 143/2000) and new psychoactive substances (substances in pure form or in a preparation, which are not covered by the 1961 United Nations Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, or the 1971 United Nations Convention on Psychotropic Substances, but which may present risks to health or society similar to those presented by the substances covered by the aforementioned conventions)

- The main offenses are set out in Articles 2–10 of Law No. 143/2000, where we could give as an example Article 2: cultivation, production, manufacture, experimentation, extraction, preparation, processing, offering, sale, distribution, offering for sale, delivery under any title, sending, transporting, procuring, purchasing, possessing, or other operations involving the circulation of high-risk drugs without authorization, where the penalty is 3 to 10 years and the deprivation of certain rights, and for high-risk drugs the penalty is imprisonment from 5 to 15 years, and in some situations provided for in art. 3 para. (2) from 10 to 20 years. If the acts committed under the law provided for in Articles 2, 6-8, and 10 resulted in the death of the victim, the penalty is imprisonment from 15 to 25 years and the deprivation of certain rights.

- Prevention measures: educational campaigns, information programs, treatment for users.

- In terms of institutional cooperation, the law provides that the central units specializing in the prevention and combating of illicit drug trafficking and consumption within the General Inspectorate of the Romanian Police, the General Inspectorate of the Romanian Border Police, the Public Ministry and the General Directorate of Customs shall transmit to the National Anti-Drug Agency data on the prevention and combating of illicit drug trafficking and consumption, essential chemicals, precursors, and toxic chemical inhalants, necessary for the preparation of reports to the Romanian Government and international bodies on the evolution and level of drug trafficking and consumption in Romania, as well as those necessary for the preparation of studies, syntheses, and analyses to support policies and strategies in the fight against drugs.

I.1. AMENDMENTS MADE BY LAW NO. 45/2023 TO LAW NO. 143/2000

Law No. 45/2023 marks a milestone in the evolution of national drug legislation, seeking to better balance criminal liability according to the seriousness of the offense and the actual social danger. The amendments introduced by this law are intended both to make the crackdown on trafficking networks more effective and to ensure effective reintegration mechanisms for addicts.

This amendment through Law No. 45/2023 brings a fundamental revision of Law No. 143/2000, aiming both to clarify key concepts (definitions) and strengthening the penalty regime for drug trafficking offences and closer alignment with international substance control mechanisms.

Thus, Article 1(a) on substances under national control, drugs, and precursors listed in Annexes I-IV has been included, with the possibility of amending them within a maximum of six months from receipt of the amendment proposal. In this way, the legislator establishes the obligation to update the tables within a maximum of six months, which ensures rapid alignment with UN standards (the 1961 and 1971 Conventions), and the Ministry of Health and the Ministry of Internal Affairs are obliged to submit the amendment proposal as soon as they receive the communication from the international bodies. This reduces the risk of new drugs or precursors circulating in a "legislative vacuum" until they are included in these tables.

New concepts relating to drugs have also been defined, namely "new psychoactive substances" (Article 1(d)(1)- a substance in pure form or a preparation that is not regulated by UN conventions but presents similar risks) and "preparation" (Article 1(d2- a mixture containing one or more new psychoactive substances), thus aligning the provisions of Directive (EU) 2017/2103, which requires Member States to take rapid measures to control new psychoactive substances (NPS).

This law also tightened the penalties for trafficking in high-risk and very high-risk drugs (Article 2) and for bringing drugs into or out of the country (Art. 3), as well as an aggravated version based on the outcome, if the trafficking resulted in the death of the victim, with a penalty of 15 to 25 years and the deprivation of certain rights.

Through these amendments, Romania has adopted a "zero tolerance" policy towards drug trafficking, considerably limiting the possibility of applying probation (Art. 91 of the Criminal Code applicable only if the sentence imposed is no more than 3 years), maintaining the distinction between high-risk and low-risk drugs, with more severe penalties for high-risk drugs.

Furthermore, the provisions of Article 17(4) stipulate that goods and means used in the illicit manufacture of drugs may be used for educational purposes or in prevention campaigns.

This law also amended Article 19(1) concerning the assessment of the consumer, whereby the prosecutor orders, within 5 days of the continuation of the criminal investigation, the assessment of the consumer, with their consent. Thus, a period of 5 days from the continuation of the criminal investigation was introduced → ensuring the speed of the procedure and rapid intervention for treatment, and as a new element, the assessment of the consumer. This introduced a 5-day deadline from the continuation of the criminal investigation → ensuring the speed of the procedure and rapid intervention for treatment, and as a new

element, the assessment is only carried out with the written consent of the consumer.

I.2. AMENDMENTS MADE BY LAW NO. 58/2024 TO LAW NO. 143/2000

The amendments to Law No. 143/2000 by Law No. 58/2024 had a significant impact on the penalty regime for drug trafficking offences, as it restricted defendants' access to a very important measure of clemency – the suspension of the execution of the sentence under supervision.

Thus, the provisions of Article 15¹ stated that "the suspension of the execution of the sentence under supervision cannot be ordered in the case of the offenses provided for in Article 2(2) and Article 3(2)."

In such situations, the judge no longer has the possibility to assess the appropriateness of suspension under supervision for high-risk drug trafficking offenses, so that any sentence imposed for these offenses (even below the special minimum, if the mitigating circumstance is retained) must be effectively enforced in detention.

In this way, the legislator sought to combat the phenomenon of high-risk drug trafficking through a firm criminal response, considering that the measure of suspension under supervision does not have a sufficient deterrent effect.

Article 15¹ is a restrictive lex specialis, which limits the court's discretion and eliminates the possibility of suspending the execution of the sentence under supervision for high-risk drug trafficking offenses.

I.3. AMENDMENTS MADE BY LAW NO. 172/2024 TO LAW NO. 143/2000

Although Article 19 had already been amended by Law No. 45/2023, Law 172/2024 amends and supplements Law 143/2000 with regard to this article, which concerns the legal treatment of drug users, particularly in relation to the offense provided for in Article 4 (unlawful possession of drugs for personal use).

Prior to the amendment, the assessment of the user was possible, but the legal framework was less clear and did not expressly regulate the mandatory nature of the assessment for minors, the time limit within which the prosecutor must order measures, and there was no correlation between the assessment and inclusion in the assistance program.

Thus, according to Article 19(1) "In the case of the offense referred to in Article 4, the prosecutor may order, when he or she deems it necessary for the resolution of the case, the assessment of the user (...)".

The prosecutor thus has a discretionary right and not a general obligation, except in the case of minors (provided for in Article 19(2)), and the assessment serves to determine the degree of consumption (occasional, experimental, dependent) and treatment needs. This assessment may influence the measures

ordered (discontinuation of criminal proceedings, postponement of the application of the penalty, or referral to treatment). The measure is ordered only if the person is not already voluntarily enrolled in a program.

According to Article 19(2), for minors, the assessment is no longer at the discretion of the prosecutor but is mandatory, in line with the UN Convention on the Rights of the Child and the principle of the best interests of the child. Thus, minors who use drugs will be automatically included in an assessment and support process, which can prevent escalation to addiction or trafficking activities.

Thus, minor users will be automatically integrated into an assessment and support process, which can prevent the escalation of use to addiction or trafficking activities.

The assessment of the consumer is carried out with their consent by the drug prevention, assessment, and counseling center. (Article 19(3))

Depending on the conclusions of the assessment report, within 5 days of its receipt, with the written consent of the consumer, they will be included in the integrated assistance program for drug users. The procedural deadline of 5 days from receipt of the report is a short period, which guarantees the speed of the measures, with the aim of treatment, counseling, support for reducing consumption, and preventing relapse.

I.4. AMENDMENTS MADE BY LAW NO. 234/2024 TO LAW NO. 143/2000

This law supplemented the measures that can be taken against illicit drug use, relating to integrated assistance programs for drug users.

With this amendment, the legislator moves from general principles and obligations to a concrete institutional structure, through the establishment of detoxification centers, as stated in the provisions of paragraph (4^1) of Article 20: "Detoxification and recovery centers for drug addicts shall be established and organized as specialized institutions for social recovery (...) in each of the eight development regions (...) under the authority of the Ministry of Health."

The legal wording ("shall be established") imposes a mandatory obligation on the Government with national coverage, as the centers will be established in each of the eight development regions provided for by Law No. 315/2004 on regional development in Romania, ensuring equitable access in all areas of the country.

The centers will be independent entities with their own budget and assets, which gives them functional autonomy, being subordinate to the Ministry of Health and not to the Ministry of Internal Affairs or the Ministry of Justice, with a medical approach.

The new paragraphs (4^1) and (4^2) of Article 22 of Law No. 143/2000 are strategic in nature, creating the national infrastructure for the treatment and recovery of addicts, and through this, Romania is moving closer to an integrated

health and justice system that not only punishes but also treats, in the spirit of restorative justice and public health protection.

I.5. AMENDMENTS MADE BY LAW No. 234/2024 TO LAW No. 143/2000

The amendment made by Law No. 58/2024 to Law No. 143/2000 is of particular importance in the criminal justice system because it broadens the cases in which the suspension of the execution of the sentence under supervision cannot be ordered, introducing a direct correlation between the Criminal Code and special laws.

Thus, according to Article 91 of the Criminal Code, the suspension of the execution of the sentence under supervision is regulated as a measure of judicial individualization that allows the convicted person not to actually serve the sentence in prison, but to be supervised in the community, subject to certain obligations.

Thus, according to Article 93(3) of the Criminal Code, the suspension of the execution of the sentence under supervision cannot be ordered if the sentence imposed is only a fine, the application of the sentence was initially postponed, but the postponement was subsequently revoked, or if the offender evaded criminal prosecution or trial or attempted to obstruct the discovery of the truth or the identification and criminal prosecution of the perpetrator or participants.

In addition to these three conditions, Law No. 58/2024 amended Article 91 of the Criminal Code by introducing a new provision, namely: "if the special law expressly provides for it."

This provision creates a bridge between the Criminal Code and special legislation, allowing the legislator to exclude probation for certain crimes through separate normative acts [such as Article 15^1 of Law No. 143/2000, which excludes probation for drug trafficking -Article 2(2) and Article 3(2)]. Other future special laws could add similar provisions for acts posing a high social danger (terrorism, serious corruption, human trafficking, etc.).

Also, Law No. 172/2024 amended the provisions of Art. 83 para. (2^1) of the Criminal Code (amended by Law 172/2024) already excludes the postponement of punishment for Art. 335 and 336 of the Criminal Code (driving without a license and under the influence of alcohol/drugs).

II. LAW No. 194/2011 – BASIC REGULATIONS ON COMBATING OPERATIONS WITH PRODUCTS SUSCEPTIBLE TO HAVING PSYCHOACTIVE EFFECTS, OTHER THAN THOSE PROVIDED FOR BY THE REGULATIONS IN FORCE

Law No. 194/2011 on combating operations with products likely to have psychoactive effects (other than those provided for by the normative acts in force)

supplements the normative framework of Law No. 143/2000, with the aim of regulating the market for-called "ethnobotanicals" and other new substances with psychoactive effects, which are not yet included in international control tables.

The law regulates substances which, although not listed in the tables annexed to Law No. 143/2000 and not covered by the UN conventions (1961, 1971), may pose a similar risk to public health. Thus, the law quickly covers new substances appearing on the market until they are formally included in the drug tables. Articles 6-15 regulate the authorization procedure for any operation involving such products, through a scientific evaluation committee, with the lack of authorization attracting criminal or administrative liability, depending on the seriousness of the offense.

From the perspective of criminal liability, Law No. 194/2011 provides in the provisions of Articles 16-19 for offenses related to products that have psychoactive effects, criminalizing the production, distribution, sale, transport, possession, etc., without authorization, the concealment of the psychoactive nature of the products, as well as the advertising of the products, credibly claiming that they have psychoactive effects.

Through these articles, the law creates a penalty regime almost identical to that for trafficking in high-risk drugs, but adapted to the particularities of the phenomenon of new psychoactive products.

II.1. AMENDMENTS MADE BY LAW NO. 45/2023 TO LAW NO. 194/2011

The amendments made by Law No. 45/2023 to Law No. 194/2011 represent an important legislative intervention, aimed in particular at tightening criminal liability for operations involving products likely to have psychoactive effects (commonly known as "ethnobotanicals"), but also to clarify the forms of guilt and prohibited conduct.

Thus, this law increased the penalties for the offenses provided for in Articles 16, 17, and 19, which previously included fines.

This first reform represented a first step towards an integrated approach to the phenomenon of "ethnobotanicals," correlated with the tightening of penalties for drug trafficking (Law No. 143/2000, also amended by Law No. 45/2023).

II.2. AMENDMENTS MADE BY LAW No. 58/2024 TO LAW No. 194/2011

The adoption of Law No. 58/2024 brought about a further increase in the penalties for the offences referred to in Article 16(1) and Article 17(1), with penalties ranging from 3 to 10 years and the deprivation of certain rights, as in the case of the offense of trafficking in high-risk drugs provided for in Article 2(1) of Law No. 143/2000.

The changes, which come just one year after the last increase in sentencing limits under Law No. 45/2023, mark a shift from a relatively lenient approach to one of zero tolerance for transactions involving psychoactive substances, with

penalties now aligned with those for drug trafficking, ensuring uniform treatment for acts of similar social danger and limiting the possibility of applying suspended sentences.

II.3. AMENDMENTS MADE BY LAW No. 172/2024 TO LAW No. 194/2011

This amendment introduces a complex legislative package with a direct impact on criminal liability for operations involving products likely to have psychoactive effects and on how they are managed after seizure/confiscation. The analysis should highlight three directions: tougher penalties, the introduction of new offenses, and clear regulation of safety measures and destruction procedures.

Thus, in the case of the offense provided for in Article 16(2), which may be committed in the form of negligence with foresight, the complementary penalty of prohibition from exercising certain rights has been expressly stipulated.

Also, two new paragraphs have been introduced for this offense, regulating the aggravating circumstance if the acts resulted in the death of the victim (the penalty being 15-25 years, similar in severity to aggravated murder provided for in Article 189 of the Criminal Code) and the attempt was criminalized, extending criminal liability to the early stages of the offense, which increases the preventive capacity of the norm.

The amendments made to Law No. 194/2011 by Law No. 172/2024 also consisted in the introduction of Articles 191to 19(5), representing an important step in expanding the scope of criminalization and strengthening control mechanisms over the phenomenon of ethnobotanicals.

Through Article 191, the legislator sought to go beyond merely punishing trafficking itself and also punish forms of facilitating and encouraging consumption. Thus, making properties available, including those that are disused or under construction, for the consumption of psychoactive products, as well as tolerating consumption in such spaces, is punishable. Likewise, the administration or delivery of products without a medical prescription is criminalized, as is the incitement to consumption, even if no actual result has been achieved. An important element is the punishment of the financing of these acts, with an increase in the penalty by one third, which shows that the legislator wanted to strike at the economic side of the phenomenon, not just at the perpetrators. Attempts are punishable, and the law assimilates preparatory acts to attempts, reinforcing the preventive nature of the norm.

The provisions of Article 192introduce specific aggravating circumstances (complementary to those provided for in the Criminal Code), similar to those in Law No. 143/2000, with an emphasis on the protection of minors, the mentally ill, and persons in therapeutic programs. The severity is increased when the acts are committed in educational, medical, military, or detention facilities, as well as

when the products are mixed with substances that increase their danger to life. These provisions allow the court to apply higher penalties in situations where public health is exposed to particular risk.

Article 193regulates the special confiscation of products, goods used, and profits obtained from their sale, with the possibility of pursuing the equivalent in cash if the objects can no longer be found. This measure is intended to deprive offenders of the economic benefits of their illegal activity, in line with Article 112^1 of the Criminal Code and European policies to combat organized crime.

Article 194establishes clear rules for the destruction of products confiscated under Article 574(d) of the Code of Criminal Procedure, with some exceptions for medicines and substances that can be used for pharmaceutical or educational purposes, thus ensuring a balance between public safety and the exploitation of available resources.

Finally, Article 195refers to Article 21 of Law No. 143/2000 (central units specializing in the prevention and combating of illicit drug trafficking and consumption), extending the mechanisms for international cooperation and reporting to the competent bodies to psychoactive products.

Overall, these amendments transform Law No. 194/2011 into a complex instrument for preventing and combating the phenomenon, which not only punishes traffickers but also discourages the creation of environments tolerant of consumption, attacks sources of funding, and ensures the traceability and destruction of dangerous substances in a transparent manner.

Law No. 194/2011 is a legal mechanism for rapid response to the phenomenon of ethnobotanicals, falling within the competence of the Directorate for the Investigation of Organized Crime and Terrorism, where criminal prosecution is mandatory for prosecutors. The main objective of the normative act is to protect public health, criminalizing both intentional and negligent acts. At the same time, it sanctions related conduct—such as advertising, financing, or providing premises for consumption—and supplements the provisions of Law No. 143/2000, ensuring that no dangerous psychoactive product escapes criminal control.

CONCLUSION

Legislative developments in 2023–2024 mark a phase of intensification of criminal policy on drugs and products likely to have psychoactive effects, with Romania opting for a combination of severe c e sanctions and rehabilitation measures. On a positive note, the regulatory framework has become more professional: criminal offenses are more precisely defined, aggravating circumstances are clearly defined, and the system for prevention and reintegration of users is much better defined. Mandatory assessment, treatment, and psychological counseling programs, along with the establishment of regional

detoxification centers, represent a step toward a modern public health policy that treats addiction as a complex problem, not just a violation of the law.

However, successive amendments, adopted at short intervals, erode the stability and predictability of criminal law, affecting the principle of legal certainty. The repeated tightening of penalties – from 6 months to 3 years or a fine, to 2–7 years, and then to 3–10 years for Article 16 of Law No. 194/2011 or up to 10–20 years for bringing high-risk drugs into the country (Article 3(2) of Law No. 143/2000) – pushes the penalty regime towards limits comparable to those for intentional crimes against life, raising serious questions about the proportionality and fairness of the penalties.

Furthermore, restricting access to alternative measures (suspension under supervision or postponement of the application of the sentence) and the excessive emphasis on detention risk leading to prison overcrowding. In the absence of adequate infrastructure for electronic monitoring and a sufficient number of functional treatment centers, the goal of rehabilitation and social reintegration may remain more declarative than effective.

In conclusion, Romanian criminal policy is in a phase of expansion and consolidation, but its success depends on the state's ability to strike a balance between the repressive and preventive dimensions. Effective criminal justice cannot be reduced to harsher penalties, but must be accompanied by real measures of education, treatment, and reintegration, so as to reduce recidivism and protect public health without sacrificing fundamental rights and the principle of proportionality. If these conditions are not met, there is a risk that the legislation will become more of a retributive instrument than one of social balance, generating instability and mistrust in the justice system in the long term.

BIBLIOGRAFIE

1. Law No. 143/2000 on the prevention and combating of illicit drug trafficking and consumption, republished (r1) in the Official Gazette, Part I No. 163 of March 6, 2014;
2. Law No. 194/2011 on combating operations with products likely to have psychoactive effects, other than those provided for by the legislative acts in force, republished (r1) in the Official Gazette, Part I No. 140 of February 26, 2014.
3. Law No. 45/2023 amending and supplementing Law No. 143/2000 on preventing and combating illicit drug trafficking and consumption and amending Law No. 194/2011 on combating operations with products likely to have psychoactive effects, other than those provided for by the legislative acts in force, published in the Official Gazette, Part I No. 178 of March 2, 2023;
4. Law No. 58/2024 supplementing Law No. 143/2000 on the prevention and combating of illicit drug trafficking and consumption, amending Law No.

194/2011 on combating operations with products likely to have psychoactive effects, other than those provided for by the legislative acts in force, as well as supplementing Article 91(3) of Law No. 286/2009 on the Criminal Code, published in the Official Gazette, Part I No. 243 of March 21, 2024;
5. Law No. 172/2024 amending and supplementing certain legislative acts in the field of preventing and combating trafficking and illicit consumption of drugs and other substances likely to have psychoactive effects, published in the Official Gazette, Part I No. 510 of May 31, 2024;
6. Law No. 234/2024 supplementing Article 22 of Law No. 143/2000 on the prevention and combating of illicit drug trafficking and consumption, published in the Official Gazette, Part I No. 713 of July 22, 2024.

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA **L**aw **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 113-125

INTERNATIONAL JUDICIAL COOPERATION IN THE APPLICATION OF LAW NO. 143/2000 ON THE PREVENTION AND COMBATING OF ILLICIT DRUG TRAFFICKING AND CONSUMPTION

P. BUNECI

Received 10.11.2025; accepted 16.12.2025
First online publication: 18.12.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.286

Petre BUNECI
Ecological University of Bucharest –
Faculty of Law
E-mail: bunpetre56@yahoo.com
ORCID ID: https://orcid.org/0009-0004-8978-8072

Abstract

International judicial cooperation plays an important role in the enforcement of Law No. 143/2000 on the prevention and combating of illicit drug trafficking and consumption, in particular the modern legal instruments used in the European and international context. The main cooperation mechanisms are presented—extradition, the European arrest warrant, letters rogatory, the European investigation order, and mutual recognition of confiscation orders—and the importance of police cooperation and information exchange through Europol, Interpol, and SELEC is highlighted. Thus, current challenges related to legislative differences, data protection, and the complexity of evidence in transnational cases can hinder cooperation. Future trends, such as the digitization of cooperation procedures, the possible extension of the competence of the European Public Prosecutor's Office (EPPO), and the reorientation of criminal policy towards alternative measures and public health policies, are solutions to ensure a faster, more effective, and balanced response to drug trafficking.

Key words: *international judicial cooperation, drug trafficking, European arrest warrant, European investigation order, confiscation of assets.*

INTRODUCTION

Drug trafficking is one of the most profitable and widespread forms of organized crime, with a major impact on public safety, public health, and the global economy.

Criminal organizations involved in drug production and distribution operate transnationally, using complex transport routes, money laundering networks, and diversified distribution channels, including online platforms and encrypted networks on the dark web.

According to reports by the United Nations Office on Drugs and Crime (UNODC), the global drug market is constantly expanding, particularly with regard to synthetic drugs and new psychoactive substances, which can be produced at low cost and distributed rapidly across multiple continents. This reality transforms the phenomenon into a transnational challenge that cannot be effectively addressed solely through a state's domestic legal mechanisms.

In Romania, Law No. 143/2000 constitutes the fundamental regulatory framework for preventing and combating illicit drug trafficking and consumption. However, given that most trafficking offences involve foreign elements (import, export, transit, transfer of money abroad), it is clear that international judicial cooperation is essential.

This involves not only the exchange of operational information between authorities, but also the use of the European arrest warrant and extradition, the establishment of joint investigation teams in cross-border cases, the mutual recognition and enforcement of confiscation orders and precautionary measures, and the coordination of actions with European agencies (Europol, Eurojust) and international bodies (Interpol, UNODC).

Without these tools, the effectiveness of criminal investigations and prosecutions would be severely compromised, and criminal groups could exploit differences between national systems to avoid accountability.

I. INTERNATIONAL AND DOMESTIC REGULATORY FRAMEWORK

I.1. DOMESTIC REGULATIONS

Law No. 143/2000 contains provisions which, although brief, establish the framework for cooperation between Romanian authorities and international institutions and organizations, such as:

- Articles 16-17 on the confiscation and disposal of assets derived from drug trafficking allow for cooperation with other states to identify, freeze, and confiscate assets located abroad.

- The provisions of Articles 21-22 on prevention and assistance programs emphasize the need for cooperation with international organizations and NGOs in order to implement joint programs, exchange best practices, and harmonize public health policies.

Although the law does not expressly refer to the application of legislation on international judicial cooperation in criminal matters, the provisions of Law No. 302/2004 on international judicial cooperation in criminal matters are applicable when the offences provided for have foreign elements.

Thus, Law No. 143/2000 is part of a broader regulatory system, leaving the detailed procedural aspects to other legislative acts.

International cooperation in criminal matters is governed mainly by the Code of Criminal Procedure and Law No. 302/2004 on international judicial cooperation.

Thus, the main procedural instruments in the field of international judicial cooperation are:

- *Passive extradition* – regulated by Art. 18 et seq. of Law No. 302/2004, allows for the surrender of offenders from Romania, in accordance with the principle of double criminality.
- *Active extradition* – regulated by Art. 61 et seq. of Law No. 302/2004, which allows the surrender of persons at the request of the Romanian judicial authorities.
- *European arrest warrant* – Articles 84 et seq. of Law No. 302/2004 – a simplified mechanism for surrender between EU Member States, with short deadlines and a less formal procedure.
- *International letters rogatory,* Art. 230 et seq. of Law No. 302/2004 – used for the administration of evidence abroad (hearing of witnesses, searches, seizure of objects), in compliance with the legislation of the requested state.
- Recognition of foreign criminal judgments, Art. 145 et seq. of Law No. 302/2004 – for the enforcement of custodial sentences or security measures in Romania, and for the confiscation of proceeds of crime.

These instruments ensure the uniform application of Law No. 143/2000 when crimes cross national borders.

I.2. INTERNATIONAL REGULATIONS

In order to harmonize national legislation and facilitate cross-border cooperation, the following have been adopted at international level:

- *The 1988 Vienna Convention on Illicit Traffic in Narcotic Drugs* and *Psychotropic Substances*, which is the main global legal instrument for combating drug trafficking. It establishes a common framework for action for the States Parties, with clear obligations in several areas, such as *the criminalization of drug trafficking* – requiring States to criminalize the illicit production, supply, distribution, import, and export of drugs; *judicial cooperation* – regulates extradition and mutual legal assistance between states, including for the exchange of evidence and the enforcement of criminal judgments; *control of precursors* – provides for measures to monitor chemicals used in the manufacture of drugs, as well as *confiscation of the proceeds of crime* – requires states to adopt mechanisms for identifying, seizing, and confiscating property obtained from drug trafficking.

- *The UN Convention against Transnational Organized Crime*, also known as the "Palermo Convention", which expanded the fight against organized crime globally, including drug trafficking. This convention provides for the definition of organized crime groups and the obligation of states to criminalize participation in them; modern investigative mechanisms, such as controlled delivery, undercover investigations, electronic surveillance, and police cooperation; extended legal assistance—exchange of information, letters rogatory, transfer of criminal proceedings, and recognition of judgments; protection of witnesses and collaborators—establishment of effective measures for their safety.

Both conventions have been ratified by Romania and, according to the Constitution (Articles 11 and 20), form part of domestic law, taking precedence over any conflicting legal provisions. They supplement Law No. 143/2000 and Law No. 302/2004 on international judicial cooperation, providing a solid legal basis for combating drug trafficking and organized crime.

I.3. EUROPEAN UNION INSTRUMENTS

At the European Union level, there has also been ongoing concern with developing a regulatory framework to facilitate judicial cooperation in criminal matters, and in this regard we can mention the Framework Decision of the Council of the European Union of June 13, 2002, on the European arrest warrant and surrender procedures between Member States.

This Framework Decision introduces the European Arrest Warrant (EAW), which replaced traditional extradition procedures between EU Member States, with the aim of simplifying and speeding up the surrender of persons who are wanted for criminal prosecution or convicted, in a spirit of mutual trust between judicial systems.

The European Arrest Warrant is a judicial decision issued by one Member State for the arrest and surrender of a person by another Member State for the purposes of criminal prosecution or the execution of a sentence. It applies both to persons accused of committing a crime and to those who have been finally convicted. Among the 32 serious crimes for which surrender is possible without double criminality, if the minimum sentence is at least three years, is drug trafficking.

The Framework Decision was an essential step towards the European area of freedom, security, and justice by strengthening judicial cooperation, speeding up procedures, and increasing the effectiveness of the fight against cross-border crime.

Another legal instrument applicable in drug trafficking cases is Directive 2014/41/EU of the European Parliament and of the Council, known as the Directive on the European Investigation Order in criminal matters, adopted to strengthen judicial cooperation between Member States in the administration of evidence. It introduces a single instrument—the European Investigation Order—

through which a judicial authority in one Member State can directly and quickly request the collection or transmission of evidence from another Member State. Unlike the old rogatory commission mechanisms, the new system is simpler, based on mutual recognition and clear deadlines for execution.

The Directive covers a wide range of evidentiary measures, including obtaining documents and electronic data, conducting searches, hearing witnesses and experts by videoconference, and intercepting communications. Its purpose is to facilitate cross-border criminal investigations by reducing delays and excessive formalism. The European Investigation Order thus contributes to making criminal proceedings more efficient and protecting the right to a fair trial, while ensuring that the fundamental rights of the persons concerned are respected.

Regulation (EU) 2018/1805 of the European Parliament and of the Council of November 14, 2018, enshrines the principle of mutual recognition in the area of freezing and confiscation of proceeds of crime. Through this legislative act, the European Union aims to ensure a uniform and effective framework whereby freezing and confiscation orders issued in one Member State are recognized and enforced quickly in other Member States without excessive formalities.

The regulation covers both freezing measures—where assets are frozen to prevent their disposal—and confiscation measures, including extended confiscation and third-party confiscation. It applies regardless of the nature of the property, whether it is movable, immovable, money, or digital assets, thereby strengthening the fight against organized crime and serious crime that generates significant profits.

By introducing clear deadlines for recognition and enforcement, as well as reducing the grounds for refusal, Regulation 2018/1805 contributes to increasing the efficiency of judicial cooperation in criminal matters and protecting the financial interests of the European Union, deterring criminal activities by depriving perpetrators of the benefits they have obtained.

At European Union level, the European Union Drugs Strategy for 2021-2025 has also been adopted, which constitutes the political reference framework for all actions of the Union and Member States in the field of drugs, providing a unified and integrated vision of this complex phenomenon. The document aims to protect public health and social well-being, strengthen citizens' security, and ensure respect for fundamental rights, promoting an approach based on scientific evidence and the principles of subsidiarity and proportionality. The strategy is designed as a coordination tool between the national, European, and international levels, complementing Member States' policies and supporting a common and coherent response to developments in the drug markets.

The document proposes a strategic architecture structured around three major areas: reducing the supply of drugs, reducing the demand for drugs, and mitigating the negative consequences associated with consumption. In terms of

reducing supply, the focus is on dismantling organized crime groups, disrupting illegal markets, seizing the proceeds of crime, and strengthening border controls, including through cross-border cooperation and the use of operational data. In terms of reducing demand, the Strategy promotes prevention, early intervention, access to treatment and rehabilitation, social reintegration of addicts, and programs tailored to vulnerable groups. The negative consequences component aims to reduce health risks, prevent overdoses, combat the spread of communicable diseases, and ensure adequate services in prisons and after release.

In addition to these areas of intervention, the Strategy integrates three cross-cutting themes – international cooperation, research and innovation, and governance and implementation – recognizing that the drug phenomenon is global and requires a coordinated response, adapted to new threats and supported by a solid evidence base. The document also reaffirms the EU's commitment to the UN conventions on drug control, the 2019 Ministerial Declaration, and the 2030 Agenda for Sustainable Development, emphasizing the human rights and public health dimensions of drug policies.

Overall, the EU Drugs Strategy 2021-2025 proposed an integrated, balanced, and forward-looking approach aimed at increasing the resilience of European societies, reducing the impact of organized crime, and ensuring the protection of human health and dignity.

II. FORMS OF JUDICIAL COOPERATION IN THE FIELD OF DRUG TRAFFICKING

Combating drug trafficking requires the use of a complex set of legal mechanisms that enable the identification, prosecution, and punishment of perpetrators, regardless of their location or the location of evidence and proceeds of crime. As an EU member state and a party to the main international conventions, Romania has modern cooperation tools at its disposal, but their practical application sometimes poses difficulties.

II.1 EXTRADITION AND SURRENDER

Extradition is the classic instrument by which one state hands over a person who is being prosecuted or convicted to another country. In Romania, the procedure is regulated by Law No. 302/2004 and involves verifying the principle of double criminality (the act must be a crime in both countries) and compliance with human rights guarantees (extradition is not granted if there is a risk of inhuman treatment, torture, or unfair trial).

A faster procedure is surrender under the European Arrest Warrant (EAW), used between EU Member States, which eliminates the formalities of traditional extradition, with strict deadlines, surrender taking place within 10 days of the date of the final surrender decision or 10 days if the person consents to surrender. The European Arrest Warrant applies directly to the offences listed in the Framework Decision, which includes drug trafficking.

In judicial practice, there may be justified refusals due to poor prison conditions in the requesting state, and the case law of the ECHR and the CJEU has imposed additional assessments, as well as difficulties regarding the cumulative enforcement of sentences when the person is tried in several states.

II.2 INTERNATIONAL LEGAL ASSISTANCE

International legal assistance refers to the set of mechanisms through which states cooperate to investigate and punish drug trafficking offences that transcend the borders of a single state. Given the transnational nature of organized crime networks involved in the production, transport, and distribution of drugs, judicial cooperation is essential for the effective administration of justice and for ensuring a rapid response to common threats. This includes all necessary forms of procedural support – from obtaining evidence and locating suspects to confiscating the proceeds of crime and surrendering wanted persons.

The classic tool used remains the international letter of request, whereby judicial authorities request procedural acts to be carried out on the territory of another state, such as hearing witnesses, seizing objects or documents, conducting searches or expert examinations. In drug trafficking cases, these commissions are frequently used to identify transport routes, document financial transactions used for money laundering, and establish links between members of transnational networks. However, the formalistic nature of this procedure can cause significant delays affecting the speed of the investigation and sometimes allowing suspects to cover their tracks or transfer their assets.

Within the European Union, these limitations have been overcome by the introduction of the European Investigation Order, which allows requests for evidence to be sent directly between judicial authorities, without the involvement of ministries of justice as intermediaries. In drug trafficking cases, this tool has proven extremely useful for quickly obtaining data on bank transactions, intercepting communications, accessing electronic data, or conducting coordinated searches in several countries simultaneously.

Another important innovation is videoconferencing, which is increasingly used in cross-border drug trafficking cases. This method facilitates the hearing of witnesses, collaborators, or experts from other countries, protecting their identity and physical integrity when they may be at risk of reprisals from criminal networks. In addition, it helps to reduce costs and speed up judicial proceedings.

However, judicial cooperation in drug trafficking cases faces significant challenges. Differences between legal systems can affect the admissibility of evidence, particularly when it has been obtained through special investigative techniques such as controlled deliveries, undercover investigations, or cross-border interceptions. Delayed responses to requests for assistance can also jeopardize investigations, and the need for certified translations of large volumes

of documents and mutual recognition of laboratory expertise (particularly with regard to new psychoactive substances) can generate additional costs and delays.

In this context, improving the efficiency of international legal assistance remains a priority in the fight against drug trafficking, requiring the ongoing adaptation of existing mechanisms, deeper legislative harmonization, and the digitization of data exchange between authorities. Only through rapid, secure, and mutually trusting judicial cooperation can the complex phenomenon of cross-border drug trafficking be adequately addressed and the objectives of criminal justice at European and international level be achieved.

II.3 MUTUAL RECOGNITION OF JUDGMENTS – CONFISCATION OF PROCEEDS FROM DRUG TRAFFICKING

Mutual recognition of court decisions, particularly in relation to the confiscation of assets derived from drug trafficking, is a fundamental pillar of European criminal policy. The recovery of the proceeds of crime is not only a means of punishing perpetrators, but also a tool for deterring organized crime by depriving networks of the financial resources that enable them to continue their activities.

Romania applies Regulation (EU) 2018/1805 on the mutual recognition of freezing and confiscation orders, which has standardized the procedure for seizure and confiscation at European Union level. Through this instrument, orders issued by Romanian judicial authorities can be enforced quickly in other Member States, ensuring that assets are frozen and recovered, regardless of their location. In addition, national legislation provides for extended confiscation (Article 112¹ of the Criminal Code), applicable to drug trafficking offences, which allows the court to confiscate other assets whose value cannot be legally justified when there is a clear disproportion between the acquired wealth and lawful income.

However, the practical application of these mechanisms raises a number of difficulties. Identifying assets in other jurisdictions requires rapid operational cooperation between the competent authorities and effective access to property registers, bank accounts, and tax databases. Parallel proceedings in several countries can lead to conflicts of jurisdiction regarding the enforcement of confiscation orders and the distribution of recovered assets. Furthermore, the valuation of assets—particularly those with fluctuating values, such as cryptocurrencies, stocks, or works of art—and the distribution of proceeds among states remain sensitive issues that require clear rules and consistent judicial cooperation.

Mutual recognition of confiscation orders is therefore an indispensable tool in the fight against drug trafficking, but its effectiveness depends on the ability of Member States to cooperate in real time, ensure the traceability of assets, and harmonize enforcement procedures in order to achieve the common goal of depriving criminals of the economic benefits of their illegal activities.

II.4 POLICE COOPERATION AND INFORMATION EXCHANGE

Police cooperation and information exchange are the backbone of the operational fight against drug trafficking, complementing judicial mechanisms and ensuring the rapid detection of transnational networks. In a field characterized by high mobility and the adaptability of criminal networks, the efficient flow of information between law enforcement authorities is essential for locating drug shipments, identifying trafficking routes, and dismantling the groups involved.

Information exchange is carried out through a number of specialized platforms, such as Europol (The European Union Agency for Law Enforcement Cooperation), which provides operational and strategic analysis, supporting joint investigations, and Interpol (International Criminal Police Organization), which facilitates global cooperation. At the regional level, mechanisms such as SELEC (South East European Law Enforcement Center) play an important role in coordinating operations in the Balkans, recognized as one of the main trafficking routes. At the same time, the use of common IT systems, such as the Schengen Information System (SIS) and the Europol Information System, allows for the real-time exchange of data on suspects, vehicles used, and operational alerts.

However, this exchange of data raises significant challenges in terms of the protection of privacy and personal data. Regulation (EU) 2016/679 (GDPR) and Directive (EU) 2016/680 on data protection in criminal matters impose strict obligations on the collection, storage, and use of information, and authorities must strike a balance between the operational need for access to data and respect for fundamental rights. Differences between Member States in terms of data retention periods, access conditions, or security standards can hamper cooperation and lead to procedural bottlenecks. In addition, the risk of information leaks or misuse of data for purposes other than investigation is a constant threat, with the potential to compromise ongoing operations and trust between authorities.

European agencies play a key role in this mechanism. Europol provides the framework for secure information exchange and produces analytical reports on trends in drug trafficking, facilitating joint operations. Eurojust supports the establishment and coordination of Joint Investigation Teams (JITs), which are essential in complex cases involving multiple jurisdictions, and intervenes to resolve conflicts of jurisdiction. The European Union Drugs Agency (EUDA, formerly EMCDDA) also collects and analyzes data on drug use, new psychoactive substances, and the European drug market, providing evidence-based information that informs public policy and law enforcement priorities.

Thus, transnational police cooperation, supported by European IT infrastructure and specialized agencies, remains a key element in dismantling drug trafficking networks. The current challenge is to ensure the rapid and efficient exchange of data while respecting high standards of personal data protection and maintaining trust between Member States.

II.5 GOOD PRACTICES IN COMBATING INTERNATIONAL DRUG TRAFFICKING

Combating international drug trafficking requires a coordinated, multidimensional, and sustainable approach that combines legal instruments, operational cooperation, technological innovation, and civil society involvement. Recent international experience has highlighted a number of good practices that can be considered models of efficiency in preventing, investigating, and dismantling organized crime networks involved in this phenomenon.

Among the most relevant good practices are: the use of Joint Investigation Teams (JITs), strict control of chemical precursors, the integration of financial investigations into criminal investigations, public-private cooperation, the use of artificial intelligence-based technologies, and the continuous training of law enforcement personnel.

The establishment of Joint Investigation Teams (JITs), provided for by the European Convention on Mutual Assistance in Criminal Matters (2000) and Framework Decision 2002/465/JHA, is one of the most effective forms of cross-border cooperation. This mechanism allows investigations to be conducted simultaneously in several countries, the rapid exchange of information, and the gathering of evidence without the need for constant letters rogatory. Successful examples, such as Operation Icebreaker (2019–2021), coordinated by Europol and Eurojust, demonstrate the effectiveness of JITs in dismantling global drug trafficking and money laundering networks.

Another good practice is the strict monitoring of chemical precursors used in drug manufacturing, in accordance with the 1988 UN Convention and European Union regulations. Programs such as the INCB's Project Prism have established global systems for monitoring trade flows and providing early warning of suspicious shipments, while also involving the private chemical industry in the process of preventing the diversion of legal substances to illicit production.

Integrated financial investigations in trafficking cases – according to the "follow the money" principle – are another essential practice. Collaboration between financial intelligence units (FIUs), banking institutions, and tax authorities has led to the identification and widespread confiscation of assets derived from trafficking activities, strengthening the asset recovery component.

At the same time, the involvement of the private sector – transport, logistics and courier companies, financial institutions and online platforms – has become an increasingly important dimension of cooperation. Programs such as the Global Container Control Program (UNODC–WCO) have demonstrated the effectiveness of collaboration between customs authorities and port operators in intercepting illicit shipments. In the digital environment, partnerships with payment service providers and e-commerce platforms contribute to combating trafficking through the darknet and social networks.

Furthermore, the application of emerging technologies, in particular systems based on artificial intelligence and machine learning, enables predictive

data analysis, the identification of trafficking routes, and the detection of anomalies in shipments or financial flows. Europol and INTERPOL are already using advanced digital analysis tools to map global networks, significantly reducing operational response times.

Last but not least, the continuous professional training of law enforcement personnel is an essential condition for effectiveness. Training programs organized by UNODC, CEPOL, or INTERPOL contribute to the standardization of investigation procedures, the harmonization of evidence collection techniques, and the strengthening of international cooperation.

A complementary dimension, promoted by the UN and the European Union, is the integration of public health and prevention aspects into anti-drug strategies. Countries that have combined repressive measures with educational and social interventions—such as Portugal or the Nordic countries—have seen significant reductions in the illicit market and recidivism.

Therefore, international best practices show that success in combating drug trafficking depends on an integrated model based on cooperation, innovation, and a balance between repression and prevention. Judicial coordination, precursor control, public-private partnerships, the use of modern technologies, and continuous training are the pillars of an effective global system that can adapt to the new challenges of transnational crime.

CONCLUSION

International judicial cooperation in the field of drug trafficking has evolved considerably in recent decades, becoming a complex system based on mutual trust, automatic recognition of judicial acts, and operational coordination. Instruments such as the European arrest warrant, the European investigation order, and Regulation (EU) 2018/1805 on the mutual recognition of freezing and confiscation orders enable authorities to act quickly and coherently in cross-border cases, reducing the advantages exploited by organized crime networks. At the same time, police cooperation – through Europol, Interpol, SELEC – and the involvement of specialized European agencies have increased the capacity for early detection of trafficking routes and dismantling of networks.

However, significant challenges remain. Legislative differences between countries, issues of admissibility of evidence, and sometimes lengthy delays in the execution of letters rogatory can slow down investigations. In addition, compliance with the requirements of Regulation (EU) 2016/679 and Directive (EU) 2016/680 on data protection requires authorities to strike a delicate balance between operational efficiency and privacy protection in order to avoid both abuse and the loss of relevant evidence.

The outlook for development points to a transition towards more integrated and digitized judicial cooperation. The e-Evidence platform, currently

being implemented, promises the direct and secure transmission of requests for digital evidence, and the digitization of procedures will enable the almost instantaneous issuance and execution of European investigation, seizure, and confiscation orders. At the same time, extending the competence of the European Public Prosecutor's Office (EPPO) to serious forms of cross-border crime, including drug trafficking, could in future ensure uniform coordination of investigations at European level and better management of conflicts of jurisdiction between states.

In terms of criminal policy, a balance is emerging between the repressive and public health components. While drug trafficking is being punished more severely and targeted by extensive confiscation measures, addicted users are increasingly being directed towards treatment, substitution, and social reintegration programs, in line with WHO and UNODC recommendations. This integrated approach responds to the need to reduce not only the supply but also the demand for drugs, contributing to the long-term reduction of the phenomenon.

For Romania, the priority areas should include continuing to harmonize legislation with European standards, investing in digital infrastructure for judicial cooperation, and strengthening partnerships with European and international agencies. At the same time, the development of public health services for the prevention and treatment of addiction remains an essential condition for ensuring a balanced response between prevention, punishment, and reintegration. Only through a coherent combination of legal, police, and social measures can the devastating impact of drug trafficking on security, health, and social cohesion be reduced.

BIBLIOGRAFIE

1. United Nations Convention against Transnational Organized Crime, adopted in Palermo on November 15, 2000, published in the Official Gazette of Romania, Part I, No. 813 of November 8, 2002.
2. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in Vienna on December 20, 1988, published in the Official Gazette of Romania, Part I, No. 341 of December 30, 1992.
3. Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA), published in the Official Journal of the European Union, L 190 of 18 July 2002.
4. Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 on the European Investigation Order in criminal matters, published in the Official Journal of the European Union, L 130 of 1 May 2014.
5. Law No. 143/2000 on the prevention and combating of illicit drug trafficking and consumption, republished in the Official Gazette of Romania, Part I, No. 163 of March 6, 2014.

6. Law No. 302/2004 on international judicial cooperation in criminal matters, republished in the Official Gazette of Romania, Part I, No. 411 of May 27, 2019.
7. Regulation (EU) 2018/1805 of the European Parliament and of the Council of November 14, 2018, on the mutual recognition of freezing and confiscation orders, published in the Official Journal of the European Union, L 303 of November 28, 2018.
8. European Union Drugs Strategy 2021-2025 (2021/C 102 I/01), published in the Official Journal of the European Union, C 102 I/01 of 24 March 2021, available at: https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=OJ:C:2021:102I:FULL.

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 126-135

THE EVOLUTION OF FACIAL IDENTIFICATION IN THE JUDICIAL SYSTEM

C.D. CIOCHINĂ

Received 12.02.2025; accepted 08.05.2025
First online publication: 08.05.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.253

Claudiu-Dănuț CIOCHINĂ
PhD.Student, "Dunărea de Jos" University from Galati, Romania
Faculty of Law and Administrative Sciences,
Doctoral School of Social and Human Sciences
E-mail: ciochinaclaudiu@gmail.com
ORCID ID: https://orcid.org/0009-0006-0584-5784

Abstract

Facial identification has had a crucial role in forensics, helping to modernize justice investigation and administration methods. Starting with Alphonse Bertillon's anthropometry in the 19th century and implementing complex biometric systems such as the facial identification and recognition System (NBIS), this technology has evolved significantly. We propose to examine the transition from manual methods to automated identification systems, pointing out both their advantages and their limitations, as well as the international collaborations that have eased the global use of biometric data.

Key words: *Facial identification, Forensics, Imagetrak, NBIS, biometric recognition.*

INTRODUCTION

In the forensic identification process, activities are carried out both in the laboratory and on the field. Actions and/or inactions are in a certain sequence, in a concrete context and in different environments where factors contributing to the formation, preservation, fixation, lifting, transportation and valorisation of traces and/or dynamic characteristics of persons intervene (*Mihuț E.A., 2004, p. 35).*

Since ancient times, the idea of uniqueness of the face features has been established, thus Aristotle was convinced that each person has a unique face, a belief that increased the interest in physiognomy, the study of the features of the face and implicitly their association with a certain type of character of the person (*Leunissen, M. Physiognomy, 2012, p.508*).

Modern systems used in forensic identification have changed over the years through additions in working variants, so as to be as effective as possible in the context of information society, computerization and digitalization.

Considering the process of trace formation, modern means of search and trace detection, the limits of trace preservation, knowing that the environment is in constant change, the possibilities of exploiting traces within the limits of existing technique, and the various possibilities to change facial features (*Iancu E.A., 2019, p. 458*), cutting-edge facial recognition systems still present shortcomings when used in forensic procedures.

Used for the purpose of securing, identifying, preventing and/or combating fluctuations in facial morphology attributable to variables such as position, illumination, circumstances, facial expressions and image fidelity may make it difficult to establish the identity, to verify or recognize the identity *(Poorvi Ujjainia and all., 2024, p. 3129).*

At the same time, communities have legitimate expectations of the state to have at its disposal effective means of deterrence and/or of discovering and identifying the perpetrators of crimes. The issue of Facial recognition technology (FRT) compliance with indisputable standards for the protection of fundamental human rights and freedoms still raises controversy or/and is being challenged by others, which can lead to delaying criminal investigation processes and make it difficult to establish the truth in criminal proceedings *(Novokmet, A., Tomičić, Z., & Vidaković, I., 2023, p.527).*

Facial recognition technology could provide "legal certainty" that represents citizens' sense of trust in the correct application and unitary interpretation of legal norms *(Lorincz A.L., 2025*).

Considered an essential element of the rule of law, the principle of security of legal relationships is explicitly enshrined in the case-law of the and Fundamental Freedoms, i.e. the right to a fair trial, including the requirement to European Court of Human Rights[1] in relation to one of the fundamental rights stipulated by the Convention for the Protection of Human Rights ensure access to justice (*Lorincz A.L., 2025*).

Moreover, it has also been held in Community case-law that the reasoning must be appropriate to the act issued and must present in a clear and unequivocal manner the algorithm followed by the institution which adopted the contested measure, so as to enable the concerned persons to determine the motivation of the measures and also to allow Community courts to have jurisdiction to review the act (case C-367/1995).

As decided by the European Court of Justice, the extent and detail of the reasons depend on the nature of the adopted act and the requirements to be met by

[1] For example, the judgment of the ECHR of 31 August 2000 in *Brumărescu v. Romania*, published in the Official Journal of Romania no. 414 of 31 August 2000

such reasons depend on the circumstances of each case, an insufficient or incorrect reasoning being considered equivalent to a lack of reasons for the acts, as in this case. Moreover, the lack of reasons or failure to state reasons entails the nullity or invalidity of Community acts (case C – 41/1969). A detailed statement of reasons is also necessary where the issuing institution has a wide discretion, as the reasoning gives transparency to the act, enabling individuals to verify that the act is properly substantiated and, at the same time, allows the court to exercise judicial review (case C – 509/1993) (*Iovănaș E., 2024, p.217).*

There are pros and cons of using Facial recognition technology (FRT) in a criminal trial in respect of human rights, but in essence, one must consider the contribution brought by such evidence in the identification and investigation of suspects based on FRT.I believe that the acceptance or rejection of the implementation of such evidence in a criminal trial must be decided after analysing the benefits and possible breaches of fundamental rights generated by the implementation of this technology in countries that already use the FRT, respectively how the magistrates reacted to such evidence, meaning if they accepted or rejected them. Of course, certain restrictions in the use of this technology must be considered, but there must be a balance between security and respect for the rights of the person. Possible errors in the interpretation of technological systems must also be accepted if they fall within the margin of error.

The development of software that serves the FRT and the improvement of algorithms have as a challenge the minimization of errors and the establishment with maximum accuracy of the authenticity of persons *(Novokmet, A., Tomičić, Z., & Vidaković, I., 2023, p.528-529).*

The main argument of persons who are reluctant to implement such a system as evidence in criminal proceedings is based on the possible violation of fundamental rights and in particular the procedure determining which categories of persons are subject to databases[2].

It is normal that the databases storing images of people's facial features for automatic comparisons are not identical to national databases, but the better a database is populated, the higher the chance of a HIT (positive identification).Even if there is a fear that an innocent person may be wrongly accused, it should be noted that in a criminal trial, the criminal prosecution is based on a combination of evidence (direct and indirect), not just on a single piece of evidence. The credibility of a person's statement must also be taken into consideration. Even if the judicial bodies, through their experience, can observe certain aspects and concordances, nevertheless supporting or supplementing a statement with the FRT is an additional piece of evidence, taking into

[2] https://theconversation.com/facial-recognition-ten-reasons-you-should-be-worried-about-the-technology-122137 accessed in 04.03.2025

consideration the difficulty and complexity in establishing a person's credibility (*Novokmet, A., Tomičić, Z., & Vidaković, I., 2023, p.550-551).*

I. HISTORY OF FACIAL IDENTIFICATION

The identification of people based on facial features was introduced into the police system in France in the late 19th century, when Paris was facing a large exodus of repeat offenders. Although in 1840, shortly after the appearance of the photo, France decided to photograph the criminals, it was not until 1888 that anthropometry was standardized; until this date, the identification of persons was done only by name or photo[3].

Anthropometry was invented by Alphonse Bertillon (1853-1914) and was the first scientific system used by the police to identify criminals. Bertillon's method is based on the fact that each human being is different from another by the size of different parts of the body (head, upper and lower limbs).The ratio of proportionality remains constant throughout life, even with the waxing and waning of old age, and individualizes each person. The Paris Police Prefecture had more than 60,000 photographs of criminals in its possession, but the disorganization of the file cabinet and the large volume made it almost impossible to identify an offender from the existing photographs. With the Bertillon method, following the measurements established by it as relevant, the encoding of the file cabinet was successful, which made it much easier to search for recidivist criminals. Even though this method was viewed with scepticism and was considered controversial because it was prejudicial to privacy, because subjects had to be stripped of their clothes, it proved to be a real success. Between 1883 and 1884 Bertillon was able to measure and code 19771 individuals, and based on the encoding process, 290 were identified. Bertillon concluded that only 11 measurements are analysed, and the chance of finding them in another person would be 1 in 4,191, 304[4].

Also in 1888, Bertillon perfected the system by introducing the "Spoken-portrait" method, which combines, on a single sheet, the characteristics of the head, photographed from the front and profile, with body measurements and other particularities (for example, scars and tattoos), these elements still being used today in the Romanian Police databases.

In Romania, anthropometry was introduced by the forensic pathologist Mina Minovici who translated Bertillon's work on anthropometry into Romanian and who, through insistence, succeeded in introducing the anthropometric method developed by Bertillon in the Romanian judicial system by publishing the "Catalogului cu condamnați în toată țara în cursul anului 1892" (Catalogue of convicted persons in the country in 1892). By this method, Mina Minovici proves

[3] https://inec.ro/scurt-istoric/ accessed in 04.03.2025
[4] https://inec.ro/scurt-istoric/ accessed in 04.03.2025

the efficiency of identifying recidivists, a method already used in other European countries, and which has had the expected effects in Romania, as well, because criminals were afraid to commit another offence for fear of being identified as recidivists, which would lead to a more severe sentence.

Global trends towards the integration of biometrics in multiple domains have led to the elimination of manual verifications, with the technology helping to optimize certain administrative processes, reducing fraud risks and increasing efficiency in digital identity management. India is one of the countries with such innovative approach, which has introduced an automated authentication system using the FRT technology to give students in both private and public schools secure access to digital information *(Poorvi Ujjainia and all., 2024, p. 3135).*

II. TECHNOLOGICAL ADVANCES IN FORENSICS

In the first half of the ninth century, Forensics had a significant evolution, photography being introduced to case research, facial recognition methods evolving by analysing photos, and yet the progress was not remarkable.

Since the 1950s, European countries have started to set up specialized institutions such as forensic institutes or forensic laboratories dedicated to research and the application of forensic science in the field of crime. In Romania, for example, the National Institute of Criminology was established in 1970, aiming to centralize and apply forensic research in an organized framework, using scientific methods for investigating criminal cases. With the establishment of the National Institute of Criminology, techniques such as facial identification were developed through photo analysis and new methods such as blood or hair analysis were developed.

The lack of standardization of working methods and the lack of common regulations for the use of forensic technologies, their application varied significantly from one country to another.

The period 1900-1990 was crucial in the development of methods of evidence exploitation, from anthropometric studies, to the analysis of judicial photographs, to facial reconstruction based on the skull. Although the development was systematically limited by the technology existing during this period, the studies and research carried out during this time period laid the foundations for the development that followed.

Folders were set up with photographs of the offenders to have a clearer record of them, templates were created with face shapes printed on transparent plastic foil which, by overlapping several templates (eyes, mouth, nose, etc.) led to obtaining a facial image based on the descriptions made by witnesses. Later, with the technology being developed, these printed templates were replaced by computers that had a template base and could be merged until a facial image was obtained based on the descriptions of witnesses.

Recent studies focus on various aspects of facial recognition, including the aging process of the face, identification of distinctive features, correlation of sketches with photographers, analysis based on video recordings, and comparison of near-infrared *(NIR)* images with conventional photographs *(Poorvi Ujjainia and all., 2024, p. 3133).*

III. MODERN IDENTIFICATION SYSTEMS

After the 2000s, there was a boom in the field of facial recognition, a boom favoured by technological evolution, the development of software systems and the automation of search systems. In Romania, starting with 2004, an automated search system "Imagetrak" was implemented at national level, which included a database of persons subject to implementation in the databases of the Romanian Police, implementation regulated by Law no. 218/2002[5] as well as by the Code of Criminal Procedure.

With the implementation of the Imagetrak database, the former file cabinets and folders were replaced, and persons were implemented in this database with their anthropometric data, of interest being also those developed by Bertillon. The advantage of the electronic database was that it could be searched by selecting filters from the search fields, resulting in a list of candidates from the national base. Persons could be searched by several identifying features (eye colour, hair, beard, build, age, race, ethnicity, etc), in addition to these physical features, the database also included photographs of the particular features of the persons entered, such as tattoos, scars, missing fingers, visible surgical operations, etc.

The CDN Corpse-Missing-Unknown base was also part of Imagetrak, a database that had been developed before the advent of Imagetrak, and which includes interest data of bodies with unknown identity (BUI), missing persons (MP) and persons with unknown identity (PUI), with the possibility of identifying persons by cross-searching and based on facial matching and subsequently, through a tracing expertise. Most of the identifications in these three categories were made among the implemented BUIs that were identified among the missing persons.

The old file cabinets and other existing databases that met the quality conditions were taken over and integrated into the new Imagetrak base.

A plus brought by the Imagetrak system is the fact that it offered the possibility of creating a robot portrait with the help of the software application installed on the work program; once the portrait was created, it offered the possibility of searching the created image in the database. If the portrait was as

[5] Law 218 of 2002, published in the Official Journal no. 305 of 9 May 2002; Code of Criminal Procedure published in the Official Journal, no. 486 of 15 July 2010

close as possible to reality, the program would bring in the search list several candidates with similar features to those of the person of interest.

At the same time, the development of surveillance systems installed both in private areas and by public institutions was able to capture people committing illegal acts, images that could be exploited by the Imagetrak system.

After to the implementation of the system, to have the activities carried out recognized at European level, the working stages with the Imagetrak system were processed, thus the ENFIS group (working group comprising forensic institutes at the European level) appreciated the working procedures, the accuracy of the results and the minimization of the risks that may arise, which is why the National Institute of Forensic Science obtained RENAR accreditation in several areas, which led to the work carried out in the forensic training under the aegis of RENAR being recognized and used in the European judicial system.

The need to evolve and expand databases has replaced the Imagetrak system with a new, more modern system called NBIS (National Biometric Information System).

NBIS is a more complex system developed to support the collection, storage and comparison of biometric data, including fingerprints, facial images and other biometric data for national security and other government applications.

NBIS focuses on processing and comparing many biometric data in a massive database. It includes modules for database search and identity verification based on a data set, providing a set of advanced algorithms to process and extract biometric features.

The fact that it supports international standards for interoperability, makes it compatible with certain systems used by the FBI or other governmental institutions, being compliant with the FBI's Next Generation Identification (NGI) standards.

At the same time, the complexity of the NBIS system is also applicable to the national security system, immigration, which requires a robust system for biometric authentication.

With the NBIS system, in 2017 an automatic facial recognition system (NeoFace Wach) was implemented, which made it easier and more efficient to search existing databases.This automated system allows the search for similarities between facial images of people deployed in Imagetrak and CDN.

The results were remarkable, the number of persons identified based on this automatic facial recognition system has increased considerably, from a few dozens of identifications per year at national level to about 1000 identifications.

IV. FACIAL RECOGNITION IN A GLOBAL CONTEXT

In the context of the extension of EU borders, five electronic registers have been set up to manage biometric data of persons of interest (SIS[6], EES[7], ETIAS[8], EURODAC[9]and VIS[10]). The advantage of these electronic registers is that by Regulation no. 817/2019 of the European Parliament and of the Council, they became interoperable, offering the possibility to search all the register databases simultaneously, which reduces the search time of a "trace" and of finding concordances with the data stored in these databases.

After a 6-year negotiation period, from 2017 to 2023, the EU signed a data sharing agreement with the US, an agreement given by the European Commission through the EU-US Framework Decision.

On 13 March 2024, Regulation no. 982[11] was approved by the European Parliament and the Council, amending the two JHA decisions 615 and 616 of 2008 establishing the exchange of data between the Member States of the Treaty of Prum (DNA and fingerprints), which increases the importance of identifying persons by biometric data and expands the possibilities of searching Member States' databases for facial images (facial matching).

Of course, the member states of the PCC-SEE (Police Cooperation Convention of South-Eastern European States), which are not necessarily EU Member States, have developed cooperation systems and search possibilities in their databases on the principle of reciprocity, and at the 2023 meeting, the prevention of transnational war-related crime also became a priority.

V. CHALLENGES AND LIMITATIONS

With all the scientific developments that have appeared and have been implemented so far, the identification of a person based on facial features is recognized in the judicial system only through a demonstration in a scientific report of findings or forensic examination by a specialist or expert in the field.

At present, existing database search software can only achieve authenticity between the image entered and the database by establishing similarities between the person sought and the main candidates.

Performing the identification through specialists or experts minimizes the possible errors and risks that a software program could register, which can be caused by several factors.

---

[6] The Schengen Information System
[7] European Entry/Exit System
[8] European Travel Information and Authorization System
[9] European system for the comparison of the dactyloscopic records of asylum seekers, Published in the Official Journal under number 135 L of 22 May 2019
[10] Visa Information System, published in the Official Journal of 05.04.2024
[11] Published in the Official Journal under number 135 L of 22 May 2019

Poor image quality, unfavourable angles and algorithm errors can lead to incorrect identifications. Therefore, the final identification is made by forensic experts, who analyse the images in detail to minimize the risks.

Although FRT systems have reached some degree of evolution, their performance is limited to real-world conditions such as partial face occlusion, lighting, certain disguises or facial expressions, and still poses many challenges.These aspects lead us to state that all these technologies are well below the human ability to visualize and analyse (*Isaf Adjabi, 2020*).

In addition to these aspects, the implementation of technology in the field of identification of persons is also limited by the high cost of high-performance software. Another encouraging aspect is the vision of the European Union, which in recent years has been supporting and funding programs aimed at increasing the safety and security of its citizens through the implementation of modern technologies in all aspects of forensic identification.

CONCLUSION

The evolution of facial identification has transformed forensics, from the rudimentary methods of the 19th century to modern biometric systems. Current technologies, such as NBIS and Neoface Watch, facilitate the investigation of complex cases, and their international integration improves cooperation in fighting against and investigating crime.

We must be convinced that facial identification is the future of forensic identification and will have an increasing trend in evolution as the technology is advancing at a rapid pace.

BIBLIOGRAFIE

1. Isaf Adjabi, *Past, Present, and Future of Face Recognition 2020,* DOI: https://doi.org/10.3390/electronics9081188

2. Elena-Ana Iancu, *The Contribution of Forensic Science to Establishing the Truth in Criminal Proceedings* in Athens Journal of Law - Volume 5, Issue 4 https://www.athensjournals.gr/law/2019-5-4-6-Iancu.pdf
DOI: https://doi.org/10.30958/ajl.5-4-6

3. Eugenia Iovanaș, *Procedura de evaluarea performanţelor profesionale individualale funcţionarilor publici potrivit codului administrativ. Motivarea actului administrative (The procedure for evaluating the individual professional performance of civil servants according to the administrative code. Motivation of the administrative act),* ASUS Magazine, nr. 1, Presa Universsitara Clujeana Publishing House, 2024;

4. Lorincz, A.-L. (2025).*Review of some criminal judgments that do not resolve the substance of the case - procedural mean to ensure the legal*

order. International Journal of Legal and Social Order, *5*(1). DOI: https://doi.org/10.55516/ijlso.v5i1.248
5. Elena-Ana Mihuț, *Identificarea criminalistică,* Ed.Lumina Lex, Bucharest, 2004;
6. Poorvi Ujjainia, Leoson Heisnam, Dr.Santosh Gaikwad, Sanjeev Saini, Arjun MS, Saumya Tripathi, Vaishalli, *The Evolution of Forensic Facial Recognition:From Anthropometry to Multimodal Biometric Systems,* Tuijin Jishu/Journal of Propulsion Technology ISSN:1001-4055 Vol.45 No.2 (2024), https://www.researchgate.net/profile/Poorvi-Ujjainia/publication/380726085 accessed on 07.03.2025*;*
7. Novokmet, A., Tomičić, Z., & Vidaković, I. (2023). F*acial recognition technology in eu criminal justice - human rights implications and challenges. EU and Comparative Law Issues and Challenges Series (ECLIC), 7*, 525–570. DOI: https://doi.org/10.25234/eclic/27461
8. Leunissen, M. *Physiognomy*, 2012, https://mleunissen.wordpress.com/wp-content/uploads/2012/04/50-4-leunissen-jhp.pdf
9. Law 218 of 2002, published in the Official Journal of Romania, Part I, no. 305 of 9 May 2002;
10. The Code of Criminal Procedure, published in the Official Journal *of Romania, Part I, no.486 of 15 July 2010;*
11. Regulation no. 817/2019, published in the Official Journal under number 135L of 22 May 2019;
12. Regulation no. 982, published in the Official Journal of 05.04.2024*;*
13. Instruction on entering and checking data and photos from the identification sheets of missing persons, persons and bodies with unknown identity in the CDN computerized system. Edition 3 /date:17.02.2012, Revision 1 / date:21.03.2012 Code IL-02-03;
14. Working instructions on the organization and use of the National Biometric Information System (NBIS) Code IL 02-12, Edition 1/08.06.2020, revision 0/08.06.2020.

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 136-141

REFLECTIONS ON THE HISTORY OF ROMANIAN FINANCIAL LAW

D. CÎRMACIU

Received 10.10.2025; accepted 16.12.2025
First online publication: 18.12.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.289

Diana CÎRMACIU
University of Oradea, Faculty of Law
West University of Timișoara, Doctoral School of Law
E-mail: dcirmaciu@gmail.com
ORCID ID: https://orcid.org/0000-0002-8036-0131

Abstract

From the very outset of the present scientific undertaking, it must be emphasized that, given the wealth of information and the inherent complexity of the financial field, concerns related to the development of financial science were — and continue to be — fully justified. A study on the history of the broad domain of financial law allows for a deeper understanding and interpretation of its evolution, the topic being both current and relevant, as the history of financial law is closely connected to the evolution of the State and of the economic system.

Key words: *the history of law, the historical foundations and sources of financial law, periods of transition.*

INTRODUCTION

The dynamism inherent in the field of financial law compels both theorists and practitioners to identify principles and constants capable of mitigating the negative effects that may arise from changes in the relevant legislation. However, we take the view that no viable and objective solutions can be formulated without also considering a historical approach to financial law.
For a better understanding of the issues examined herein, it is necessary to define the notion of financial law. Thus, financial law—recognized as a distinct branch of public law—comprises the body of legal norms governing the formation, administration, allocation, use, and supervision of the State's monetary funds (*Costaș, Tofan, 2023, p. 25*).

Given the substantive content of the concept of financial law, it becomes evident that its historical examination constitutes a fundamental prerequisite for understanding and deepening the institutional and legal mechanisms of public finance (including those applicable today).

I. HISTORICAL SOURCES SPECIFIC TO FINANCIAL LAW

Among the historical sources of financial law, one must mention the customary rules through which, at an early stage of fiscal development, the contributions owed to the ruler were established (such as *văcăritul* or *cuniţa*—a levy collected in kind, instituted around the year 1580; *albinăritul*, *vinericiul domnesc*, the "hay bucket," the "wheat bucket," etc.) (*Cîrmaciu, 2010, p. 103*), the customs duties imposed on merchants, as well as various other contributions intended to meet defence-related needs.

In addition to customary law, the *hrisoave*, *urice*, and other normative acts issued by the ruler must also be mentioned, through which exemptions, fiscal relief measures, monopolies, taxes, and other such instruments were established.

Gradually, the discipline of financial matters came to bear the imprint of Byzantine influence (in the Romanian principalities, for instance), through the emergence of *pravile* inspired by Byzantine law. These regulated matters pertaining to taxes, various "customs dues," established the liability of financial officials (*dregători*), and instituted rudimentary fiscal procedural elements, more precisely regarding the collection of domain revenues.

This category of historical sources also includes several codifications from the pre-1848 period, such as: The Legislation of Alexandru Ipsilanti (containing provisions on taxes owed to the nobility as well as to the Church), The Caragea Code (with provisions on domain revenues, sanctions for failure to fulfil payment obligations, and introducing a certain framework for the organisation of public finances), among others.

Not least, one must also recall the Law on the Court of Accounts[1], which provided that this authority exercised control functions and established measures concerning public revenues (conducting audits of ministry registers, preparing reports on budget execution, sanctioning inefficient or defective management of public resources, etc.).

A defining characteristic of this period (up to approximately 1831, when the Organic Regulations of Wallachia and Moldavia came into force) is that, within the legal organisation of medieval finances, payment obligations were not differentiated between public revenues (treasury revenues) and duties representing personal obligations owed to the ruler. All such obligations were subject to the same legal regime[2].

[1] The Law on the Court of Accounts of 24 January 1864

[2] Fiscal obligations in their modern sense define a modern fiscal system, in which public revenues are separated from private or feudal duties. This transformation emerged in the nineteenth century,

II. CONSIDERATIONS ON THE EVOLUTION OF ROMANIAN FINANCIAL LAW

The process of consolidating financial law within the modern Romanian State is likewise reflected in the activity of the Council of State, a consultative body of Prince Alexandru Ioan Cuza (albeit one with a relatively short existence, as it ceased its activity in 1866—two years after its establishment—its powers being thereafter transferred, as appropriate, to judicial authorities and certain administrative bodies)[3] (*Morozan, 2014, p. 30*). Through the reforms enacted during his reign, the transition was made toward a system of legal taxation, whereby arbitrary contributions were replaced by modern taxes and levies (direct and indirect taxes, stamp duties, and others).

During the constitutional monarchy of King Carol I, the extensive process of modernising Romania's fiscal and budgetary system continued. Under the provisions of the fundamental law[4], any tax could be instituted solely to cover the general needs of the State and of administrative-territorial units[5]. The principle of *legality of taxation*[6] was thereby consecrated, meaning that taxes could be established and collected only pursuant to statute. This principle constitutes the keystone and foundational element of modern financial law.

A visible consequence of the adoption of the 1866 Constitution was the establishment of a parliamentary "monopoly" in the field of tax approval and a corresponding limitation of executive intervention in this domain. Thus, local taxes approved by local and/or county councils were subject to "confirmation" by the legislative authority[7]. Likewise, tax benefits[8] (exemptions or reductions) could be granted exclusively by law. The fundamental law also contained provisions concerning the budget. The budget had the legal nature of a statute: it was voted by Parliament, published, and binding upon all[9]. Moreover, essential principles of

following the adoption of the Organic Regulations and the implementation of the reforms introduced by Alexandru Ioan Cuza.

[3] https://arhivelenationale.ro/site/download/inventare/Consiliul-de-Stat.-1864-1866.-Inv.-871.pdf, website accessed on 1 October 2025, at 13:00.

Among the draft bills submitted for debate before the Council of State, we may list the following: the draft law on judicial organisation (11 July 1865); the draft law for the introduction of a tax on exported products (31 July – 11 September 1865); the draft law on the payment of levies to communal treasuries (5 August – 11 September 1865); the draft law on the tax on spirituous beverages (8 August – 11 October 1865); the draft law concerning the organisation of the service of agents responsible for assessing direct contributions and the regulations for the service of assessment agents (20 September – 3 December 1865); the draft law establishing import duties on foreign goods (1867).

[4] The Constitution of the United Romanian Principalities of 30 June 1866, published in *Monitorul Oficial* No. 142 of 13 July 1866.

[5] Article 108 of the 1866 Constitution

[6] Article 109 of the 1866 Constitution

[7] Article 110 of the 1866 Constitution

[8] Article 111 of the 1866 Constitution

[9] Articles 113 et seq. of the 1866 Constitution

the budgetary process were introduced—namely, the principles of budgetary unity, universality, specificity, budgetary equilibrium, and budget publicity (principles which continue to govern the modern budgetary procedure) (*Cîrmaciu, 2024, pp. 148–149*).

The influence of Western European models, particularly the French model, was also felt in the Romanian fiscal system of that period. It must be noted that in 1866 the country was facing, in addition to a political crisis, a severe financial crisis—characterised by outstanding and unpaid debts and by difficulties in obtaining public loans, as potential creditors expressed doubt regarding the State's capacity for fiscal and administrative "rectification." Gradually, measures were adopted to reduce public expenditure, customs duties were increased (for imports, the rate rose from 5% to 7.5%), and salary reductions of 20% were imposed on civil servants. Consequently, the financial situation began to show signs of slight improvement at the beginning of 1868 (*Aslan, 1905, pp. 121–122*).

In a public message, King Carol I welcomed these positive developments, emphasising that the results were due to "the courage of the people," to a significantly more active and efficient collection of budgetary revenues, and to a judicious allocation of public funds (*Aslan, op. cit., p. 126*).

The components of the financial administration of the period included: the relevant ministry, the Deposits and Consignments House (*Casa de Depuneri și Consemnațiuni*), the National Bank of Romania, and the county-level fiscal directorates—whose establishment ensured the professionalisation of the fiscal administration.

The First World War likewise left its mark on financial law through the introduction of new taxes—specifically, incidental or extraordinary wartime levies. At the same time, the State resorted to public borrowing on the domestic capital market, and the supervisory activity over resources intended to cover wartime expenditures was intensified.

Analysing this entire period, it can be stated with certainty that the nineteenth century constituted the formative stage of Romanian financial law, especially if we reiterate the measures that shaped this development: the construction of the budgetary framework, the principle of legality of taxation, the establishment of modern financial authorities, the strengthening of financial oversight, and perhaps most importantly, the transition from the ruler's finances to the concept of public finance.

The major challenge of the subsequent stage in the evolution of financial law was the need to unify the fiscal and budgetary systems of the various provinces following the creation of the unified national state. The measures adopted in this regard aimed at transitioning towards modern, centralised financial

institutions, shifting from an agrarian state to an industrialised one, and adapting the economy to wartime necessities.

Among the legislative novelties of the interwar period, particular emphasis must be placed on Law No. 661/1923[10] on the Unification of Direct Contributions and on the Establishment of the Global Income Tax, a normative act that brought significant changes to the fiscal system by introducing the global income tax and regulating the methods of determining taxable income, assessing tax liabilities, and collecting taxes.

The years 1929–1934 marked Romania's passage through the global economic crisis. Drastic measures were imposed by the exceptional circumstances faced by the country—such measures included, for instance: the introduction of an economic crisis tax, the collection of a luxury tax, increases in customs duties, reductions in the remuneration of publicly funded personnel, expenditure caps, and the suspension of certain fiscal facilities.

With the adoption of the 1938 Constitution, a trend toward centralisation of public finances can be observed. At the same time, a degree of flexibility—or a derogation—from the principle of annuality of the budget was introduced: should the budget fail to be adopted on time, the executive was authorised to perform its tasks by applying the provisions of the previous year's budget, a solution that could not, however, exceed one fiscal year[11].

The interwar era may thus be regarded as a stage of consolidation or maturation of financial law, characterised by the adoption of modern fiscal legislation, the strengthening of financial control, legislative and administrative unification, and the State's efforts to counteract the negative effects of the economic crisis through active intervention.

In light of the above, it may be affirmed that the study of financial law gradually emerged as an indispensable component in the training of legal professionals. During the interwar period, university curricula in the field centred on examining the rational foundations of financial phenomena. For example, at the Faculty of Law of the University of Bucharest[12], during the 1939–1940 academic year, the *Financial Science* course taught by Professor Gheorghe N. Leon (*Cîrmaciu, 2015, p. 16*) was structured as follows: 1.Introduction. Object and nature of financial science. Relationship between financial science and other social disciplines. Research methodology. 2.Public expenditures. 3.Public revenues (Introductory notions; Revenues arising from the State's property and productive activities; Fees; Taxes). 4.Public credit. 5.The budget. 6. A brief overview of the history of public finances.

[10] Published in *Monitorul Oficial* No. 253/23 February 1923. See Articles 75–104.

[11] Article 83 of the 1938 Constitution.

[12] National Archives, University of Bucharest Collection, Rectorate, file 73 (1939), folio 200

CONCLUSION

Viewed also from a historical perspective, Romanian financial law has undergone numerous transformations over time: beginning with feudal obligations and elements of arbitrary taxation, and eventually evolving into modern, European-integrated fiscal systems grounded in clear legal principles, robust institutions, and independent supervisory mechanisms.

The development of financial law as a discipline reflects the very evolution of the Romanian State—a process marked by periods of progress and modernisation, moments of regression and centralisation, as well as successive phases of recovery built upon principles of legality and financial responsibility.

BIBLIOGRAFIE

1. Aslan Th. C., *Finanțele României de la Regulamentul Organic până astăzi, 1831-1905*, Editura Institutul de Arte Grafice Carol Gobl, București, 1905;
2. Cîrmaciu Diana, *Universitarul Gheorghe N. Leon*, Editura Pro Universitaria, Bucureşti, 2015;
3. Cîrmaciu Diana, *Dreptul finanțelor publice*, Editura Universității din Oradea, Oradea, 2010;
4. Costaș Cosmin Flavius, Tofan Mihaela, *Drept financiar*, Editura Universul Juridic, București, 2023;
5. Morozan Florina, Drept civil. Volumul I Introducere în Dreptul civil, Editura Universității din Oradea, Oradea, 2014;
6. Cîrmaciu Diana, Romania: National Identity and EU s Common Values. Vision, Reality, Expectation, publicat în volumul Economic Governance. The impact of the European Union on the Regulation of Fiscal and Monetary Policy in Central European Countries, Editura CEA Publishing, Miskolc-Budapesta, 2024, pp. 145-167, ISSN 2786-2518;
7. https://real.mtak.hu/146406/; DOI: 10.54237/profnet.2024.znecogov_6
8. https://arhivelenationale.ro/site/download/inventare/Consiliul-de-Stat.-1864-1866.-Inv.-871.pdf.

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 142-153

LEGISLATIVE CHANGES RAGARDING TRAFFICKING AND EXPLOITATION OF VULNERABLE PERSONS – EVOLUTION AND CURRENT JUSTIFICATIONS

E. CONSTANTIN

Received 10.11.2024; accepted 12.02.2025
First online publication:15.02.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.245

Eduard CONSTANTIN
Bucharest University of Economic Studies, Romania
E-mail: eduardconstantin157@gmail.com
ORCID ID: https://orcid.org/0009-0009-0185-9099

Abstract

The intensification of the phenomenon of exploitation of vulnerable people, the serious ways in which this phenomenon manifests itself, and its cross-border character have led the legislator to intervene on the normative content of some crimes regarding the trafficking and exploitation of vulnerable people in the current Criminal Code, by changing the amount of punishments and by introducing new assimilated variants and aggravating elements – the latest amendments were introduced by Law No. 217 of 10 July 2023, Law No. 202 of 26 June 2024, and Law No. 269 of 30 October 2024.

The justification for these legislative amendments referred to the high rate of human trafficking, the large number of children abused and sexually exploited by being forced into prostitution or into acts specific to child pornography, in the online environment, but also to the cross-border nature of human trafficking. Other reasons were also presented, such as: the significant proportion of other forms of exploitation (forced labor, begging); very lenient sentences compared to the seriousness of the crimes of trafficking and exploitation of vulnerable persons; the need to restrict the scope of application of the provisions on the suspension of the execution of the sentence under supervision in the case of slavery, human trafficking and minors trafficking; the lack of differences between the social danger of pimping in its aggravated form and human trafficking; non-uniform judicial practice.

Key words: *human trafficking, child trafficking, human exploitation, sexual exploitation.*

INTRODUCTION

The phenomenon of trafficking and the exploitation of vulnerable people is on the rise, with increasingly serious manifestations, both nationally and internationally. The acts of trafficking and the exploitation of vulnerable persons have a transnational character, being committed by Romanian citizens on the territory of other countries or by foreign citizens on the territory of Romania, or part of the criminal activity is committed on the territory of our country, and another part on the territory of other countries. Most of the time, Romanian citizens collect the victims in Romania and exploit them in other countries, having important financial gains.

The economic and social changes of recent years, manifested by the decrease in the standard of living *(C.Anghelache, M.G.Anghel & A.M.Popescu, 2021, p. 262)* and affecting the living conditions of the population, especially of the poor population segment, have also led to the intensification of this criminal phenomenon, determining the intervention of the legislator by changing the normative content of some crimes regarding the trafficking and exploitation of vulnerable persons included in the Criminal Code, in particular, under the aspect of the sanctioning regime.

Prior to the entry into force of the current Criminal Code, crimes regarding the trafficking and exploitation of vulnerable persons were regulated separately in a special law, respectively Law no. 678/2001. When taking over these crimes in the current Criminal Code, the following international normative acts were taken into account: the Council's framework decision of 19 July 2002 on combating human trafficking (it was replaced by Directive 2011/36/EU), the United Nations Convention against organized transnational crime since 2000, the Council of Europe Convention on Combating Trafficking in Persons since 2005 *(T.Manea & G.Șologon, 2022, p. 45)*.

Unlike the current Criminal Code, none of the previous codes were systematized in such a way as to group in a single chapter all the crimes that targeted the trafficking and exploitation of vulnerable persons, these being regulated separately or as aggravating circumstantial elements of other crimes, in different chapters or sections.

Since the entry into force of the Criminal Code, the normative texts of traffic offenses and exploitation of vulnerable persons have undergone several changes, the last ones being adopted by Law no. 217 of 10 July 2023, Law no. 202 of 26 June 2024 and by Law no. 269 of 30 October 2024. Thus, from 1 January 2024, the normative content of the act of using child prostitution was changed (art. 216 ind. 1), and from 1 July 2024, respectively 3 November 2024, the texts criminalizing acts of slavery, trafficking of persons and trafficking of minors were changed (art. 209-211).

I. BRIEF HISTORY OF THE REGULATION OF TRAFFICKING AND

LEGISLATIVE CHANGES RAGARDING TRAFFICKING AND EXPLOITATION OF VULNERABLE PERSONS – EVOLUTION AND CURRENT JUSTIFICATIONS

EXPLOITATION OF VULNERABLE PERSONS

In the Criminal Code 1865, the kidnapping of minors, by cunning or violence, or their hiding or displacement (transfer) were criminalized by art. 280 and punishable by imprisonment from one year to 2 years; if the minor was a girl younger than 16, the law provided for the maximum imprisonment (art. 281), being an aggravating circumstantial element. Exploitation of kidnapped minors under the age of 16, by forcing them to beg or prostitute or to other activities from which material benefits were obtained, was sanctioned with imprisonment (art. 283).

The crime of pimping was provided for by art. 267 of the Code, which criminalizes determining, favoring or facilitating prostitution or corrupting young people under the age of 21.

In the original version of the Criminal Code 1937, putting or keeping a person in slavery or in a similar situation or trading or transporting slaves (slave traffic) was punishable by correctional imprisonment from one to 5 years and a criminal fine (art. 491).

In the concept of art. 348 of the Code, the exploitation of begging consisted in encouraging a minor to beg or procuring a minor to be used in begging, in order to obtain a benefit - this act was punishable by imprisonment from 6 months to 2 years and a criminal fine, and if the perpetrator was the parent or guardian, the complementary penalty of losing parental rights was also applied.

The determination of a person of any sex to practice prostitution, for the purpose of its exploitation, was criminalized as a crime of sexual corruption and punished with correctional prison from 2 to 5 years and correctional prohibition from one year to 3 years (art. 433 par. 1). The one who helps, assists or favors the prostitution of a person was punished more mildly for favoring prostitution, with correctional prison from 6 months to one year and correctional prohibition from one year to 2 years (art. 433 par. 2). The punishment was greater if the acts were committed by an ascendant, in direct line or through alliance, by the adoptive father or mother, by one of the spouses, by the guardian or any other person, to whom the victim is entrusted for care, education, instruction, supervision or security (433 par. 3). If the facts provided by art. 433 of the Code were committed against a minor or by violence, threat, abuse of power or authority, fraud, use of alcoholic beverages or narcotics, the penalties were increased by a fourth.

Exploitation of prostitution required that the perpetrator was supported by a woman, from the earnings from her prostitution, or gave his protection or help to a woman for the practice of prostitution, habitually and for the purpose of obtaining personal benefit - the act was sanctioned with correctional imprisonment from 3 months to 2 years, criminal fine and correctional ban from one year to 2 years. The penalty is increased by a fourth, if the one who gave the help or protection carried weapons.

Pimping consisted in procuring someone, usually and with the aim of achieving a material benefit, of a person to maintain sexual acts or acts of sexual inversion - the act was punishable by correctional imprisonment from 6 months to 2 years, a criminal fine and correctional ban from one to 2 years (art. 436). Also, in the scope of the notion of pimping was included the gathering of a woman under the age of 21 for the practice of prostitution, including through violence, the act being more severely sanctioned (art. 437). Art. 438 of the Code provides for other aggravating circumstantial elements, namely the commission of pimping through violence, threat, fraud or the use of narcotics or by an ascendant, in direct line or through alliance, by the adoptive father or mother, by one of the spouses, by a guardian or any another person, to whom the victim is entrusted for care, education, instruction, supervision or guarding.

Sending or taking a woman abroad to practice prostitution was considered trafficking in women and was punishable by 2 to 8 years of correctional imprisonment, a criminal fine, and 2 to 5 years of correctional prohibition. The punishment was greater if the act was committed in the following circumstances: on a woman under the age of 21 and who was unconscious or unable to express her will or defend herself; by violence, threat, fraud or drug use; on a married woman.

In the amended version of 1 December 1960, the text criminalizing the exploitation of begging was repealed, and the content of the crime of pimping was reformulated. According to the new regulations, pimping meant the exploitation of prostitution in any way and the trafficking of women for the purpose of prostitution - the limits of the correctional prison increased, but the criminal fine was waived, as in the case of other crimes.

Criminal Code 1969, in its original form, it regulated slavery and slave trafficking (art. 191), submission to forced or compulsory labor (art. 191) and pimping (art. 329) – these acts were sanctioned with imprisonment and the prohibition of certain rights.

In the case of pimping, the incriminating text also referred to the recruitment of a person for prostitution, but also to human trafficking for this purpose, as normative methods of the crime.

In the last amended version of the Code, pimping was more severely punished, and the recruitment and trafficking of people for prostitution, coercion into prostitution, but also the commission of the crime against a minor, were circumstantial elements of aggravation.

The criminal protection of the person's freedom and rights, dignity, bodily integrity and health, against acts of exploitation, was fulfilled by the adoption of Law no. 678/2001, which contained a modern regulation in the matter of preventing and combating human trafficking; this law was based on the Protocol on the Prevention, Suppression and Punishment of Trafficking in Persons,

Especially Women and Children, additional to the United Nations Convention against Transnational Organized Crime of 15 November 2000.

According to art. 3 of the Additional Protocol, human trafficking consists in recruiting, transporting, transferring, harboring or receiving persons, through the threat of resorting to or resorting to force or other forms of coercion, through 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 means exploitation through prostitution of another person or other forms of sexual exploitation, exploitation through forced labor, slavery, use or removal of organs.

According to the Additional Protocol, recruiting, transporting, transferring, harboring or receiving a child for the purpose of exploitation constitutes trafficking in persons, even if no means of coercion are used; child is any person under the age of 18.

At the European level, the newest normative instrument applicable in the matter is Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating human trafficking and protecting its victims, which adopted the terminology and principles established by the Protocol additionally from the year 2000. This directive was recently amended by Directive (EU) 2024/1712, which includes in the notion of exploitation the exploitation of surrogacy, forced marriage or illegal adoption - in this sense, we believe that it is necessary to amend the legal definition of exploitation of a person in the current Criminal Code (art. 182) as soon as possible, this having already been supplemented on 3 November 2024 with a new form of exploitation, namely the compulsion to commit acts provided for by criminal law.

Offenses regarding trafficking in persons and minors, provided for in Law no. 678/2001, were taken over in the Criminal Code 2014 (art. 210-211), in a separate chapter, suggestively named "Trafficking and exploitation of vulnerable persons" (Chapter VII, Title I), which also included crimes of the same kind from previous criminal codes, such as slavery (art. 209), submission to forced or compulsory labor (art. 212), pimping (art. 213), the exploitation of begging (art. 214), the use of a minor for the purpose of begging (art. 215), but also a new crime, namely the use of the services of exploited persons (art. 216).

II. THE CHANGES MADE TO THE CURRENT CRIMINAL CODE IN THE MATTER OF TRAFFICKING AND EXPLOITATION OF VULNERABLE PERSONS

In the initial version of the Criminal Code 2014, human trafficking consisted in recruiting, transporting, transferring, harboring or receiving a person, for the purpose of exploiting him, in the following circumstances: by coercion, kidnapping, misleading or abuse of authority; taking advantage of the impossibility of defending oneself or expressing one's will or of the state of

obvious vulnerability of that person; by offering, giving, accepting or receiving money or other benefits in exchange for the consent of the person who has authority over that person. In the case of minors' trafficking, the simple recruitment, transportation, transfer, harboring or reception of minors for the purpose of their exploitation is also sanctioned; the act was more serious if it was committed in the circumstances listed previously.

In the matter of trafficking and exploitation of vulnerable persons, the current Criminal Code has been amended several times over time. Thus, by Law no. 187 of 24 October 2012, a new aggravating circumstantial element was introduced into the text of the crimes of trafficking in persons and minors trafficking, namely the commission of the act by a public official in the exercise of his official duties – the amendment took effect as of 1 February 2014.

Emergency Ordinance No. 18 of 18 May 2016, again amended the normative content of the crime of minors trafficking, introducing other aggravating circumstantial elements, as follows: the act endangered the life of the minor; the act was committed by a family member of the minor; the act was committed by a person in whose care, protection, education, guard or treatment the minor was or by a person who abused his recognized position of trust or authority over the minor - the ordinance began to produce its effects starting with May 23, 2016. The same ordinance criminalized a new act, namely the use of child prostitution, this being included in the chapter dedicated to crimes regarding trafficking and exploitation of vulnerable persons.

Law no. 217 of 29 October 2020 supplemented the content of the circumstantial elements provided for in art. 211 para. 2 let. d) and e), with minors trafficking being more serious if it is committed by a person who lives with the minor, as well as in the event that the perpetrator took advantage of the minor's obviously vulnerable situation, due to a mental or physical handicap, a situation of dependency, a state of physical or mental incapacity or another cause; also, the minimum limit of the prison sentence applicable to the aggravated variant provided for in art. 211 para. 2 of the Code increased from 5 to 7 years – this law entered into force on 2 November 2020. The same law also amended the normative text of the crime of pimping, introducing a new aggravated variant (art. 211 para. 3 ind. 1), so that the punishment for the first aggravated variant provided for in art. 211 para. 3 will be increased by a quarter, if the act is committed against a minor in the following circumstances: the perpetrator is a family member or a person living with the victim; the minor is in the care, protection, education, guard or treatment of the perpetrator or the perpetrator has abused his recognized position of trust or authority over the minor; the perpetrator has previously committed a crime against sexual freedom and integrity against a minor, a crime of child pornography or pimping against a minor. The minimum prison sentence for the standard version of the crime of pimping was increased from 3 to 5 years.

The latest amendments were introduced by Law no. 217 of 10 July 2023, Law no. 202 of 26 June 2024 and Law no. 269 of 30 October 2024 and mainly concern the amount of the penalty applicable to the crimes of slavery, human trafficking, minors trafficking and the crime of using child prostitution, as well as the regulation of an assimilated variant of the crimes of human trafficking and minors trafficking.

The amendments adopted by Law no. 217 of 10 July 2023 entered into force on 1 January 2024 and consist of increasing the limits of the prison sentence for using child prostitution – the minimum limit from 3 to 6 months, and the maximum limit from 2 to 3 years.

The amendments provided for by Law no. 202 of 26 June 2024 began to take effect on 1 July 2024 and refers to the increase in the penalty limits for slavery, human trafficking and minors trafficking, but also to the prohibition of ordering the suspension of the execution of the penalty under supervision in the case of these crimes. Following these amendments, the minimum limit of imprisonment for slavery increased from 3 to 5 years, and the maximum limit from 10 to 12 years, the penalty provided by law being imprisonment from 5 to 12 years and the prohibition of the exercise of certain rights.

Likewise, for the standard variant of human trafficking, the minimum prison sentence was increased from 3 to 5 years, and the maximum from 10 to 12, the penalty provided by law being imprisonment from 5 to 12 years and the prohibition of exercising certain rights – the same penalty as in the case of slavery. As for the aggravated variant, the minimum limit was increased from 5 to 7 years, and the maximum from 12 to 15 years, the penalty provided by law being imprisonment from 7 to 15 years and the prohibition of exercising certain rights.

The minimum prison sentence for the standard variant of minors trafficking was increased from 5 to 7 years, and the maximum from 10 to 15 years, the penalty provided by law being imprisonment from 7 to 15 years and the prohibition of exercising certain rights; for the aggravated variant, the minimum prison limit increased from 7 to 10 years, and the maximum limit from 12 to 20 years, the penalty provided by law being imprisonment from 10 to 20 years and the prohibition of the exercise of certain rights – in the same amount as the penalty for simple murder.

Another amendment imposed by Law no. 202 of 26 June 2024 aims to introduce express provisions regarding the concurrence of crimes, in the event that the acts of persons or minors trafficking are followed by the effective exploitation of the victim – the conditions of the concurrence of crimes may be met, with pimping, exploitation of begging, slavery, submission to forced labor or with the illegal trafficking of organs, tissues or cells of human origin (art. 157-158 of Law no. 95/2006), depending on the content of the illicit exploitation activity.

The amendments adopted by Law no. 269 of 30 October 2024 entered into force on 3 November 2024 and consist of including circumstantial elements of pimping in the incriminating text of the crimes of human trafficking and minors trafficking, as assimilated variants, supplementing the aggravated variants of the two crimes with new circumstantial elements, as well as increasing the punishment in the case of the aggravated variant of the crime of minors trafficking.

The determination to start or continue the practice of prostitution by coercion, misleading or abuse of authority, but also by other means provided for in art. 210 paragraph 1 of the Criminal Code, as well as the determination or facilitation of the practice of prostitution or the obtaining of patrimonial benefits from the practice of prostitution by one or more minors are currently assimilated to human trafficking or minors trafficking, being excluded from the content of the crime of pimping.

Also, crimes of human trafficking or minors trafficking committed by a person who has previously committed a crime against sexual freedom and integrity, a crime of child pornography, a crime of human trafficking, minors trafficking or pimping will be punished more severely.

In the case of the aggravated variant of minors trafficking, the minimum limit of the sentence increased from 5 to 10 years in prison, and the maximum limit from 12 to 20 years in prison, the penalty provided for by the new criminal law being imprisonment from 10 to 20 years and the prohibition of the exercise of certain rights.

As follows from the Explanatory Memorandum of Law no. 217 of 10 July 2023, the increase in the penalty for the use of child prostitution was justified by the high rate of human trafficking, Romania being in first place at European level in terms of this type of crime. The United States Department of State places Romania at the Tier 2 Watchlist level in terms of concrete actions to prevent and combat human trafficking.

Another reason was the large number of sexually abused and exploited children, who practice prostitution by coercion, under the threat of the aggressor. They come from poor families, do not have a stable home or residence, or live in various centers or shelters, finding themselves in an unfavorable, vulnerable situation.

The explanatory memorandum of Law no. 202 of 26 June 2024, which amended the text of the crimes of slavery, human trafficking and minors trafficking, shows the extent of the phenomenon of human exploitation. In Romania, during the period 2019-2023, the most common form of exploitation was sexual exploitation (114 victims), followed by labor exploitation (17 victims) and begging (12 victims). Also, over half of the total number of identified victims were minors (57%), mainly targeting the sexual exploitation of young women between 14 and 17 years old. It was found that sexual exploitation is usually

carried out by forcing them to practice prostitution, as well as through acts of child pornography, in the online environment, with an upward trend in this type of exploitation being recorded at national level.

It is also stated that human trafficking and minors trafficking have a cross-border nature, Romania being generally the country of origin of the victims, while Italy, Spain, Germany and the United Kingdom are countries of destination, of exploitation; in these countries of destination, it is known that there is increased demand for sexual services, cheap and unskilled labor, but also a more permissive legislative system regarding begging. However, it was noted that a significant proportion of victims are exploited domestically, the localities of origin being Bacău, Bucharest, Brașov, Alba and Argeș.

From a judicial perspective, it was found that a significant part of the cases that had as their object this type of crime were resolved with the suspension of the execution of the sentence under supervision, therefore through a non-custodial method, the general opinion being that the sanctions applied were too mild compared to the gravity of the acts and the importance of the social values protected by the criminal law.

By increasing the penalty limits, the aim was to impose a sanctioning regime proportional to the high social danger of these acts and to restrict the possibility of the courts to apply a punishment that is too mild both in terms of the quantum and in terms of the manner of execution of the sentence, even if they were to focus on the special minimum provided for by law.

As is evident from the Explanatory Memorandum to Law no. 269 of 30 October 2024, the assimilation of the act of determination to start or continue practicing prostitution by coercion with human trafficking was justified by the lack of differences between the social danger of pimping in its aggravated version, as regulated in the previous criminal law, and human trafficking, and problems were also found related to the uneven application of the law on the matter by the courts, which framed the acts differently, although coercion, the vitiation of the victim's subjective position, is a specific mode of action for human trafficking. The new regulation removes the non-uniform practice, and pimping committed by means of coercion was included in the content of human trafficking. Similarly, pimping targeting minor victims is regulated, after the latest amendments, in the text of the crime of minors trafficking.

CONCLUSION

Forms of trafficking and exploitation of vulnerable persons have been regulated in all Romanian codes since 1864, but only in the current Criminal Code, which entered into force on 1 February 2014, have they been brought together in a single chapter (Chapter VII, Title I), these being the following: slavery (art. 209), human trafficking (art. 210), minors trafficking (art. 211),

subjection to forced or compulsory labor (art. 212), pimping (art. 213), exploitation of begging (art. 214), use of a minor for the purpose of begging (art. 215), use of the services of exploited persons (art. 216), use of child prostitution (art. 216 ind. 1). At the same time, the legal texts that criminalized these acts have undergone numerous changes over time, both in terms of constitutive content and in terms of the sanctioning regime. The latest amendments were introduced by Law No. 217 of 10 July 2023, Law No. 202 of 26 June 2024 and Law No. 269 of 30 October 2024 and aimed at increasing the penalties provided for by the Criminal Code for the use of child prostitution, slavery, human trafficking and minors trafficking, establishing the application of the provisions of the concurrence of crimes if human trafficking or minors trafficking is followed by concrete acts of exploitation, as well as assimilating pimping committed by coercion with human trafficking, regulating a new variant of criminalizing the crime of human trafficking.

The extent of the phenomenon of exploitation of vulnerable persons, the numerous cases of sexual exploitation of minors, including in the field of child pornography, in the online environment, the particularly serious consequences on the physical and mental state of the victim, but also the too lenient sanctions ordered by the courts, disproportionate to the gravity of the acts, are the main reasons why the legislator increased the punishment limits provided by the law for slavery, human trafficking, minors trafficking and the use of child prostitution.

The assimilation of pimping by coercion with human trafficking, as well as the separate regulation of this act in the criminal text of human trafficking, was motivated by the removal of the non-unitary practice and the sanctioning of the aggravated variant of pimping with the same punishment as the standard variant of human trafficking, there being no difference in social danger.

We believe that most of the current changes to the regulations on trafficking and exploitation of vulnerable persons are justified, but their rapid succession, within a few months or even weeks, and their multitude, denote the lack of predictability of the legislator at the time of drafting the Criminal Code 2014 and later, with legislation usually taking place as a result of particular cases with public resonance, although the history of the regulation could constitute a guideline in legislation. Legislative instability is likely to disrupt the process of law enforcement and affect its educational and preventive purpose.

We also note an excess in sanctioning certain acts with specific penalties for crimes against life, although the social values affected are less important than the life of the person, reaching the situation where minors trafficking in its aggravated form is sanctioned with the penalty provided by law for murder, without taking into account the hierarchy of social values and the difference in abstract social danger.

BIBLIOGRAFIE

1. The Criminal Code 2014. This Act was adopted by Law no. 286 of 17 July 2009 and published in the Official Gazette of Romania, Part I, no. 510 of 24 July 2009, subsequently undergoing several amendments and additions. It entered into force on 1 February 2014;
2. The Criminal Code 1969. This Act was adopted on 21 June 1968 and entered into force on 1 January 1969, being published in the Official Gazette no. 79-79 bis of 21 June 1968 and republished in 1973 and 1997;
3. The Criminal Code 1937. This Act was promulgated on 17 March 1936 and entered into force on 1 January 1937, later being rectified and amended. It was published in the Official Gazette on 18 March 1936 and republished on 19 January 1948.
4. The Criminal Code 1865. This Act was promulgated on 12 October 1864 and put into effect on 1 May 1865. It was published in the Official Gazette on 30 October 1864, later being amended several times and republished on 22 October 1912.
5. The Council of Europe Convention on Action against Trafficking in Human Beings was adopted on 3 May 2005, and was opened for signature in Warsaw, between 16 and 17 May 2005. The Convention was ratified by Romania by Law No. 300 of 11 July 2006.
6. The United Nations Convention against Transnational Organized Crime was adopted on 15 November 2000, in New York. The Convention was ratified by Romania by Law No. 565 of 16 October 2002.
7. Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA). This Framework Decision expired on 14 April 2011 and was replaced by Directive 2011/36/EU of the European Parliament and of the Council of the European Union.
8. Directive (EU) 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. It was published in the Official Journal of the European Union L Series of 24 June 2024.
9. Directive 2011/36/EU of the European Parliament and of the Council of the European Union of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Framework Decision 2002/629/JHA of the Council of the European Union. It was published in the Official Journal of the European Union L101 of 15 April 2011.
10. Law no. 269 of 30 October 2024 amending and supplementing Law no. 286/2009 on the Criminal Code. This law was published in the Official Gazette no. 1089 of 31 October 2024.

11. Law no. 202 of 26 June 2024 amending and supplementing Law no. 286/2009 on the Criminal Code. This law was published in the Official Gazette no. 607 of 28 June 2024.
12. Law no. 217 of 10 July 2023 amending and supplementing Law no. 286/2009 on the Criminal Code, Law no. 135/2010 on the Criminal Procedure Code, as well as Law no. 504/2002 on Audiovisual, with subsequent amendments. This Act was published in the Official Gazette no. 634 of 11 July 2023.
13. Law no. 187 of 24 October 2012 implementing Law no. 286/2009 on the Criminal Code, as amended. This law was published in the Official Gazette no. 757 of 12 November 2012.
14. Law no. 678 of 21 November 2001 on preventing and combating trafficking in persons, as amended. This law was published in the Official Gazette no. 783 of 11 December 2001.
15. Emergency Ordinance no. 18 of 18 May 2016 amending and supplementing Law no. 286/2009 on the Criminal Code, Law no. 135/2010 on the Criminal Procedure Code, as well as supplementing art. 31 paragraph 1 of Law no. 304/2004 on judicial organization. This ordinance was published in the Official Gazette no. 389 of 23 May 2016.
16. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime of 15 November 2000. The Protocol was ratified by Romania by Law no. 565 of 16 October 2002.
17. C. Anghelache, M.G. Anghel & A.M. Popescu, *The standard of living of the population is affected by the pandemic and financial and economic crisis. Is the fall in the standard of living deeper compared to other European states?*, in Romanian Statistical Journal – Supplement No. 3/2021, https://www.revistadestatistica.ro/supliment/2021/05/nivelul-de-trai-al-populatiei-este-afectat-de-criza-pandemica-si-financiar-economica-se-adanceste-caderea-nivelului-de-trai-comparativ-cu-celelalte-state-eur opene/ (Accessed 03.10.2024).
18. T. Manea & G. Șologon, *Human trafficking and the exploitation of vulnerable persons. Aspects of doctrine and judicial practice*, Hamangiu, Bucharest, 2022.
19. Explanatory Memorandum of Law No. 269 of 30 October 2024, https://www.cdep.ro/proiecte/ 2024/400/50/0/em510.pdf (Accessed 05.11.2024).
20. Explanatory Memorandum of Law No. 217 of 10 July 2023, https://www.cdep.ro/proiecte /2022/400/50 /7/em549.pdf (Accessed 10.10.2024).
21. Explanatory Memorandum of Law No. 202 of 26 June 2024, https://www.cdep.ro/proiecte/2024/ 200/70/2/em308.pdf (Accessed 12.10.2024).

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 154-180

GOOD GOVERNANCE THROUGH OFFICIAL DEVELOPMENT ASSISTANCE: ROMANIA'S LEGAL INSTRUMENTS FOR INSTITUTIONAL CONSOLIDATION IN THE REPUBLIC OF MOLDOVA

A. COPĂCEANU

Received 27.11.2025; accepted 16.12.2025
First online publication:16.12.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.281

Andrei COPĂCEANU
PhD. Candidate
Multidisciplinary Doctoral School Field of Political Science, National University of Political Studies and Public Administration, Bucharest, Romania
E-mail: andrei.copaceanu10@gmail.com
ORCID ID: https://orcid.org/0009-0009-2648-1627

Abstract

The article analyzes the ways in which Romania contributes to strengthening institutional resilience and promoting good governance in the Republic of Moldova through Official Development Assistance (ODA). Based on the legal framework provided by Law no. 213/2016 and key bilateral agreements, the study examines Romania's role as both donor and strategic partner in supporting democratic reform, legislative harmonization, and administrative capacity building. The analysis draws on RoAid's Annual Plans and Activity Reports from 2023 and 2024 to identify funding directions, thematic areas, implementation methods, and achieved results.

The methodology combines documentary analysis with case study research, focusing on projects aligned with Sustainable Development Goal 16, particularly those targeting the justice system, anti-corruption efforts, and institutional modernization. Romania supports these processes by deploying legal experts, providing technical assistance, and implementing training programs for local public administration, thereby reinforcing the rule of law and judicial independence.

Findings reveal a coherent approach grounded in soft power diplomacy and development policy coherence. The Republic of Moldova has received more than half of Romania's bilateral ODA in recent years, confirming Romania's role not only as a donor, but also as a model and facilitator of institutional reform. In

this context, Romanian ODA emerges as a strategic and normative tool, supporting Moldova's European integration and contributing to Romania's commitments under the 2030 Agenda and its OECD accession process.

Key words: *Official development assistance; good governance; sustainable development goals; institutional resilience; bilateral cooperation.*

INTRODUCTION

In the first part of this article, I will present Romania's legal instruments aimed at supporting institutional resilience in the Republic of Moldova, specifically through Official Development Assistance (ODA).

ODA is a publicly funded action by developed countries and is allocated to underdeveloped or developing states, with the central objective of promoting economic development and the welfare of developing countries, having a concessional character (RoAid, 2018). Funds are allocated through two types of implementation: direct and indirect. Direct implementation is carried out through: public procurement of goods, services, or works necessary to achieve the objectives of development cooperation and humanitarian assistance, in accordance with public procurement legislation; through donations; through the transfer of expertise to beneficiaries; and through the granting of scholarships for study and research. Indirect implementation is achieved through voluntary contributions provided to beneficiaries based on a financing agreement or a Ministerial Order issued by the Ministry of Foreign Affairs; through grants; or through budget support (Articles 4 and 5 of Government Decision no. 690/2017).

Official Development Assistance (ODA) includes both bilateral support, offered directly to developing countries, and multilateral contributions directed to international organizations. Within bilateral assistance, two main forms are distinguished: grants and loans, including government-to-government lending. Grants involve the transfer of non-reimbursable funds or technical cooperation support, leveraging Romanian experience, technology, and knowledge to help develop human capital in partner countries. They may also include financial contributions for specific projects implemented via international organizations. Bilateral loans, such as those granted by governments, offer financial resources to recipient states under favorable conditions, such as reduced interest rates or extended repayment terms, and may support both economic development programs and private sector investment.

Multilateral assistance refers to voluntary contributions made by donor states to international institutions, such as United Nations agencies. The primary criterion that qualifies an action as part of ODA is its developmental intent: it must aim primarily to promote economic development and improve living conditions in beneficiary countries.

In the second part of this article, we analyze the case of the Republic of Moldova—both as a strategic partner of Romania and as an EU candidate country—which has benefited from substantial Romanian support through ODA instruments aimed at strengthening state institutions and advancing the implementation of SDG 16 of the UN 2030 Agenda (peaceful societies, effective justice, and strong institutions). Moldova remains the top bilateral recipient of Romanian ODA. Through various programs and projects, RoAid (*the Romanian Agency for International Development Cooperation*) actively supports the objectives of SDG 16 in the Republic of Moldova.

The analysis of multi-annual programs, Ministry of Foreign Affairs reports, and RoAid annual plans highlights several concrete interventions: the strengthening of public administration, modernization of the emergency service 112, professional training, and improvements in judicial procedures, all aligned with SDG 16. Romania's contribution to ODA reached 0.16% of GDP in 2024, still below the EU's target of 0.33% by 2030.

We also examine how the method of implementing Romanian ODA (independent variable: direct vs. indirect implementation) influences the degree of institutional consolidation in the Republic of Moldova (dependent variable: expressed through the presence of reforms, institutional partnerships, and local response). Based on this relationship, we propose the following hypothesis: ODA projects implemented directly by Romania, through expert transfer and professional training, contribute more visibly to institutional consolidation in the Republic of Moldova than those implemented indirectly, through grants or donations. The research question posed is: *How does the type of ODA intervention applied by Romania influence the institutional effectiveness of its partners in the Republic of Moldova?*

I. THEORETICAL FRAMEWORK

According to institutionalist theory, institutions consist of specific sets of norms and rules that regulate and structure human interaction in order to reduce certain uncertainties. (North, 1990) It defines institutions as "humanly devised constraints... designed to structure interaction" and highlights that the evolution of institutions essentially explains differences in economic performance, some institutions foster economic growth and social cohesion, while others lead to stagnation (*North, 1990*). Another perspective is outlined by *(Van Nederveen Meerkerk, 2013)* which shows that inclusive political institutions are those that protect the interests of the entire society and generate inclusive economic institutions, ultimately leading to the society's sustainable prosperity. In contrast, (*North, 1*990) presents extractive institutions (i.e., those oriented toward enriching elites) as responsible for development blockages and political conflict. All of this suggests that good governance—understood as a societal institution that respects

human rights and the rule of law—is a sine qua non condition for development interventions to be effective. In the specialized literature, institutionalism emphasizes the role of historical relative advantages, particularly the influence of the pre-existing institutional context and critical junctures that can shape the direction of state evolution (path dependency theory and institutional change) (*North,* 1990). Consequently, the analysis of ODA must take into account that the success of external support is directly proportional to its adaptation to the mentalities, legal customs, and administrative capacity of the beneficiaries or partner institutions.

II. LITERATURE REVIEW

ODA is generally defined as aid intended to promote the economic development and welfare of developing countries. (*Aid Activities*, f.a.). It represents the OECD DAC Committee's standard measure for evaluating donor efforts. In the view of (*Arndt & Tarp, 2*017) its definition remains a subject of debate. Optimistic perspectives on ODA, according to (*Brautigam, 1992*) donors contribute to the development of good governance only if they create conditions for accountability and transparency, which are essential factors for sustainable development. These measures are particularly relevant when civil society and the media are supported, along with the strengthening of the rule of law. In the same spirit, a recent study (*Olaoye & Akinyele, 2025*) highlights that foreign aid improves institutional quality when it is aligned with governance reforms and accountability mechanisms, as external funding can support administrative reforms and investments in institutional capacity. Moreover, economist (*Sachs,* 2005) argues that ODA represents a major stimulus and could lead to the eradication of global poverty *(Burnside & Dollar, 2000)* take an even more nuanced position, demonstrating that aid can stimulate economic growth in countries with sound fiscal policies and good governance, essentially highlighting that aid is effective primarily in states with a certain level of stability. In their study, which analyzed aid flows from 1970 to 1993, they found that assistance had a positive impact on growth in countries with good governance and prudent policies, whereas in countries with weak policies, aid appeared to be ineffective. (*Aid Activities*, f.a.). From these findings, they highlight that only in suitable political environments does aid have a positive impact, and that donors can maximize its effectiveness by directing it toward nations with a certain level of stability.

On the other hand, there are also criticisms regarding the provision of ODA, which draw attention to its potential negative effects, such as (*Knack, 200*1) which, based on comparative data, show that high levels of ODA can erode the quality of governance—for example, as measured by the ICRG indicators on bureaucracy, corruption, and the rule of law. The same study also highlights that when governments rely heavily on external aid, political pressure for reforms weakens, and elites may capture aid funds for their own interests. Moreover, in countries receiving high shares of ODA, governance scores tend to deteriorate. The economic

literature refers to this phenomenon as the "boon" of external resources (analogous to the "Dutch disease"), as the influx of aid may create budgetary complacency but can also fuel corruption in the absence of clear institutional conditionality *(Knack, 2001)*.

Likewise, critics such as (*Bauer, 2006*) argue that if a country has the right conditions for growth—such as sound policies and strong institutions—capital will be generated domestically or attracted through markets, which in turn means that aid becomes unnecessary or inefficient. Furthermore, in the view of (*Easterly*, 2001) and *(Whiteside, 2010*) they argue that ODA often does more harm than good, as it discourages the resolution of local problems and undermines the strength of domestic institutions by fostering dependency—ultimately reinforcing corruption and inertia in recipient countries.

Moreover, Romania supports the political and economic importance of stabilizing and developing the Republic of Moldova, and the budgetary-fiscal policy measures recently proposed by researchers are intended to reduce income inequalities in Moldova *(Balan*, 2023). These emphasize the need to adopt fiscal policies that support the efficient redistribution of resources—an objective that Romania has actively supported through various bilateral actions and collaborative initiatives. Especially in the context of European integration, close cooperation between Romania and the Republic of Moldova in promoting good governance is absolutely essential. According to an analysis of governance dynamics in post-Soviet regions, the European Union plays a significant role in stabilizing democracy and promoting democratic norms in neighboring countries *(Dipama, 2024)*. In this way, the Official Development Assistance provided by Romania to the Republic of Moldova is not merely bilateral, but part of a broader network of international support aimed at strengthening Moldova's governance structures. Along the same lines, promoting a cooperation framework that includes both the evaluation and reform of existing laws is essential. Therefore, it is suggested that increased attention must be given to the implementation framework of legislative reforms targeting institutional strengthening *(Mendelski, 2016*). In this regard, such actions can lead to significant progress in strengthening the rule of law and improving essential public services.

This article highlights Romania's advantages as a donor in its relationship with the Republic of Moldova by showing that, unlike major donor powers, Romania benefits from cultural, linguistic, and historical proximity. This relationship is not merely symbolic—the history of Romania–Moldova relations is marked by a deep cultural bond that transcends current political-administrative borders. The two states share a common historical heritage. In this context, bilateral cooperation through ODA is not the expression of a classic donor–beneficiary relationship, but rather a historical and moral commitment to mutual support—

creating a dimension of historical continuity as part of an effort toward institutional, legislative reconnection and support for Moldova's European path.

III. METHODOLOGY

This research adopts a mixed qualitative approach, combining documentary analysis with case study methodology, in order to examine how Romania, through its Official Development Assistance (ODA), contributes to institutional strengthening in the Republic of Moldova, particularly in alignment with Sustainable Development Goal 16 (peace, justice, and strong institutions) *(OECD Development Co-operation Peer Reviews: Romania 2023*) The documentary analysis component involved the collection, review, and critical interpretation of official, strategic, and academic sources. The study examined all Annual Cooperation Plans issued by RoAid for the period 2022–2025, alongside the corresponding RoAid Annual Activity Reports, to identify funding directions, legal instruments applied, intervention types (grants, expertise, donations, mobility), and measurable results. Additionally, policy documents published by Romania's Ministry of Foreign Affairs and government institutions were reviewed, as well as international sources such as the OECD Development Co-operation Peer Reviews: Romania 2023, which provided validated insight into Romania's performance as an emerging donor, along with aggregated statistical data on allocations and thematic priorities. (*OECD Development Co-operation Peer Reviews: Romania 2023*).

The case study method was used to investigate three representative ODA projects implemented in the Republic of Moldova between 2022 and 2025, particularly in the fields of justice and governance. The cases were selected based on their relevance to SDG 16, their public visibility, the level of detail available in official documents, and the impact noted in both reports and media coverage. Each case was analyzed in terms of objectives, implementation methods, institutional partners involved, and official reactions from Moldovan authorities.

To ensure consistency between planning and execution, source triangulation was applied, correlating data from planning documents (RoAid annual plans), implementation evaluations (activity reports), and official press releases and news coverage from both Romanian and Moldovan outlets. This process enhanced the validity of findings and allowed for a broader understanding of the public perception surrounding the selected ODA interventions.

This qualitative methodology enabled not only the identification and description of Romania's legal and institutional tools as a bilateral donor, but also a contextual interpretation of the effectiveness and relevance of its ODA interventions in relation to the institutional resilience of the Republic of Moldova.

IV. THE LEGAL AND INSTITUTIONAL FRAMEWORK OF ODA IN ROMANIA

I will begin by outlining the fundamental milestones (the most important documents) of the bilateral relationship between Romania and the Republic of

Moldova, which were established through Romania's recognition of Moldova immediately after its declaration of independence, on August 27, 1991. Diplomatic relations were officially established on the same date, August 27, 1991. Subsequently, the Agreement on Cooperation in the Fields of Science, Education, and Culture between the Government of Romania and the Government of the Republic of Moldova was signed in Chișinău on May 19, 1992, and entered into force on December 27, 1993. Ministry of Foreign Affairs, 2021). Subsequently, the Treaty between Romania and the Republic of Moldova on Legal Assistance in Civil and Criminal Matters was adopted on July 6, 1996. (T*he Treaty between Romania and the Republic of Moldova on Legal Assistance in Civil and Criminal Matters, July 6, 1996, n.d.*)

Note: The remaining documents that establish the legal framework between Romania and the Republic of Moldova can be consulted by accessing the link provided in the footnote..[1]

Next, an important step was taken through the adoption of the Declaration on the Establishment of a Strategic Partnership between Romania and the Republic of Moldova for the European Integration of the Republic of Moldova, signed in Bucharest on April 27, 2010. This declaration prioritizes the interests of the citizens of the Republic of Moldova and the continuation of key reforms necessary for the country's democratic development and advancement along its European path.

The legal cornerstone of ODA in Romania is represented by the promulgation of Law no. 213/2016 on International Development Cooperation and Humanitarian Assistance. According to Articles 1, 2, and 3 of this law, the aim is "to provide long-term support for sustainable development" and "to promote and support peace, security, democratic development, and civil society, including the development of the rule of law and the principles of good governance." *(Law no. 213/2016 on International Development Cooperation and Humanitarian Assistance, 2016)* The law thus transposes Romania's obligation to align with other European states following its accession to the European Union in 2007, specifically through the establishment of a distinct entity responsible for implementing ODA programs and projects.

In doing so, Romania also aligns itself with relevant international organizations and legal instruments, such as the 2005 Paris Declaration. (OECD, 2005); the 2008 Accra Agenda for Action (*OECD, 2008*) și and the Busan Partnership for Effective Development Co-operation *(Busan Partnership for Effective Development Co-Operation, 2011).*

Romania, as an EU Member State, committed to gradually increase its ODA volume to reach 0.33% of Gross National Income (GNI) by 2030. This target requires additional institutional and budgetary efforts to strengthen Romania's

[1] https://www.mae.ro/node/55111

capacity for planning, managing, and coordinating development cooperation projects.

At the same time, Romania—although recognized as a donor state—still lacks a fully efficient legal and institutional framework to fulfill its obligations as a contributor to the EU's development cooperation budget. Moreover, the Romanian Court of Accounts has repeatedly recommended enhancing the MFA's capacity to monitor funded projects—something that can only be addressed through coherent legislation and a unified monitoring mechanism for the implementation of development assistance policy.

In this context, ensuring an adequate institutional system, financing framework, and national implementation capacity is essential. Increasing the efficiency of managing development cooperation funds and externally promoting Romania's activity in this field is equally important.

Following the above legislative steps, Government Decision no. 690/2017 was adopted to approve the Methodological Norms for implementing the provisions of Law no. 213/2016. These norms serve as the law's formal implementation rules.

Finally, the Strategic Multiannual Program for International Development Cooperation and Humanitarian Assistance for the period 2020–2023 constitutes the main strategic guidance document. It defines and plans Romania's general and specific objectives in the field of international development and humanitarian assistance in the short and medium term. *(Romania's Strategic Multiannual Program for International Development Cooperation and Humanitarian Assistance 2020–2023, n.d.); (Romania's Multiannual Strategic International Cooperation Program for Development and Humanitarian Assistance 2024-2027, f.a.)*

Moreover, each calendar year, an Annual ODA Plan is adopted, which sets Romania's specific objectives in the field of international development cooperation and humanitarian assistance for the respective year, as well as the concrete means of implementation.

This document is drafted by the Ministry of Foreign Affairs following consultations with the Consultative Committee and is submitted to the Government for approval via an information note.

To complement the institutional framework, Government Decision no. 678/2017 regulates the establishment of the Consultative Committee on International Development Cooperation and Humanitarian Assistance, a body that supports the design and implementation of national policies in this area. The Committee operates under the Ministry of Foreign Affairs and brings together representatives of public authorities, academia, and civil society, ensuring a platform for dialogue and coordination among relevant actors.

In support of the legislative framework, Order no. 2364/2025, amending Annexes 1 and 2 of the Minister of Foreign Affairs' Order no. 1371/2023, establishes eligibility criteria for beneficiaries of public funds allocated for achieving international development and humanitarian assistance objectives. The act

introduces requirements related to integrity, transparency, non-discrimination, and the adoption of internal ethics and abuse prevention policies.

Another key moment in bilateral relations is the Joint Declaration of the President of Romania, Mr. Klaus Werner Iohannis, and the President of the Republic of Moldova, Ms. Maia Sandu, regarding bilateral cooperation for strengthening the resilience of the Republic of Moldova. (*Press statement by President Maia Sandu after the meeting with President Klaus Iohannis, 2022*) which highlight the objectives set forth in the Bilateral Strategic Partnership for the European Integration of the Republic of Moldova (*Bucharest, April 27, 2010*) and the Joint Declaration of the Presidents of Romania and the Republic of Moldova (*Chișinău, December 29, 2020*). The Republic of Moldova aims to join the European Union by 2030, with Romania's support through political and technical cooperation and the transfer of expertise. The two countries will strengthen their partnership in the fields of defense, security, combating disinformation, and cyber protection. They will also collaborate on border management, crime prevention, and the development of energy interconnections, with the goal of integrating the Republic of Moldova.

4.1. Theoretical and empirical synthesis: ODA as a vector of good governance

Development cooperation between Romania and the Republic of Moldova, materialized through official development assistance (ODA) mechanisms, functions as a multiple vector of "good governance," transcending the simple transfer of financial resources to configure a complex institutional ecosystem of democratic transformation and consolidation of the rule of law. The existing legal framework, structured around Law 213/2016, strategic bilateral agreements, and sectoral protocols, represents a solid legal edifice, inspired by OECD-DAC practices and the principles of efficiency, effectiveness, and predictability of contemporary ODA.

A comparative analysis of the 2019-2024 period reveals a significant qualitative evolution of legal implementation instruments: public procurement, earmarked grants, competitive grants, and voluntary contributions to international organizations allow for differentiated and adaptive implementation of institutional strengthening projects, responding to specific needs identified through direct consultation with beneficiaries. Romania has strategically positioned the Republic of Moldova as its priority bilateral beneficiary, planning significant annual resources for strengthening the public sector and Moldovan community resilience in the context of increasing geopolitical pressures.

The projects implemented range from supporting the Single Emergency Service 112 (cumulative investment >245,000 lei, 2020-2024) and training magistrates at the National Institute of Justice (>219,000 lei, 2023-2024) to grants for civil society organizations dedicated to combating domestic violence (396,378 lei, 2024) – are strategically aligned with SDG 16 (Peace, Justice and Strong Institutions) and contribute directly to strengthening the stability, transparency and

efficiency of Moldovan institutions in the process of preparing for negotiations on accession to the European Union.

4.2.The capacity paradox: operational excellence versus limited resources

However, the study identifies a fundamental paradox of Romanian ODA: despite its proven operational excellence (budget execution rate of 99.8% in 2024, beneficiary satisfaction of 4/4, project sustainability of 10-30 years), the aggregate volume of Romanian ODA remains relatively modest in relation to the country's economic potential and international commitments.

In 2024, Romania reached only 0.16% of GNI in ODA, significantly below the European target of 0.33% by 2030 and considerably below the UN target of 0.7% of GNI. For the Republic of Moldova, this limitation translates into budgetary constraints that prevent the scaling up of successful pilot projects (e.g., SMURD – only 4 certified trainers instead of national coverage; kindergartens – 1,300 renovated out of a total requirement of >2,000) and a reduction in the capacity to respond to beneficiaries' requests for cooperation in emerging areas (energy, transport, sustainable agriculture).

Increasing the ODA/GNI ratio is therefore essential not only for fulfilling Romania's formal commitments to the 2030 Agenda and OECD-DAC standards, but also for strengthening its strategic role as a reliable partner and regional influence in the development of Eastern Europe. Comparative analyses show that Romania has significantly surpassed Germany (€25.35 million vs. €70.57 million for Moldova in 2024), but this performance reflects Moldova's strategic prioritization rather than a generous total volume of ODA.

4.3. Effectiveness of legal instruments: from legal formalism to social impact

Current administrative and political efforts, bringing together intensified inter-institutional collaboration (57 experts from 10+ Romanian public institutions mobilized in 2023-2024), predictable resource allocation (Justice Action Plan 2025-2027) and monitoring mechanisms based on performance indicators – can ensure that Romanian ODA has a sustainable, measurable, and scalable impact in the Republic of Moldova, contributing to its transformation into a regional model of successful democratic transition and accelerated European integration.

Combining the Romanian legislative strategy (*Law 213/2016, Government Decision 690/2017)* with international institutional standards (OECD-DAC, European Consensus on Development, Paris Declaration), this ODA mechanism aims not only to reduce poverty or provide emergency humanitarian support, but more profoundly to cultivate democratic, transparent, and efficient institutions, which are indispensable for the long-term stability, social cohesion, and sustainable economic prosperity of the Republic of Moldova as a future member state of the European Union.

4.4. Academic contribution – legal-empirical synthesis of good governance through ODA

This study demonstrates, through comprehensive empirical analysis, that Romania uses a complex and sophisticated legal and institutional framework to provide ODA in support of good governance, directly contributing to strengthening the resilience and institutional capacity of the Republic of Moldova. Through Law 213/2016, strategic bilateral agreements (*the 2010 Strategic Partnership Declaration, the 2025-2027 Justice Action Plan*) and sectoral cooperation protocols, a robust legal foundation has been created for predictable, adaptable, and results-oriented cooperation.

Through specific programs and projects implemented by RoAid, financial resources have been strategically directed towards priority objectives of democratic governance, European integration, and strengthening the rule of law, areas in which Romania's recent experience (EU accession in 2007, post-CVM judicial reforms) offers unique and immediately transferable added value.

The original academic contribution of this study consists of the methodological synthesis of formal legal elements (legislation, treaties, protocols) with quantitative empirical results (budget statistics, performance indicators, execution rates) and qualitative results (beneficiary assessments, official statements, impact analyses), highlighting that Romania's interventions actively and systematically aim to put into practice the principles of good governance—transparency, accountability, participation, effectiveness, and inclusiveness—in the specific context of the Republic of Moldova.

This integrative approach goes beyond previous studies that have dealt separately with either the legal dimension (analysis of ODA legislation) or the empirical dimension (technical implementation reports), offering a holistic perspective on how legal instruments translate into real social impact and measurable institutional transformation.

4.5. Research limitations and future research agenda

However, the study also acknowledges certain methodological limitations that open up new research opportunities:

a) Data availability: some of the statistics used are preliminary or not fully published (e.g., the OECD reports for 2024 are based on provisional data), which calls for caution in making generalizations and requires further validation with final consolidated data.

b) Impact monitoring: although projects are systematically evaluated by beneficiaries according to OECD-DAC criteria (relevance, effectiveness, efficiency, impact, sustainability), there is still no unified system for monitoring the aggregate impact of Romanian ODA on good governance indicators in the Republic of Moldova (e.g., evolution of the Corruption Perceptions Index, Worldwide Governance Indicators scores, progress in fulfilling the acquis). This methodological gap limits the ability to establish direct causal links between specific interventions and observed institutional transformations.

c) Beneficiaries' perspective: the predominantly documentary and institutional approach does not sufficiently highlight the perceptions of local actors, Moldovan citizens, beneficiary civil servants, and civil society representatives on the actual effectiveness and perceived relevance of Romanian ODA in their daily lives. Future research based on surveys, in-depth interviews, and focus groups could complement the analysis with the experiential dimension of good governance induced by ODA.
d) Limited comparative analysis: the study focuses on the bilateral relationship between Romania and Moldova, without sufficiently exploring systematic comparisons with other bilateral partnerships of Moldova (Germany, Poland, the Baltic states) or with alternative models for promoting good governance through ODA (e.g., the Scandinavian approach based on sectoral budget support vs. the Romanian approach based on expertise transfer and projects).

4.6. Public policy recommendations: from analysis to action

Based on this comprehensive analysis, concrete public policy recommendations can be formulated, structured on three levels of intervention:
Level I: strengthening the strategic and legislative framework

1. Accelerated legislative harmonization

Systematically continue to harmonize the Moldovan legislative framework with the European acquis, taking advantage of intensified Romanian legal assistance for priority institutional reforms (justice, anti-corruption, public procurement, data protection, business environment).

This can be achieved through concrete actions, namely by extending the Justice Action Plan 2025-2027 to other critical areas (public administration, cybersecurity, EU fund management), with a dedicated budget of at least 500,000 lei/year for each area.

2. Increased budget predictability

Adopting a multi-year funding framework (3-5 years) instead of the current annual planning, allowing Moldovan beneficiaries to plan strategically and ensure the sustainability of investments.

Concrete action: Romania's commitment to a minimum guaranteed budget of 2.5-3 million lei/year for the period 2025-2027, regardless of internal budget fluctuations, thus protecting the continuity of strategic projects.
Level II: Strengthening institutional implementation capacity

3. Strengthening RoAid

Increasing the administrative capacity of the Agency for International Development Cooperation (RoAid) by: (a) expanding specialized staff (project evaluation experts, impact monitoring specialists, communication officers) and, implicitly, the financial resources allocated for human resources, (b) investments in IT systems (integrated project management platform, beneficiary databases, automatic reporting tools), (c) continuous training of staff in international methodologies (PCM, Theory of Change, impact assessment); d) obtaining Pillar Assessment accreditation; e) expanding the financial resources allocated to ODA by

increasing the budget allocations by the Romanian Government for ODA projects implemented by RoAid in the coming years;

4. Improved monitoring and evaluation mechanisms

Development of a unified impact monitoring system (SIM-AOD) that integrates: (a) quantitative output indicators (number of beneficiaries, equipment delivered, courses organized), (b) qualitative outcome indicators (perceived improvement in institutional capacity, legislative changes induced), (c) long-term impact indicators (evolution of good governance indicators, progress in European integration).

This can be achieved by establishing partnerships with Romanian and Moldovan academic institutions (SNSPA, Bucharest Academy of Economic Studies, Moldova State University) for independent external evaluations of major projects, with a budget of 50,000 lei/evaluation.

Level III: Optimisation of the project portfolio

5. Maintaining direct funding for local projects

Continuing and expanding direct funding for local projects with visible and immediate impact (kindergarten renovations, equipment for local hospitals, emergency services equipment) as a complementary component of major institutional reform programs. This dual-track approach ensures both profound structural transformations and tangible results that strengthen the legitimacy of ODA in the public perception.

This can be achieved by allocating a "Local Community Fund" of 500,000 lei/year, dedicated to small and medium-sized projects (10,000-50,000 lei/project), managed through a simplified procedure and rapid implementation (maximum 6 months).

6. Strategic scaling of successful pilot projects

Systematic identification and scaling of pilot projects with exceptional results: (a) SMURD: expansion from 4 to 20 certified trainers, with a target of national coverage in 10 years, (b) Anti-corruption: expansion of equipment from the Prosecutor's Office to all relevant institutions (Moldovan equivalent of ANI, Court of Auditors), (c) Gender equality: expansion from 3 to 10 assistance centers in priority districts.

These actions can be achieved by dedicating a minimum of 30% of the annual budget (≈800,000 lei) to scaling up projects that have been empirically validated as having high impact and long-term sustainability.

7. Strengthening trilateral partnerships and co-financing

Developing a trilateral partnership model Romania (expertise + equipment) + EU/Germany/USAID (major funding + standards) + Republic of Moldova (implementation + minimum co-financing of 10%), allowing for increased impact without a proportional increase in the Romanian budget.

These actions can be achieved by identifying and initiating a minimum of two trilateral projects per year in the fields of energy, transport, or the environment, with a total budget of >€1 million, of which Romania's contribution represents 20-25% (€200,000-250,000).

Romania and the Republic of Moldova will further cooperate on attracting European funds, supporting Ukraine's reconstruction, and developing connections between institutions, civil society, academia, and the cultural sector.

V. INSTRUMENTS FOR IMPLEMENTING ODA IN ROMANIA

The national regulatory framework outlines two modalities for implementing ODA projects, namely:

- Direct implementation (Art. 12 of Law no. 213/2016) – this is carried out through:
  - ✓ Public procurement – of goods, services, or works necessary for project implementation, such as the purchase of technological equipment or the construction of infrastructure within partner institutions.
  - ✓ Donations (Art. 12, para. (2) letter b)) – involving the transfer of funds to the partner institution's account, enabling them to purchase needed goods directly.
  - ✓ Transfer of expertise (Art. 12, para. (2) letter c)) – includes consultancy, training, and mentoring missions. For example, Romanian experts may assist partner institutions in drafting institutional strategies in the public administration sector.
  - ✓ Scholarships for study and research (Art. 12, para. (2) letter d)) – financing education and participation in specialized training programs. Through such projects, Romania invests in human capital development in partner states, including in administrative or legal fields.
- Indirect implementation – is carried out through collaboration with external beneficiaries on the basis of funding agreements (via grants or credits) or by ministerial orders. The funding forms include:
  - ✓ Grants (Art. 16 of Law no. 213/2016) – non-reimbursable financial support for projects, programs, or contributions to the budgets of local or regional organizations pursuing common objectives. These are typically awarded to NGOs, public institutions, or international organizations operating in Moldova. Under current legislation, grants may fund bilateral projects (e.g., school-to-school cooperation) or institutional budget contributions (e.g., co-financing of government initiatives), and are provided through competitive procedures or directly allocated with justification.
  - ✓ Direct budget support (Art. 17) – refers to subsidizing the budgets of public institutions in the partner country. While less frequently used in

Romania, this form entails direct government-to-government transfers to support administrative reforms or public project implementation.

- ✓ Voluntary contributions (Art. 18) – Romania's allocations to multilateral institutions or global financing pools (e.g., contributions to the UN, UNICEF, the EU, or regional partnerships). Through these, Romania supports initiatives that benefit partner countries—such as regional good governance programs—even if the funds are managed by other actors.

Within these projects, in accordance with the provisions of Art. 52, para. (8) of Law no. 500/2002 on Public Finances, as amended and supplemented, the Ministry of Foreign Affairs may make advance payments from public funds to beneficiaries of up to 100% of the funding amount for the financing of activities specific to international development cooperation and humanitarian assistance. The amounts representing advance payments made by the MFA for development cooperation activities must be justified in accordance with the provisions of the funding agreements or, as the case may be, by ministerial order (Law no. 500/2002 on Public Finances, as amended).

Thus, cooperation sectors from local governance and justice to education and healthcare can be funded through grants aligned with the priorities set in Romania's international development program.

VI. VOLUME OF ODA PROVIDED THROUGH PROGRAMS AND PROJECTS GRANTED BY ROMANIA IN THE REPUBLIC OF MOLDOVA

Between 2015 and 2019, Romania allocated approximately €130 million in ODA to the Republic of Moldova, with the largest share directed toward the field of education—primarily through scholarships for young people and bilateral projects. These efforts focused in particular on good governance, anti-corruption measures, and the promotion of sustainability. (Romanian Ministry of Foreign Affairs, 2021). The €100 million Agreement (2010–2021) on technical and financial assistance, based on non-reimbursable financial support and signed on April 27, 2010, expired on March 28, 2021. For nearly a decade, this agreement allowed Romania to finance emblematic projects, such as the rehabilitation of over 1,000 kindergartens and public educational institutions across the Republic of Moldova. (Romanian Ministry of Foreign Affairs, 2021), this agreement expired upon reaching its term in 2021.

In accordance with point 4.2 of Programul multianual strategic de cooperare internațională pentru dezvoltare și asistență umanitară 2020-2023 al României, f.a. (Romanian Ministry of Foreign Affairs, 2020), the Republic of Moldova is designated as a priority country due to its geographical proximity and deep cultural and historical ties. The objectives will include—but are not limited to—modern governance, strengthening the rule of law with direct implications for integration into the European space, prison reform, and the prevention and combatting of corruption and organized crime.

Additionally, under point 4.4.2 of Romania's Multiannual Strategic International Cooperation Program for Development and Humanitarian Assistance 2024-2027, f.a. (Romanian Ministry of Foreign Affairs), the Republic of Moldova is identified as a top-tier priority of Romania's foreign policy, with Romania supporting Moldova's European integration efforts and democratic reform agenda, based on the Strategic Partnership for the European Integration of the Republic of Moldova. This partnership is grounded in the two countries' shared language, history, and culture, as well as a common vision of a unified space from the perspective of European integration. As such, the Republic of Moldova is the primary beneficiary of Romania's international development cooperation policy. The strengthening of the Fund for Democratization and Sustainable Development for the Republic of Moldova, by increasing the funds allocated for international development cooperation and humanitarian assistance activities, constitutes a key priority for the Romanian Government. *(Romania's Multiannual Strategic International Cooperation Program for Development and Humanitarian Assistance 2024-2027, f.a.*)

Therefore, under the previous Multiannual Strategic Program (2020–2023), Romania provided support in accordance with (Romanian Ministry of Foreign Affairs, 2020 f.a.) these primarily targeted: domestic refugee-related costs – 522.4 million lei; education and youth promotion – 330.2 million lei; humanitarian assistance – 46.1 million lei; sustainable economic development – 34.5 million lei; and governance and inclusive societies – 12.15 million lei.

Among the 50 public institutions that implemented, financed, and reported the provision of ODA, the main contributors were: the Ministry of Finance, which allocated 59.3% of total Official Development Assistance; the Ministry of Foreign Affairs, which allocated 21%; the Ministry of Education, which allocated 12.5%; and again the Ministry of Foreign Affairs, in a separate implementing capacity, which allocated 3.18% of total ODA.

The main ODA recipient countries in 2023 were: the Republic of Moldova – 285.38 million lei; Ukraine – 24.31 million lei; Republic of Turkey – 18.90 million lei; Republic of Armenia – 6.2 million lei; and Republic of Serbia – 9.5 million lei.

It is also important to note that the Romanian Agency for International Development Cooperation, a public institution under the Ministry of Foreign Affairs, carried out the highest number of bilateral projects in developing countries under the aforementioned multiannual program. The agency extended ODA to 22 developing states.

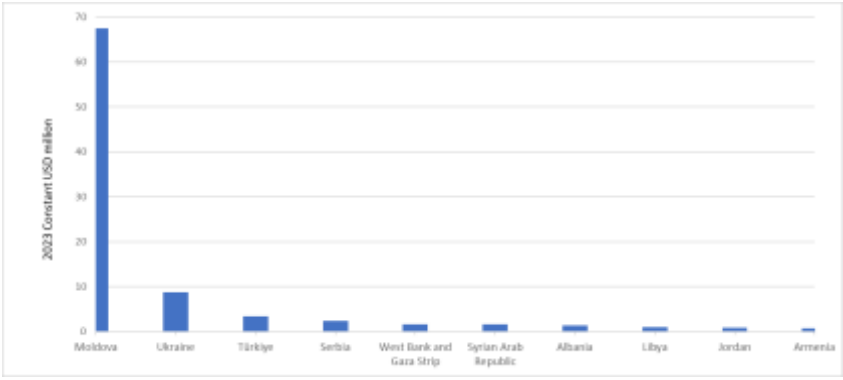
FIGURE 1. Geolocation focalisation reprezentation of AOD VNB



Source: (Romanian Ministry of Foreign Affairs, f.a.)

Bilateral ODA allocations to Romania's top 10 countries only partially reflects the focus on its priority countries and territories2. On average in 2022-23, the allocation to Moldova constitutes 41% of bilateral ODA and the allocation to Ukraine amounted to 5.3%. On average in 2022-23, a total of USD 84 million (51% gross bilateral ODA) was provided to ODA-eligible countries in Europe. Approximately USD 5.1 million was allocated to the Middle East (3.1% of gross bilateral ODA). Only USD 3.2 million (2% of bilateral ODA) was allocated to countries in Africa and none of the four priority African countries appear in the top 10 (average 2022-23 – see Figure 3). Over the same period, 54.1% of gross bilateral ODA went to Romania's top 10 recipients, which were primarily in Europe (e.g. Moldova, Ukraine and Serbia), as well as the Middle East (e.g. Türkiye, the West Bank and Gaza Strip, Syrian Arab Republic and Libya).

FIGURE 2. ROMANIA'S TOP 10 BILATERAL RECIPIENTS, 2022-23 AVERAGE



Source: OECD (2024), OECD International Development Statistics (database), https://doi.org/10.1787/data-00061-en.

[2] Albania, Ethiopia, Georgia, Mauritania, the Republic of Moldova, the Palestinian Authority, Senegal, Serbia, the United Republic of Tanzania, and Ukraine

For the year 2024, at the time of writing this article, the Ministry of Foreign Affairs has not published the report on Romania's activities within the framework of international cooperation policy for development and humanitarian assistance financed from public funds in 2024. so we will refer to the press release issued by the Ministry of Foreign Affairs stating that the OECD informed the Romanian state on April 16, 2025 (*Romanian Ministry of Foreign* Affairs, 2025), about the 14% increase in the volume of ODA granted by Romania in 2024, compared to 2023. In this regard, data published by the OECD indicates that in 2024 Romania granted ODA totaling $587 million, the highest level to date, continuing the upward trend of the last ten years. This announcement is relevant because it shows that even though our country is not a member of the OECD Development Assistance Committee (DAC), it supports the streamlining of international cooperation policy for development and humanitarian assistance, in the context of Romania's accession to the OECD and the DAC. (OECD, 2025). In this regard, the main beneficiary of ODA provided by Romania in 2024 was the Republic of Moldova, with over 50% of total bilateral ODA actions (worth $76.6 million, up 19% from the previous year). The actions implemented contributed to strengthening the institutional capacity of the Republic of Moldova with a view to EU accession and to combating the effects of the Russian Federation's war of aggression against Ukraine. (Romanian Ministry of Foreign Affairs, 2025)

VII. CASE STUDY – EXAMPLES OF GOOD PRACTICES FROM PROJECTS IMPLEMENTED BY ROMANIA IN THE REPUBLIC OF MOLDOVA THROUGH ODA AND GOOD GOVERNANCE

Romania's support prioritises the interests of Moldovan citizens and the implementation of these strategic bilateral projects, which are closely linked to the continuation of reforms essential for Moldova's democratic development and progress on its European path (*Romanian Ministry of Foreign Affair*s, 2021) The results of the implementation of the Strategic Partnership over the last decade since its signing include: the entry into force of the Association Agreement with the European Union, visa liberalization, the modernization of institutions, and the professionalization of public administration in line with European standards. (*Romanian Ministry of Foreign Affairs, 2021*).

Below, we have selected three projects representative of good governance and institutions, carried out by Romania through bilateral cooperation in 2023–2024, as follows:

7.1. Professional training program in European affairs (September 2023).

Romanian Foreign Minister Luminița Odobescu launched this program in Chișinău, dedicated to senior Moldovan officials and diplomats. (*Realitatea M*D, 2023). The main objectives were to effectively prepare Moldova's decision-making elite for European integration – participants will learn about EU policies, EU funding, and key reforms (justice, finance, internal market). Romanian Diplomatic Institute, f.a.)

The methods consisted of intensive courses and seminars (transfer of expertise), organized in modules by RoAid, the Ministry of Foreign Affairs, and IDR. (Realitatea MD, 2023). The project was initiated and supported by RoAid, the Ministry of Foreign Affairs and the Institute for Development Relations in Romania, together with the Ministry of Foreign Affairs of the Republic of Moldova (the inaugural event at the headquarters of the Ministry of Foreign Affairs of the Republic of Moldova featured a video message from L. Odobescu and was attended by Prime Minister Dorin Recean). Approximately 400 Moldovan officials (dignitaries, diplomats, and government officials) participated in this training program. The press and officials emphasized that the program gives Moldova access to the experience of Romanian negotiators in the accession process; Minister Odobescu highlighted the "historic" opportunity to accelerate reforms through this training. (Romanian Diplomatic Institute, press release, f.a.) (Realitatea MD, 2023)

7.2. Assistance in the field of justice and the rule of law

In October 2024, Romania and Moldova signed a new action plan on justice in Chișinău. (*Ministry of Justice from the Republic of Moldova, f.a., 2024)* Although this plan covers the period 2025–2027, it outlines specific projects that will begin in 2024. The main objectives are to support Moldovan judicial reform in line with the European acquis, harmonize legislation, increase the independence of the judiciary and the protection of human rights (including prison reform), etc. (Ministry of Justice from the Republic of Moldova,f.a, 2024.) *These objectives will be implemented through technical assistance and training, respectively through Romania's commitment to second experts to key institutions in Moldova (judges, prosecutors, prison officials) and to organize training programs (e.g., training for prison staff). Romania was represented at this meeting by the Romanian Ministry of Justice (Minister Alina Gorghiu) and her Moldovan counterpart (Veronica Mihailov-Moraru), with the support of institutions such as the National Institute of Magistracy of Romania and structures involved in legal cooperation. Following this meeting, the authorities in Chișinău acknowledge that Romania's experience in joining the EU offers "valuable support" (technical expertise and capacity building) for Moldova. The bilateral action plan already provides for professional training for working with prisoners and the exchange of experience in the recovery of criminal assets. The Romanian Minister of Justice announced the dispatch of experts to provide support in digitization, corruption prevention, and the development of anti-organized crime legislation. Through this project, Romania reaffirms its commitment to supporting the modernization of the Moldovan judicial system, a key element of SDG 16.* (Ministry of Justice from the Republic of Moldova, press release, f.a.)

The projects presented focused on training central institutions (the executive and diplomacy), strengthening local administration, and modernizing the justice system—areas that are essential for "peace, justice, and effective institutions" (SDG

16). Multiple sources (RoAid plans and communications from the MFA/Moldovan ministries) confirm that these projects have had a measurable impact on institutional capacity, fulfilling the agreed cooperation objectives.

3. Strengthening the justice system through expert missions

Starting in 2022, Romania, through RoAid, initiated a bilateral assistance program dedicated to strengthening the justice system in the Republic of Moldova. The key actors are INM (Romania), INJ (RM), RoAid, and MAE. The RoAid report highlights that this collaboration "involved trainers, judges, and prosecutors from the Republic of Moldova in professional development activities organized by the INM." (National Institute of Justice of Republic of Moldova, f.a.) The cooperation methodology consisted of three complementary areas, namely continuous professional training, involving judges, prosecutors, and trainers from the Republic of Moldova in professional training activities carried out by the INM in Romania; the exchange of institutional experience through the organization of study visits to judicial institutions (courts, prosecutor's offices, training institutions) for INJ delegations; and the transfer of expertise by sending Romanian experts, INM trainers, or practitioners with experience in the Republic of Moldova to support training courses for magistrates.

In 2022, the program began under the title "Assistance in the field of justice for the Republic of Moldova," focused on strengthening the justice system through the transfer of expertise. The calendar of bilateral activities included: a) The "Justice for Minors" summer school (June 27–July 1, 2022, Sinaia) b) Seminar "Ethics and Judgecraft – The Art of Being a Judge" (September 15–16, Bucharest); c) First working visit to Romania (September 27–29, 2022) d) Thematic seminars at the INM with participants from the Republic of Moldova (October 20–21, 2022, Bucharest); e) Second study visit to Romania (October 24-26, 2022); f) Conference on Combating Money Laundering and Recovering the Proceeds of Crime (November 17-18, 2022, Bucharest); g) Final training mission in Chisinau (December 12-13, 2022);

In 2023, the collaboration was expanded and it was agreed to strengthen the institutional capacity of the NIJ. The flagship activity was the organization, for the first time, of practical internships in Romania for NIJ trainees. Thus, in September–October 2023, seven professional training internships, each lasting three days, were hosted by courts and prosecutor's offices in Romania. (National Institute of Justice of Republic of Moldova, 2023, f.a.) The internships took place thanks to the RoAid project, which explicitly provided for this inter-institutional exchange component in 2023.

At the same time, joint continuing training remained an active component. INJ magistrates and trainers continued to participate in training sessions organized by the INM. For example, in November 2023, two NIJ trainers (including Livia Mitrofan, interim president of the Chișinău District Court) were invited to the 16th EuRoQuod Conference in Romania, a voluntary network of judges concerned with

the application of EU law. („Conferință EuRoQuod în România", f.a.), to deepen their knowledge and share it with colleagues in their country. At the same time, in December 2023, Moldovan judges and prosecutors were able to attend specialized INM courses online, such as the seminar "Anti-Semitism and the Holocaust – history, memory, and legislation" (December 7–8) or the training course "Special surveillance methods – technical surveillance" (December 11–12). This participation confirms the continuity of the exchange of expertise in continuing education, facilitating access for NIJ beneficiaries to the expertise and training resources of the INM („INJ Projects 2023", f.a.) The third major component in 2023 focused on strengthening the institutional capacity of the NIJ, in particular the consolidation of the NIJ's Legal Information Center.

In 2024, cooperation in the field of justice entered a new phase, more closely aligned with the priorities for the European integration of the Republic of Moldova. The bilateral program continued under the name "Assistance in the field of justice - Strengthening the institutional capacity of the NIJ in the Republic of Moldova." The project was implemented by RoAid. Adrian Cerbu, the new interim director of the NIJ (and himself a former beneficiary of the program), emphasized at the launch the importance of the support provided by Romanian partners in aligning national judicial practices with European standards. (National Institute of Justice of Republic of Moldova, 2024)

One of the first results of the new project was the organization of two training sessions for NIJ trainees (future judges and prosecutors) in Chișinău (September 19–20, 2024) on the rule of law and European Union institutions. In addition to the training sessions in the Republic of Moldova, the program continued to involve mobility and exchanges. According to the plans, new study visits and thematic internships were scheduled for the second half of 2024, including a training module in Romania focused on public communication techniques for judicial staff and advanced sessions on the adoption of the EU acquis.

In 2025, bilateral cooperation in the field of justice remained firmly on the agenda. The authorities in Bucharest and Chisinau highlighted the strategic nature of this partnership as part of Moldova's preparation for EU accession. At the ministerial level, Romania stepped up its support: Romanian Justice Minister Alina Gorghiu announced in April 2024 that around 40 legal experts would be sent to Moldova to help with the justice reform process—a complementary initiative run directly by the Romanian Ministry of Justice. *(Ministry of Justice from the Republic of Moldova, f.a, 2024.). "We are determined to support Moldova's European path by providing expertise assistance from our ministry. In the coming period, we will work closely with our Moldovan counterparts to identify specific areas where our technical assistance will be most beneficial for the implementation of justice reforms," said Minister Gorghiu.*

The INM-INJ cooperation program, supported by RoAid, has had a visible impact on strengthening the Moldovan judicial system, both in terms of human resources and at the institutional level. Over the course of four years, hundreds of Moldovan magistrates in training or in office have benefited from joint activities. Dozens of continuing education sessions, seminars, conferences, and internships have been organized in multiple areas: from judicial ethics and European case law on human rights to complex criminal proceedings (money laundering, human trafficking, hate crimes) and modern court management techniques. Moldovan participants had access to the expertise of some of the most experienced Romanian judges and trainers, as well as to the infrastructure of relevant institutions in Romania.

From a strategic perspective, the cooperation between RoAid, INM, and INJ is an eloquent example of diplomacy through development in Eastern Europe. Romania, as an EU member state and promoter of democratic values, has acted as an exporter of expertise in strengthening the rule of law, responding to the critical needs of a neighboring state and partner.

Last but not least, the impact must also be analysed in relation to Sustainable Development Goal 16 (Peace, Justice and Strong Institutions) of the UN 2030 Agenda. Target 16 involves, among other things, developing effective, accountable and transparent institutions at all levels, as well as ensuring access to justice for all. Moldovan officials have recognized the importance of this contribution. The Ministry of Justice in Chisinau has highlighted that, thanks to Romanian support through RoAid, the ambitious justice reform agenda proposed by the Moldovan government has been able to be implemented more quickly and efficiently.

In conclusion, the bilateral cooperation program in the field of justice between Romania and the Republic of Moldova (2022–2025) has proven to be a catalyst for strengthening justice in the Republic of Moldova, combining the professional training of magistrates with institutional development and high-level political commitments. Romania, through its Official Development Assistance instruments, has assumed the role of strategic partner of Chisinau in the field of justice, acting in the spirit of European solidarity and the promotion of democratic values. The short-term benefits—measurable in the number of people trained and the modernization of training procedures—are intertwined with long-term effects, such as increased institutional capacity, strengthened judicial independence, and an improved climate of integrity and rule of law. All of this contributes to preparing the Republic of Moldova for integration into the European Union and achieving SDG 16 targets, demonstrating how development cooperation can support crucial reforms in a state in transition, with a direct impact on the well-being and trust of citizens in the justice system. („Romania Boosts Moldova's EU Bid with Justice Experts", 2024)

The INM–INJ program therefore remains an example of good practice in the region, highlighting the potential of Romania's assistance in strengthening the

democratic institutions of its neighbors and promoting a common space of justice and European values.

CONCLUSION

In this study, we also analyzed how the method of implementing Romanian ODA influences the degree of institutional consolidation in the Republic of Moldova (dependent variable: expressed through the presence of reforms, partnerships, and local institutional response). Based on this relationship, we propose the following hypothesis: ODA projects implemented directly by Romania, through the transfer of expertise and professional training, contribute more visibly to the institutional consolidation of the Republic of Moldova than projects implemented indirectly, through grants or donations. The research question formulated in this regard is: how does the type of ODA intervention applied by Romania influence the institutional efficiency of partners in the Republic of Moldova?

Based on the research conducted, the validated answer is as follows:
ODA projects implemented directly by Romania, through the transfer of expertise, professional training, and technical advice, had a clearer and more visible impact on institutional strengthening in the Republic of Moldova compared to those implemented indirectly, through grants or donations.

This conclusion is supported by the following findings:

1. The magistrate training and inter-institutional cooperation programs (INM–INJ) generated positive official reactions from the Moldovan authorities and were continued in successive cycles.

2. Direct projects involved human interaction, exchange of good practices, and contextual adaptation, which increased institutional absorption and relevance.

3. In contrast, indirect projects (equipment, donations) had a more logistical or symbolic contribution, without a clear link to systemic reform or changes in administrative practices.

4. RoAid and MFA reports consistently highlight the strategic impact of direct projects on SDG 16, particularly in the areas of justice, local administration, and legislative alignment with the EU acquis.

Good governance cannot be exported through political declarations or neutral financial transfers, but is co-constructed through trusted partnerships, systematic transfer of expertise, strategic investments in institutional capacity, and the patience to cultivate profound, sustainable, and authentic transformations. Romania and the Republic of Moldova demonstrate that this process, although complex and often invisible in its immediate impact, produces tangible results that fully justify the investment in development cooperation as a vector of good governance and a catalyst for European integration.

BIBLIOGRAFIE

1. *Aid activities*. (f.a.). [Set de date]. OECD. https://doi.org/10.1787/data-00061-en;
2. Arndt, C., & Tarp, F. (2017). Aid, Environment and Climate Change. *Review of Development Economics*, *21*(2), 285-303. https://doi.org/10.1111/rode.12291;
3. Balan, A. (2023). *The Role of Budgetary-Fiscal Policy in Reducing Revenue Inequality in the Republic of Moldova*. 91-96. https://doi.org/10.53486/cike2022.11
4. Bauer, P. (2006). *The Macroeconomic Management of Foreign Aid*. INTERNATIONAL MONETARY FUND. https://doi.org/10.5089/9781589065208.072
5. Brautigam, D. (1992). Governance, economy, and foreign aid. *Studies In Comparative International Development*, *27*(3), 3-25. https://doi.org/10.1007/BF02687132
6. Burnside, C., & Dollar, D. (2000). Aid, Policies, and Growth. *American Economic Review*, *90*(4), 847-868. https://doi.org/10.1257/aer.90.4.847
7. Busan Partnership for Effective Development Co-operation: Fourth High Level Forum on Aid Effectiveness, Busan, Republic of Korea, 29 November - 1 December 2011 (Best Practices in Development Co-Operation). (2011). [Best Practices in Development Co-operation]. https://doi.org/10.1787/54de7baa-en
8. Bütler, M., & Gheorghiu, L. (2010). Exploring the Failure to Protect the Rights of the Roma Child in Romania. *Public Administration and Development*, *30*(4), 235-246. https://doi.org/10.1002/pad.562
9. Conferință EuRoQuod în România. (f.a.). *National Institute of Justice of RM*. https://www.inj.md/ro/proiecte#:~:text=%C3%8En%20perioada%2016,transmite%20colegilor%20din%20experien%C8%9Ba%20lor
10. Dipama, S. (2024). Decrypting the EU's Good Governance Promotion Policies in Sub-Saharan Africa (SSA) Through Development Cooperation. *Alternatives Global Local Political*, *50*(2), 376-402. https://doi.org/10.1177/03043754241291722
11. Easterly, W. (2001). *The elusive quest for growth: Economists' adventures and misadventures in the tropics*. The MIT Press.;
12. Institutul Diplomatic Român. (f.a.). *Anunț lansare la Chișinău Programul de formare profesională în domeniul afacerilor europene dedicat demnitarilor, membrilor corpului diplomatic și consular,* [Comunicare personală];
13. Knack, S. (2001). Aid Dependence and the Quality of Governance: Cross-Country Empirical Tests. *Southern Economic Journal*, *68*(2), 310-329. https://doi.org/10.1002/j.2325-8012.2001.tb00421.x
14. Legea 213/2016 privind cooperarea internaţională pentru dezvoltare şi asistenţă umanitară, Nr. 213/2016 (2016). https://sintact.ro/#/act/16958974/2/legea-213-2016-privind-cooperarea-internationala-pentru-dezvoltare-si-asistenta-umanitara?keyword=213%2F2016&cm=SFIRST&searchPit=2025-07-09

15. Mendelski, M. (2016). Europeanization and the Rule of Law: Towards a Pathological Turn. *Southeastern Europe*, *40*(3), 346-384. https://doi.org/10.1163/18763332-04003003
16. Ministerul Afacerilor Externe. (2021, martie 1). *Declarația privind instituirea unui Parteneriat Strategic între România și Republica Moldova pentru integrarea europeană a Republicii Moldova* [Interviu]. https://www.mae.ro/node/1677
17. Ministerul Justiției al Republicii Moldova. (2024, aprilie 17). *Cooperarea bilaterală moldo-română pe domeniul justiției va fi aprofundată* [Comunicare personală]
18. National Institute of Justice of Republic of Moldova. (f.a.). *Beneficiarii Institutului Național al Justiției din Republica Moldova, în stagii la tribunalele și parchetele din România* [Comunicare personală]
19. National Institute of Justice of Republic of Moldova. (f.a.). *Reprezentanții sistemului de justiție din Republica Moldova, în vizită la instituțiile de drept din România* [Interviu]. https://www.inj.md/ro/reprezentan%C8%9Bii-sistemului-de-justi%C8%9Bie-din-republica-moldova-%C3%AEn-vizit%C4%83-la-institu%C8%9Biile-de-drept-din#:~:text=Proiectul%20%E2%80%9E Consolidarea%20sistemului%20de%20justi%C8%9Bie,%C3%AEn%20activit%C4%83%C8%9Bile%20de%20dezvoltare%20profesional%C4%83
20. National Institute of Justice of Republic of Moldova. (2024). https://www.inj.md/ro/sesiuni-de-instruire-pentru-viitorii-judec%C4%83tori-%C8%99i-procurori-%C3%AEn-domeniile-statului-de-drept-%C8%99i#:~:text= Prezent%20la%20deschidere%2C%20Directorul%20interimar,intersecteaz%C4%83%20cu%20sectorul%20juridic%20na%C8%9Bional
21. North, D. C. (1990). *Institutions, Institutional Change and Economic Performance* (1 ed.). Cambridge University Press. https://doi.org/10.1017/CBO9780511808678
22. OECD. (2005). *Paris Declaration on Aid Effectiveness*. OECD. https://doi.org/10.1787/9789264098084-en
23. OECD. (2008). *Accra Agenda for Action*. OECD. https://doi.org/10.1787/9789264098107-en
24. OECD. (2025). *Preliminary official development assistance levels in 2024* (Nr. DCD(2025)6). OECD
25. OECD Development Co-operation Peer Reviews: Romania 2023. (2023). *OECD Development Co-operation Peer Reviews: Romania 2023*. OECD. https://www.oecd.org/en/publications/development-co-operation-profiles_04b376d7-en/romania_a438cec6-en.html
26. Olaoye, G., & Akinyele, D. (2025). How foreign aid affects institutional quality and economic development. *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.5387913

27. Press statement by President Maia Sandu after the meeting with President Klaus Iohannis. (2022, iulie 29). Press statement by President Maia Sandu after the meeting with President Klaus Iohannis. https://presedinte.md/eng/discursuri/declaratia-de-presa-a-presedintei-maia-sandu-dupa-intrevederea-cu-presedintele-romniei-klaus-iohannis
28. Programul multianual strategic de cooperare internațională pentru dezvoltare și asistență umanitară 2020-2023 al României. (f.a.). *Programul multianual strategic de cooperare internațională pentru dezvoltare și asistență umanitară 2020-2023 al României*. Ministerul Afacerilor Externe al României;
29. Realitatea MD. (2023, septembrie 15). *Odobescu a deschis Programul de formare profesională în domeniul afacerilor europene dedicat R. Moldova* [Interviu]. https://realitatea.md/odobescu-a-deschis-programul-de-formare-profesionala-in-domeniul-afacerilor-europene-dedicat-r-moldova/#:~:text=Ministrul% 20afacerilor%20externe%20Lumini%C8%9Ba%20Odobescu,RoAid;
30. RoAid. (2018). *Despre Agenția de Cooperare Internațională pentru Dezvoltare*. RoAid. https://roaid.ro/despre-noi/agentia-roaid/oda/;
31. Romania Boosts Moldova's EU Bid with Justice Experts. (2024, aprilie 25). *M1 Moldova*. https://moldova1.md/p/27863#:~:text=Moldovan%20Justice%20Minister%20Mihailov,she%20said;
32. Romanian Ministry of Foreign Affairs. (f.a.). *The Report on the Activities Carried Out by Romania within the Framework of the International Development Cooperation and Humanitarian Assistance Policy, Funded from Public Sources*.
33. Romanian Ministry of Foreign Affairs. (2021, martie 28). *Ieșirea din vigoare a Acordului privind programul de asistență tehnică și financiară în baza unui ajutor financiar nerambursabil în valoare de 100 milioane de euro acordat de România Republicii Moldova* [Interviu]. https://www.mae.ro/node/55229
34. Romanian Ministry of Foreign Affairs. (2025, aprilie 16). *Press Release—The increase in the volume of official development assistance provided by Romania in 2024*. https://mae.ro/node/66663
35. Romania's Multiannual Strategic International Cooperation Program for Development and Humanitarian Assistance 2024-2027. (f.a.). *Romania's Multiannual Strategic International Cooperation Program for Development and Humanitarian Assistance 2024-2027*. Ministerul Afacerilor Externe al României.
36. Sachs, J. D. (2005). *The end of poverty: Economic possibilities for our time*. the Penguin press.
37. Tratatul între România şi Republica Moldova privind asistenţa juridică în materie civilă şi penală din 06.07.1996, Nr. 310/1997. https://lege5.ro/Gratuit/ge3taojt/tratatul-intre-romania-si-republica-moldova-privind-asistenta-juridica-in-materie-civila-si-penala-din-06071996
38. Van Nederveen Meerkerk, E. (2013). Daron Acemoglu and James A. Robinson. Why Nations Fail. The Origins of Power, Prosperity, and Poverty.

Profile Books, London2012. Xi, 529 pp. *International Review of Social History*, *58*(1), 121-123. https://doi.org/10.1017/S0020859013000023
39. Whiteside, A. (2010). Dead aid: Why aid is not working and how there is a better way for Africa. *Global Public Health*, *5*(2), 197-198. https://doi.org/10.1080/17441690903369469

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 181-189

PUBLIC SECURITY AND COOPERATION BETWEEN STATE AND RELIGIOUS DENOMINATIONS

M. D'ARIENZO

Received 12.12.2025; accepted 21.12.2025
First online publication: 21.12.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.300

Maria D'ARIENZO
Full Professor of Law and Religion
University of Naples "Federico II", Department of Law
E-mail: maria.darienzo2@unina.it
ORCID ID: https://orcid.org/0000-0001-5557-3584

Abstract

The paper examines the collaboration between the State and religious denominations in Italy in the field of public security. It analyzes four key areas: the Catholic Church's contribution to preventing mafia infiltration; the Holy See's efforts to combat money laundering through alignment with international standards; the role of Islamic communities in countering terrorism and radicalization; and the reuse of places of worship as tools for integration and social cohesion. The study demonstrates that structured cooperation with religious actors strengthens legality, promotes intercultural dialogue, and supports preventive security policies, highlighting the strategic importance of these partnerships for collective safety and social resilience.

Key words: *public security, collaboration between State and religious denomination, mafia, organized crime, shared use of worship buildings.*

INTRODUCTION

The cooperation between public authorities and religious denominations for the protection of public security has distinctive features in the Italian legal system.

In this paper the theme will be examined from four perspectives.

The first concerns the contribution of religious denominations—and in particular of the Catholic Church—in preventing the phenomenon of organized crime, within the framework of their mutual cooperation for the promotion of the human person and the good of the country, as envisaged by Article 1 of the 1984 Villa Madama Agreements amending the 1929 Lateran Concordat.

Attention will also be devoted to the Holy See's commitment to combating the laundering of illicit funds, which has resulted in the adaptation of Vatican law to the international standards in this field.

The third line of inquiry will focus on the cooperation offered by religious communities—and especially Islamic communities—in countering terrorism inspired by fundamentalist ideologies.

Finally, the paper will focus on the significance of reusing places of worship as tools for integration and fight against marginalization.

I. CATHOLIC CHURC AND PREVENTION OF MAFIA PHEANOMENA IN THE ITALIAN LEGAL SYSTEM

Particular significance in the Italian context assumes the collaboration between public institutions and religious actors that has developed, especially in recent years, in the prevention and fight against organized crime, particularly of mafia matrix. In recent times, religious denominations have played a crucial role in combating the mafia through acts of denunciation and resistance, as well as through numerous initiatives aimed at promoting awareness of legality. These initiatives have provided real alternatives — especially for young people — to affiliation with criminal organizations in economically and socially disadvantaged areas (*Balsamo 2019; Mantineo 2017*).

This commitment has been supported by the Catholic Church through the issuance of diocesan norms aimed both at preventing criminal infiltration into Church rites and ecclesial associations, and at repressing organized crime by imposing specific canonical sanctions on those affiliated with mafia groups. In this regard, a particularly abundant body of normative texts has been produced concerning religious processions (*Balsamo 2019, p. 127 ff.*; *Ognibene 2017*). These have not only raised practical challenges but have also encouraged "mutual cooperation for the promotion of the human person and the good of the country" between the State and the Church, through distinct yet synergistic measures to combat corruption and organized crime.

To enhance the positive impact of the Church's action against the mafia, a notable initiative has been the establishment, in some dioceses, of a Round Table for dialogue with law enforcement and public authorities responsible for the prevention and suppression of crime. Its aim is to ensure better organization of religious events and ecclesiastical funerals while respecting confessional autonomy. Greater cooperation in this area is highly desirable, especially in light of certain incidents that have created tension between civil and religious authorities — such as when public security authorities have imposed the selection of individuals carrying statues during religious processions (*Balsamo 2019, p. 184*). Such imposition represents an undue interference by public authorities in matters that fall within the internal order of religious denominations.

Regarding religious processions, it is worth mentioning the converging interest of both canonical and civil norms in eradicating the deplorable practice of the "*inchini*" — that is, the pauses made by processions in front of the homes of a mafia boss. This conduct, explicitly condemned by recent diocesan canonical legislation, has also been recognized by Italy's highest courts as constituting the criminal offence of disturbing religious ceremonies under Article 405 of the Italian Penal Code (*Fuccillo 2021, Balsamo 2021*). In this way, the canonical and civil legal systems mutually reinforce one another in combating mafia manipulation of religious rites, particularly those of popular devotion. Thus, the joint efforts of the State and the Catholic Church to suppress mafia influence on religious practices find a valuable point of convergence in Article 405 of the Italian Penal Code — a provision that can serve as a cornerstone for increasingly fruitful cooperation between the State and the Church in their respective efforts to combat organized crime (*Balsamo 2021, p. 143*).

Equally significant is the cooperation between religious actors and public institutions in the reuse of property confiscated from organized crime. Such assets have been increasingly converted into youth centers, parish halls, and spaces dedicated to education in legality — initiatives often promoted under the project "*Free the Good: From Confiscated Property to the Common Good*" launched by the *Libera network* and the *Italian Bishops' Conference* through its *National Office for Social Issues and Work*, the *National Youth Ministry*, and *Caritas Italiana (Balsamo 2025).*

This commitment recently gained further momentum in Sicily following the signing, on May 5, 2023, of the *Memorandum of Understanding for the Promotion of a Culture of Legality and the Prevention and Fight against the Mafia and Organized Crime*, concluded between the *Sicilian Bishops' Conference* and the *Regional Parliamentary Commission of Inquiry and Oversight on the Mafia and Corruption of the Sicilian Regional Assembly*. The memorandum established an observatory composed of ten experts (five appointed by the Bishops' Conference and five by the regional commission) tasked, among other things, with "identifying and disseminating guidelines and good practices for promoting the culture of legality" and "creating networks of cooperation among local organizations engaged in social anti-mafia work or in combating organized crime, as well as in supporting vulnerable groups, particularly in contexts at risk of social marginalization." In immediate implementation of the *Memorandum*, the Sicilian Bishops' Conference committed to inaugurating "two new community centers in each diocese to promote solidarity and social anti-mafia initiatives" (*Balsamo 2025*).

II. THE COMMITMENT OF THE HOLY SEE TO COMBATING THE LAUNDERING OF ILLICIT FUNDS AND THE ADAPTATION OF THE VATICAN LEGAL SYSTEM TO INTERNATIONAL STANDARDS.

In last fifteen years Holy See has devoted greater attention to preventing the use of funds of illicit origin in collaboration with other State and international institution. Specifically, the Holy See commitment has taken shape through the adoption of specific regulations aimed at aligning the Vatican legal system with international standards (*d'Arienzo 2022; Zannotti, 2022; Rivetti 2013*).

Even before the Holy See's adhesion to the United Nations Convention against Corruption (the Mérida Convention) in 2016, and prior to the publication on 29 April 2021 of the *Apostolic Letter issued motu proprio containing provisions on transparency in the management of public finances* for the Vatican City State, Law No. CXXVII of 2010 had already established the *Financial Intelligence Authority* (AIF), now known as ASIF (*Supervisory and Financial Information Authority*). ASIF is the competent institution of the Holy See and of the Vatican City State for supervision (oversight and regulation) aimed at combating money laundering and the financing of terrorism, as well as for financial intelligence activities and prudential supervision and regulation of entities professionally engaged in financial activities.

ASIF is a member of the *Egmont Group*, the global forum that currently brings together the financial intelligence units of 152 countries and jurisdictions, within which rules and best practices for cooperation and the international exchange of information are shared. At the bilateral level, ASIF has entered into *Memoranda of Understanding* for the international exchange of information with the competent supervisory and financial intelligence authorities of various jurisdictions.

In this context, a fundamental element in the Vatican's efforts to align its legal system with international standards in the fight against money laundering has been the Holy See's participation in the *MONEYVAL Committee* — the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Sarais 2012). MONEYVAL is a permanent monitoring body of the Council of Europe tasked with assessing compliance with the principal international standards to counter money laundering and the financing of terrorism, as well as the effectiveness of their implementation. It is also mandated to issue recommendations to national authorities regarding necessary improvements to their systems.

The progress made by Vatican legislation in preventing and combating money laundering of illicit origin was acknowledged by the MONEYVAL Committee in its 2021 report (*d'Arienzo 2023b, p. 274; Durisotto 2023, pp. 207-216).* This objective has been further pursued through the strengthening of judicial cooperation between the Vatican legal system and other jurisdictions.

III. THE COOPERATION BETWEEN RELIGIOUS COMMUNITIES AND PUBLIC AUTHORITIES FOR THE PREVENTION OF TERRORISM INSPIRED BY RELIGIOUS FUNDAMENTALISM

PUBLIC SECURITY AND COOPERATION BETWEEN STATE AND RELIGIOUS DENOMINATIONS

A further aspect of cooperation between the State and religious denominations in the field of public security concerns the role of recently established religious communities in preventing and countering terrorism inspired by religious fundamentalism.

Following the terrorist attacks carried out by Islamic extremists in Europe in recent years, prejudice has spread against Muslim migrant communities, often perceived as a potential threat to public security. In Italy, this gave rise to the need to promote a "moderate Islam" — that is, one that is not extremist but capable of integrating within an accepted framework of civic coexistence — through the establishment of dialogue mechanisms aimed at fostering a unified representation of the diverse Muslim communities present in Italy.

The culmination of this process was the signing, in 2016, of the National Pact for an Italian Islam. This Pact explicitly required Islamic associations to commit to countering all forms of religious radicalism expressed through propaganda, actions, or strategies contrary to the laws of the State. According to the Pact, Islamic associations in Italy pledged to "continue combating religious radicalism, including through forms of cooperation that provide authorities and institutions with tools for understanding a phenomenon that threatens collective security — including the safety of citizens and residents of Islamic faith." The associations were also called upon to act as mediators for the full realization of civic principles of coexistence, promoting integration among Muslim immigrants and countering radicalism and fanaticism in synergy with Italian institutions (*d'Arienzo 2018*).

Aligned with this goal of preventing any drift toward fundamentalism are the Permanent Tables for Interreligious Dialogue — consultative bodies established for discussion, mutual understanding, and structured engagement between public institutions and religious communities, particularly those newly established in local contexts.

No less relevant for public security have been the Pacts of Sharing and Active Citizenship signed between municipal administrations and local Islamic communities. The first such "Pacts" were concluded in Turin and Florence in February 2016, at the initiative of local Islamic centers, with the goal of promoting integration policies and a shared civic consciousness. These agreements are based on the commitment of Muslim communities to uphold participatory and cooperative citizenship and to affirm common values of freedom, democracy, and equality of rights and duties. Signed in the months following the terrorist attacks in Paris, they carry strong symbolic value as a public testimony of the joint commitment of institutions and Islamic associations to fostering coexistence, mutual respect, and understanding — essential to overcoming distrust and building "shared citizenship" (*d'Arienzo 2018; d'Arienzo 2023*)

Following Turin's initiative, the city of Florence also signed a Citizenship Pact, which included the commitment of Muslim communities to use the Italian language in the khutbah (the Friday sermon), with the assistance of translators from Arabic into Italian. Other cities, such as Bologna and Bergamo, later followed this model, introducing measures such as municipal registers of "Imams and Religious Leaders" and establishing "Official Dialogue Tables" between institutions and Muslim communities. Similar Pacts of Active Citizenship have also been signed by smaller municipalities, including Castelfiorentino and Umbertide. These pacts represent an important step in the ongoing process of dialogue and cooperation among diverse social components toward the construction of civic citizenship (*d'Arienzo 2018, p. 87 ff.*).

To prevent radicalization in prisons, another notable measure was the Memorandum of Understanding signed on November 5, 2015 — and renewed in 2020 — between the Department of Penitentiary Administration (DAP) and the Union of Islamic Communities of Italy (UCOII). This agreement has helped reduce prison radicalization by providing Muslim inmates with stable religious assistance and moral support delivered by adequately trained and qualified ministers of worship (*d'Arienzo 2023*).

IV. THE COOPERATION BETWEEN RELIGIOUS COMMUNITIES AND PUBLIC AUTHORITIES FOR THE PREVENTION OF TERRORISM INSPIRED BY RELIGIOUS FUNDAMENTALISM

The shared use or repurposing of worship spaces among different religious groups have proven particularly effective in promoting peaceful coexistence. The shared management of a place of worship, or the reassignment of a disused one to a recently established religious community, constitutes a powerful tool for dialogue and inclusion (Dimodugno 2022). By addressing the difficulty some religious groups face in accessing suitable worship spaces, such practices contribute to public security by reducing tensions linked to exclusion or marginalization and by promoting mutual respect and understanding.

From this perspective, the shared use of places of worship acquires strategic importance, as it concretely contributes to building a more cohesive, inclusive, and secure social environment. The sharing of religious spaces — whether among different communities or with the support of public institutions — transforms potential places of division into spaces of encounter and mutual knowledge.

From a security standpoint, the regulated and transparent management of worship spaces helps prevent isolation and radicalization. Moreover, it enables public institutions to maintain ongoing dialogue with all religious communities, fostering collaboration and preventing situations in which the absence of suitable worship spaces might drive communities to gather in informal or unmonitored

settings — contexts that could become fertile ground for extremist messages or social conflict.

CONCLUSION

From the various areas explored, it clearly emerges that cooperation between the State and religious denominations is crucial in preventing conflict, promoting intercultural dialogue, and strengthening social cohesion — all of which are essential elements for ensuring collective security.

The examples analyzed demonstrate that religious actors, when engaged in structured and transparent forms of collaboration with public authorities, can play a decisive role in safeguarding the legal order and fostering peaceful coexistence.

The Church's commitment to preventing mafia infiltration, the Holy See's alignment with international anti-money-laundering standards, the active participation of Islamic communities in countering radicalization, and the shared use or repurposing of worship spaces all highlight how religious communities function not as marginal participants but as indispensable partners in pursuing the common good. These experiences show that security policies are most effective when they integrate the cultural, ethical, and social resources that religious groups can offer — particularly in those contexts where institutions alone may struggle to reach vulnerable or marginalized populations.

Furthermore, cooperation with religious denominations contributes to building a preventive security model rooted not only in repression but also in social inclusion, trust-building, and the dissemination of shared civic values. By promoting legality, transparency, and mutual understanding, such collaboration helps neutralize the risk factors that generate social fragmentation, criminal infiltration, or extremist drift. It also strengthens institutional legitimacy, fosters a culture of responsibility, and reinforces the sense of belonging to a community united around democratic principles.

In this light, the partnership between the State and religious communities should be understood as an essential component of a broader strategy aimed at enhancing the resilience of society as a whole. When adequately supported and regulated, this cooperation not only protects public order but also enriches the social fabric, contributing to the development of an inclusive and pluralistic environment in which diversity is recognized as a resource rather than a threat.

BIBLIOGRAFIE

1. Balsamo Fabio, *Le normative canoniche antimafia*, Luigi Pellegrini, Cosenza, 2021;
2. Balsamo Fabio, *Chiesa cattolica e contrasto a corruzione e mafie. Il contributo del diritto canonico,* Coscienza e libertà, 70, 2025;

3. Balsamo Fabio, *Delitto di turbatio sacrorum e strumentalizzazione mafiosa dei riti religiosi: la tutela del sentimento religioso collettivo nella più recente giurisprudenza della Corte di Cassazione*, Diritto e Religioni, 2, 2021;
4. d'Arienzo Maria, *Pluralismo religioso e dialogo interculturale. L'inclusione giuridica delle diversità*, Luigi Pellegrini, Cosenza, 2018;
5. d'Arienzo Maria, *Dialogo interculturale, mediazione giuridica e integrazione sociale*, Diritto e Religioni, 2, 2015, pp. 420-437;
6. d'Arienzo Maria, *La circolarità dei «modelli culturali e giuridici» nelle recenti riforme di diritto penale vaticano, canonico e italiano. Brevi spunti di riflessione*, Diritto e Religioni, 1, 2022;
7. d'Arienzo Maria, *Le nuove forme della negoziazione bilaterale Stato-confessioni religiose nell'ordinamento giuridico italiano*, in F. Oliosi (a cura di), Diritto, religione, coscienza: il valore dell'equilibrio. Liber Amicorum per Erminia Camassa, Mucchi Editore, Modena, 2023.
8. d'Arienzo Maria, *La nuova Legge Fondamentale dello Stato della Città del Vaticano del 2023*, Diritto e Religioni, 2, 2023.
9. Dimodugno Davide, *Ecclesiastical properties as common goods. A challenge for the cultural, social and economic development of local communities*, Stato, Chiese e pluralismo confessionale, Rivista telematica (www.statoechiese.it), 12, 2022;
10. Durisotto David, *SCV e alcune recenti evoluzioni del diritto vaticano*, Diritto e Religioni, 1, 2023;
11. Fuccillo Antonio, *Proteggere per promuovere: la Cassazione «scuda» il sentimento religioso*, Diritto e Religioni, 2, 2021;
12. Mantineo Antonino, *La condanna della mafia nel recente Magistero: profili penali canonistici e ricadute nella prassi ecclesiale delle Chiese di Calabria e Sicilia*, Luigi Pellegrini Editore, Cosenza, 2017;
13. Ognibene Salvo, *Diritto canonico e contrasto alle mafie. Riflessioni tra passato e futuro nel mondo ecclesiastico di fronte al fenomeno mafioso*, Diritto e Religioni, 2, 2017;
14. Rivetti Giuseppe, *Stato Città del Vaticano, Santa Sede e normativa antiriciclaggio. Produzione legislativa e riferimenti giuridici tra specificità funzionali e complessità strutturali*, Diritto e Religioni, 1, 2013.
15. Sarais Alessio, *La valutazione di Moneyval nei confronti della Santa Sede e dello Stato della Città del Vaticano in materia di lotta contro il riciclaggio dei capitali ed il finanziamento del terrorismo*, Il diritto ecclesiastico, 1, 2012.
16. Zannotti Roberto, *Le riforme penali vaticane*, Diritto e Religioni, 1, 2022.

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

PUBLIC SECURITY AND COOPERATION BETWEEN STATE AND RELIGIOUS DENOMINATIONS

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 190-204

GEOPOLITICS OF INTERNATIONAL RELATIONS FROM THE PERSPECTIVE OF THE CONFLICT IN UKRAINE

M. DINCĂ

Received 24.11.2025; accepted 19.12.2025
First online publication: 20.12.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.296

Col.(r) PhD. Eng. Marian DINCĂ
University of Oradea, associate professor
E-mail: mariandinca2006@yahoo.com
ORCID ID: https://orcid.org/0000-0003-3538-0739

Abstract

The paper analyzes in-depth the impact of the conflict in Ukraine on the geopolitics of international relations, highlighting how this war has accelerated structural transformations in the global system. Since Russia's invasion in 2022, the confrontation has produced a series of significant changes in the balance of power, international law norms, and strategic alliance configurations. The study explores the military, economic, energy, and diplomatic dimensions of the conflict, as well as its implications for collective security and the conventional international order. Through an interdisciplinary approach, the paper highlights the return to a logic of realpolitik, the rise of a multipolar world, and the redefinition of national interests in a context marked by uncertainty and global polarization. Finally, possible scenarios for the evolution of the international system are discussed, between institutional reform and systemic confrontation.

Key words: *geopolitics, conflict in Ukraine, international relations, international security, world order.*

INTRODUCTION

In recent decades, the international system has undergone profound transformations, marked by the emergence of new global powers and the redefinition of geopolitical balances. The conflict in Ukraine, which broke out in 2014 and escalated in 2022, is an emblematic expression of these changes, illustrating the tensions between democratic and authoritarian values, as well as the competition for influence and security in Eastern Europe.

This conflict is not just a regional issue, but a phenomenon with major implications for the international order, requiring a complex and multidimensional analysis. Through this approach, we aim to investigate international relations from the geopolitical perspective of the Ukrainian conflict, identifying the determining factors, the actors involved, and the global consequences.

In addition to the tragedies caused by any armed conflict, through material destruction and inevitable loss of human life, the war in Ukraine represents a real turning point in the geopolitics of international relations, with major implications for global security architecture, regional alliances, and the international order. From a purely theoretical perspective of security studies, this conflict can be analyzed through the lens of realism theories and regional complexity.

In terms of European geopolitics and security, the conflict in Ukraine has emphasized NATO's role as the main guarantor of security in Central and Eastern Europe. Countries such as Sweden and Finland, traditionally neutral, have applied for membership in the alliance (already accepted as full members, Finland in 2023 and Sweden a year later), bringing about a significant change in the European security architecture.

At the same time, the European Union has intensified economic sanctions against Russia, while identifying new sources of energy to reduce/eliminate dependence on Russian resources.



Figure 1: The geopolitical and security situation in the Black Sea region,
in the context of the Russian-Ukrainian conflict.
(source: https://origins.osu.edu/review/ukraine-nutshell)

At the same time, this conflict has highlighted a geopolitical axis between Russia, China, Iran, and North Korea. This partnership, suggestively named "CRINK,"[1] represents a direct challenge, a true contempt for the international

[1] The acronym CRINK (China-Russia-Iran-North Korea) was coined in 2024 by Peter Van Praagh, president of the Halifax International Security Forum in Washington, following the Hamas attacks

order promoted by the West. For example, North Korea sent troops to support Russia (in the conflict with Ukraine), and Iran provided drones for attacks on Ukrainian territory. Cooperation within this coalition has grown steadily, as the four countries have exchanged food, oil, weapons, diplomatic support, and military assistance in a way designed to avoid Western sanctions.

I. THE DIMENSIONS OF THE CONFLICT IN UKRAINE

The military conflict initiated by the Russian Federation against Ukraine in 2014 and dramatically escalated in February 2022 has taken on multiple strategic dimensions, far exceeding the limits of a conventional confrontation. From a military perspective, Ukraine has demonstrated remarkable resilience, managing not only to reject the initial offensives of the Russian army, but also to recover strategic territories, particularly in the Kharkiv and Kherson regions, through well-coordinated campaigns supported by Western military assistance.[2] The adaptability of the Ukrainian armed forces to new tactical realities, as well as the rapid integration of NATO equipment, have been key elements in maintaining an effective line of defense.

On the other hand, Russia has gone for a wear strategy, counting on its troop numbers and its industrial and logistical capabilities. Recently, this strategy has taken the form of an intensification of massive air strikes, carried out with hundreds of Iranian-made Shahed-136 attack drones and ballistic and cruise missiles. These attacks have frequently targeted civilian infrastructure and densely populated urban areas—including cities such as Kiev, Odessa, Harkov, and Dnipro—having a severe psychological impact on the civilian population and seeking to demoralize it.[3]

In addition to the military and psychological dimensions, Russia has also exploited the economic and humanitarian dimensions of the war, using Ukraine's agricultural infrastructure as a tool for strategic pressure. Systematic attacks on grain silos, Black Sea ports, and rail and road infrastructure essential for exports have severely affected Ukraine's ability to sustain its war economy.[4] At the same time, this strategy has contributed to the destabilization of the global food market, as Ukraine was, prior to the conflict, one of the world's leading exporters of

---

in October 2023. The term, a play on words with the BRICS nations, describes "a new alignment of nations from which the strategic challenges to global democracies now come." (https://www.libertatea.ro/stiri/ce-e-crink-si-cum-functioneaza-noua-axa-care-lupta-impotriva-ordinii-mondiale-5251777).

[2] Institute for the Study of War (ISW), *Ukrainian Counteroffensives 2022–2023*, https://understandingwar.org

[3] Human Rights Watch, *Civilian Harm from Russian Air Strikes in Ukraine*, 2023.

[4] European Council on Foreign Relations (ECFR), *Weaponising Food: Russia's Targeting of Ukraine's Agricultural Infrastructure*, 2023.

wheat, corn and sunflower oil.[5] The regions most affected by this induced food crisis were the countries of North Africa, the Sahel, and the Middle East, which depend significantly on imports from the Black Sea region.



Figure 2: The economic and destructive dimension of the conflict in Ukraine.
(source: https://www.saab.com/da/markets/danmark/press-releases/seabed-warfare)

II. THE INVOLVEMENT OF GLOBAL ACTORS IN THE CONFLICT IN UKRAINE AND THE BALANCE OF POWER

The conflict initiated by the Russian Federation against Ukraine in February 2022 is not only a regional confrontation, but also reflects a systemic crisis of the international order. Since the beginning of the invasion, the conflict has quickly become a catalyst for the reconfiguration of the global balance of power, in a context where the major powers are disputing not only regional influence, but also the model of global governance.

The Russian Federation – geopolitical revisionism and challenging the international order

Russia justified its invasion of Ukraine with rhetoric focused on national security, the "denazification" of Kiev, and the protection of the russophone population.[6] In essence, however, the military action reflects a revisionist vision that aims to reconfigure spheres of influence in the former Soviet space and counteract the expansion of NATO and the European Union.

[5] Food and Agriculture Organization (FAO), *The Importance of Ukraine and the Russian Federation for Global Agricultural Markets and the Risks Associated with the Current Conflict*, 2022.
[6] Pomerantsev, Peter. *This Is Not Propaganda: Adventures in the War Against Reality*, Faber & Faber, 2019.



Figure 3: The main security interests of the Russian Federation
(source: https://cadranpolitic.ro/interesele-legitime-de-securitate-ale-rusiei-analiza-geopolitica-si-istorica/)

The Kremlin is trying to force a multipolar order based on power hierarchies and regional domination, which goes against the UN Charter's principles of sovereignty and territorial integrity.

The United States and NATO – defending the rules-based international order

The United States and its NATO allies have taken a firm stance in support of Ukraine, providing extensive military, financial, and informational support. By 2025, the US had provided over $70 billion in military and economic aid to Ukraine.[7] NATO has significantly strengthened its eastern flank by deploying troops and equipment to Poland, Romania, and the Baltic states, enhancing the Alliance's deterrence capability.[8]

The West's involvement is not only an expression of solidarity with Ukraine, but also a defense of the liberal international order, where borders cannot be changed by force.

The European Union – from economic actor to geopolitical power

The European Union reacted quickly and unanimously, imposing successive packages of economic sanctions on Russia, providing logistical and financial support to Ukraine, and opening up real prospects for European integration.[9] At the same time, the war has accelerated common energy policies, drastically reducing dependence on Russian gas and diversifying supply sources.[10]

[7] Congressional Research Service (CRS), *U.S. Security Assistance to Ukraine*, updated August 2025.
[8] NATO, *Strengthening the Eastern Flank: NATO's Deterrence Posture*, www.nato.int
[9] European Commission, *EU support to Ukraine*, 2024, https://europa.eu
[10] International Energy Agency (IEA), *Europe's Energy Crisis Response*, 2023.

However, internal tensions have arisen between member states, reflecting divergent interests in managing the crisis – especially with regard to military support and the economic costs of sanctions.

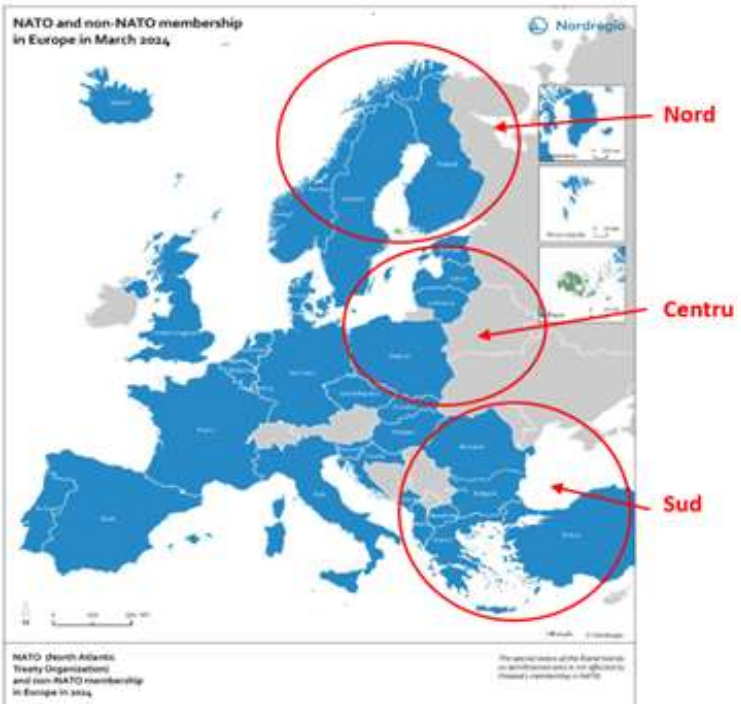


Figure 4: The NATO eastern flank
(source: https://www.contributors.ro/wp-content/uploads/2024/03/Imagine1-4.png)

China – strategic neutrality and geopolitical calculation

China has adopted an ambiguous position, claiming neutrality but indirectly supporting the Russian Federation through economic cooperation and anti-Western rhetoric. Although Beijing has avoided arms deliveries, it has maintained strong trade relations with Moscow and harshly criticized Western sanctions. For China, the conflict in Ukraine is a geopolitical case study with direct implications for the situation in Taiwan and the balance of power in the Indo-Pacific region.

The Global South – pragmatic positions in a multipolar system

Countries in the Global South – India, Brazil, South Africa, Turkey – have adopted nuanced positions, oscillating between condemning the aggression and refusing to align themselves with Western sanctions. The motivations of these states are often economic, historical, or strategic in nature, reflecting an increasingly multipolar world in which the West is no longer perceived as the sole

benchmark of legitimacy.[11] At the same time, these countries are using their position as "influential neutrals" to negotiate economic advantages and geopolitical status.

The balance of power – an international order in transition

The involvement of these global players confirms that the international system is passing through a phase of profound transition. We are witnessing a marked polarization between two rival blocs: on the one hand, the liberal-democratic West; on the other, an emerging authoritarian bloc comprising Russia, China, Iran, and North Korea.[12] At the same time, a third pole – that of non-aligned or pragmatic states – is gaining influence, contributing to the fragmentation of international norms and the dilution of global consensus on international law.

The war in Ukraine is thus becoming more than a military conflict: it is an ideological and geopolitical battle for the model of order that will dominate the coming decades. Depending on the outcome and the ability of the actors involved to maintain their positions, we may witness either a revalidation of international norms or a dangerous drift towards a chaotic system dominated by force and unilateral interests.

III. THE IMPACT OF THE CONFLICT IN UKRAINE ON INTERNATIONAL RELATIONS

The Russian invasion of Ukraine, which began on February 24, 2022, was not only a serious violation of international law, but also a turning point in the dynamics of international relations. This conflict has called into question the foundations of the post-Cold War global order, exacerbating geopolitical tensions, fragmenting the international system, and reigniting competition between the major powers. Its consequences are being felt in the military and strategic spheres, as well as in the economic, energy, and diplomatic spheres, affecting global and regional balances. This chapter will analyze the main transformations generated by the war in Ukraine on the international system, with a focus on the reconfiguration of alliances, the evolution of international norms, and the emergence of new centers of power in an increasingly multipolar and unstable context.

Transformations of the international order and balance of power

The war in Ukraine has acted as a catalyst for profound transformations in the international system, accelerating the transition from a unipolar global order, dominated by the United States in the immediate aftermath of the Cold War, to a

[11] Chatham House, *The Global South and the War in Ukraine: Between Neutrality and Strategy*, 2023.
[12] Foreign Affairs, *The New Global Polarization: Liberalism vs. Authoritarianism*, July-August 2024.

multipolar order, characterized by strategic competition between major powers and the contestation of the liberal global architecture. In this new configuration, actors such as China, India, Brazil, Turkey, and South Africa are claiming an increasingly active role in international affairs, calling into question both the legitimacy of Western supremacy and the effectiveness of the multilateral institutions founded in 1945.[13]

This geopolitical reconfiguration comes at a time of crisis for international norms. The basic principles of international law—such as sovereignty, territorial integrity, and the prohibition of aggression—have been seriously violated by the Russian Federation in the case of Ukraine, without collective security mechanisms being able to intervene effectively. The paralysis of the UN Security Council, caused by Russia's veto as a permanent member, has illustrated the structural limitations of the current system.[14] This dysfunction raises fundamental questions about the need to reform the international order and redefine the concept of global legitimacy.

At the same time, the conflict has led to a revival of Western solidarity and a reaffirmation of traditional alliances. NATO, considered by some analysts to be in decline before 2022, has strengthened its strategic position by expanding with the accession of Finland and Sweden, two formerly neutral states, in what represents a historic change in the European security landscape.[15] Coordinated military support for Ukraine and member states' defense investments have marked a revitalization of the Alliance's deterrent capability.

On the other hand, Russia, isolated from the West, has strengthened its strategic relationship with China, based on common interests in undermining American hegemony and challenging the liberal global order. Sino-Russian cooperation has expanded beyond the economic sphere to include political-diplomatic, energy, and even military components. At the same time, alternative organizations such as BRICS (Brazil, Russia, India, China, South Africa) have become platforms for expressing dissatisfaction with the Western-led international order. Initiatives such as the expansion of BRICS or calls for a new global financial architecture reflect these states' tendency to negotiate a more influential position in the international system.[16]

Thus, the conflict in Ukraine is not just an isolated episode in Eastern Europe, but a mirror of a world in transition. In the long term, the direction in

[13] Zakaria, Fareed. *The Post-American World*. W. W. Norton & Company, 2008. See also: Mahbubani, Kishore. *Has the West Lost It?*. Penguin Books, 2018.

[14] United Nations. "Veto Initiative – Security Council Reform." https://www.un.org/securitycouncil/reform.

[15] NATO. "Finland and Sweden's Accession to NATO – Strategic Implications." NATO Official Portal, 2023.

[16] BRICS Policy Center. "The Expansion of BRICS and the Emerging Multipolar Order." Policy Brief, 2024.

which the balance of power will tilt will depend on the ability of global actors to adapt to new realities, reform multilateral institutions, and reaffirm the fundamental norms of international relations. In the absence of a global consensus on values and mechanisms for conflict resolution, the international order risks becoming increasingly fragmented and volatile.

Economic, energy, and diplomatic reconfigurations in the context of the conflict in Ukraine

The war in Ukraine has generated major transformations in global economic dynamics, particularly in terms of trade relations, energy flows, and international diplomatic architecture, especially since many countries are dependent on agricultural products from Russia and Ukraine.

These changes highlight a process of recalibration of international relations, in which national interests are returning to the forefront, to the detriment of the economic interdependence promoted by globalization.

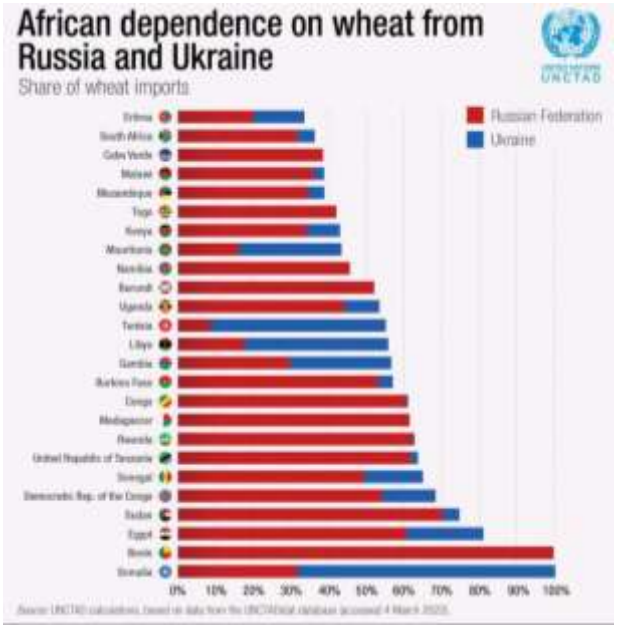


Figure 5: African countries' dependence on agricultural products from Russia and Ukraine (source: https://x.com/cobbo3/status/1504548846835314701)

Economic and energy disengagement between Russia and the West

Economically, the conflict has caused a deep rift between the Russian Federation and the Western bloc, with long-term implications for trade flows, investment, and international regulations. The European Union, in particular, has been forced to reduce its critical dependence on Russian energy resources, especially natural gas and oil, which before 2022 accounted for over 40% of the

EU's energy imports.[17] This recalibration led to an acceleration of investment in alternative energy infrastructure, including liquefied natural gas (LNG) terminals, energy partnerships with countries in the Middle East and North Africa, and a forced transition to renewable energy sources.[18]

At the same time, Russia was forced to refocus its energy and trade exports to Asia, particularly to China and India. For example, Russian oil deliveries to India increased more than tenfold between 2021 and 2024, and China became the main beneficiary of Russian natural gas through pipelines from Siberia. These trade reconfigurations have strengthened alternative economic axes to the traditional transatlantic circuit, but they have also come at a significant cost to the Russian economy, which has faced sanctions, technology embargoes, and loss of access to Western markets.

Economic regionalization and decline of globalization

These changes have accelerated a broader process of regionalization of the global economy, reflected in a preference for short supply chains, strategic partners, and bilateral trade agreements, to the detriment of neoliberal globalization and open trade that had dominated recent decades. The concept of economic interdependence, promoted as a guarantee of peace in the post-Cold War period, has been called into question by the geopolitical reality of Russian aggression.[19] In this context, states have redefined their economic priorities in terms of strategic resilience, vulnerability reduction, and economic security.

This trend has also fueled a redefinition of foreign policy, which is becoming increasingly anchored in the logic of national interest, geared toward gaining strategic advantage and reducing exposure to external risks. Multilateral cooperation, the foundation of the post-1945 international order, seems increasingly fragile, replaced by circumstantial, transactional alliances and selective diplomacy based on temporarily converging interests.

Strategic neutrality and the crisis of diplomatic legitimacy

On the diplomatic front, many countries in the Global South—notably India, Brazil, Turkey, and South Africa—have avoided taking a clear stance on the invasion of Ukraine, adopting *a strategy of pragmatic neutrality*. These positions reflect the complexity of bilateral relations with Russia, energy and economic interests, but also a certain reluctance towards Western positions, sometimes perceived as selective and dominated by double standards.[20]

---

[17] International Energy Agency (IEA), *Europe's Energy Crisis Response after Russia's Invasion of Ukraine*, 2023.

[18] European Commission, *REPowerEU Plan: Accelerating Clean Energy Transition*, 2023, https://ec.europa.eu

[19] Waltz, Kenneth. *Theory of International Politics*. Addison-Wesley, 1979. See also Nye, Joseph S. *The Future of Power*, PublicAffairs, 2011.

[20] Chatham House, *The Global South and the Ukraine War: Strategic Neutrality and the Multipolar Order*, Policy Report, 2024.

This erosion of global consensus in the face of blatant aggression complicates the effective enforcement of international sanctions and undermines the authority of fundamental norms of international law. In a system where there is no consensus on the definition and sanctioning of aggression, the legitimacy of collective action is challenged and the instruments of coercive diplomacy become ineffective.[21]

Thus, the war in Ukraine has accelerated a *profound economic and diplomatic reconfiguration* with lasting implications for global governance. The polarization of the international system and the emergence of alternative economic and strategic blocs are shaping a new, more unstable and fragmented geopolitical landscape, in which the rules of the game are being renegotiated by actors with divergent visions and interests.

Implications for international security and prospects for the global system

The conflict in Ukraine has had a profound impact on *international security*, weakening multilateral norms and fueling a return to *the geopolitical logic of spheres of influence*, characteristic of the 20th century. The principle of sovereignty—the cornerstone of the modern international order—has been flagrantly violated by the Russian Federation's invasion, and collective security mechanisms, led by the United Nations, have proven ineffective in stopping the aggression.[22]

This situation reflects the limitations of the current international system, based on a precarious balance between international law and power relations. The UN Security Council, dominated by the veto power of the major powers, has been paralyzed by Russia's opposition, which has prevented any significant coercive action against the aggressor. In the absence of effective enforcement mechanisms, the war in Ukraine becomes a concrete example of the crisis in the global governance system.

The return of realpolitik and the reconfiguration of strategic alliances

This erosion of international norms favors *the return of a realistic paradigm*, in which military power, alliances, and strategic capabilities take precedence over normative values such as democracy, the rule of law, and respect for human rights. From the perspective of offensive realism, Russia's actions can be interpreted as an attempt to secure its sphere of influence in the face of NATO expansion, while the West's reaction reflects *the logic of the balance of power.*

At the same time, the conflict has led to a *restructuring of international security relations*. NATO has strengthened its eastern flank and undergone historic expansion with the accession of Finland and Sweden, while Russia has

[21] United Nations, *Challenges to Collective Security and the Role of Sanctions*, Report to the General Assembly, 2023.

[22] United Nations. *Charter of the United Nations*, Article 2(4), 1945. See also: Chesterman, Simon. *The UN Security Council and the Rule of Law*, United Nations University, 2008.

sought alternative alliances, particularly with China, Iran, and North Korea. This process has contributed to the polarization of the global system, with increasingly visible trends toward *the fragmentation of the international order* into rival blocs.[23]

The risk of a frozen conflict and danger of precedent

In the long term, the war in Ukraine risks evolving into a frozen conflict, similar to those in Transnistria, Abkhazia, South Ossetia, or the Korean Peninsula. Such a scenario would maintain a high level of regional instability, with the potential for escalation at any time, and would set a dangerous precedent for other sensitive geopolitical situations, such as Taiwan, the Western Balkans, or the Middle East, where territorial status and sovereignty are contested.[24]

This possibility raises concerns about the normalization of geopolitical violence and the erosion of non-aggression norms. In the absence of a sustainable negotiated solution and solid security guarantees, Ukraine could remain trapped in a negative security regime marked by chronic insecurity, militarization, and economic stagnation.

Alternative perspectives: reform or systemic confrontation

In a favorable scenario, the conflict in Ukraine could become the catalyst for structural reform of international institutions, through the modernization of the UN, the adaptation of the collective security system, and the strengthening of conflict prevention mechanisms. This direction would involve reconsolidating international norms, relaunching multilateral cooperation, and including new actors (such as states from the Global South) in the global decision-making architecture.[25]

In a pessimistic scenario, however, the world could be heading towards a new period of systemic confrontation, marked by competition between rival blocs, an arms race, and the continued destabilization of geopolitical border regions. The similarities with the Cold War period—including ideological rhetoric, border militarization, and coercive diplomacy—are becoming increasingly striking, even if the current multipolar context is more complex and unpredictable.

In conclusion, the implications of the conflict in Ukraine for international security extend beyond European borders and outline a systemic crisis in which the rules of the world order are being challenged and the future depends on the international community's ability to respond to this challenge in a unified and coherent manner.

---

[23] NATO. *Strategic Concept 2022*. Bruxelles: NATO, 2022.

[24] International Crisis Group. *Frozen Conflicts in Eurasia: Risks and Opportunities*, Policy Brief, 2023.

[25] Acharya, Amitav. *The End of American World Order*, Polity Press, 2014. See also: Thakur, Ramesh. *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect*, Cambridge University Press, 2016.

CONCLUSION

The conflict in Ukraine has had a catalytic effect on developments in the international system, accelerating the transition from a unipolar global order dominated by the United States to a multipolar, fragmented, and unstable one. The Russian invasion was not only a military aggression against a sovereign state, but also a direct challenge to the norms and institutions that underpinned the post-Cold War international order.

Geopolitically, the war has reactivated the logic of spheres of influence and intensified competition between the major powers. Traditional alliances, such as NATO, have been strengthened, while new strategic axes (such as the Russian-Chinese one) have begun to take shape. The Global South has taken a more nuanced position, reflecting an increasingly multipolar world that is less dominated by global consensus.

Economically and energetically, the conflict has caused a deep rift between Russia and the West, accelerated the regionalization of trade relations, and brought the concept of economic security to the forefront. Diplomatically, the ability of multilateral institutions—especially the UN—to manage major conflicts has been seriously called into question.

The war in Ukraine is more than a regional crisis: it is a symptom of the crisis in the current international order. How this conflict is managed, as well as the ability of international actors to rebuild a framework for cooperation and collective security, will decisively influence the architecture of international relations in the coming decades.

In this context, it is essential that policymakers—both at the national and international levels—adopt a strategic, coherent, and long-term approach. Firstly, it is necessary to strengthen conflict prevention mechanisms and reform the collective security architecture by strengthening the capacity of international institutions such as the UN, OSCE, and NATO to respond effectively to systemic threats.

Romania must adopt a proactive, coherent foreign and security policy that is adapted to the new geopolitical reality. As a state located on the eastern border of NATO and the European Union, Romania has a strategic role not only in ensuring regional stability, but also in defending Euro-Atlantic values and interests.

In this regard, it is recommended to strengthen national defense capabilities, intensify cooperation within NATO, and develop bilateral and regional partnerships with key states on the eastern flank. Romania should also actively support the European path of Ukraine, the Republic of Moldova, and other countries in the Eastern Partnership, contributing to the expansion of the area of stability and democracy in its eastern neighborhood.

In terms of the economy and energy, it is necessary to diversify supply sources and strengthen regional interconnection infrastructure in order to reduce

vulnerabilities to geopolitical blackmail. At the same time, Romanian diplomacy must intensify its efforts within international organizations and actively promote the reform of the collective security system so that it more accurately reflects current realities and risks.

In an increasingly fragmented and unpredictable world, Romania must remain firmly committed to defending the rules-based international order, acting as a factor of stability, cohesion, and solidarity within the Euro-Atlantic community.

BIBLIOGRAFIE

1. Acharya, Amitav. The End of American World Order. Cambridge: Polity Press, 2014;
2. Chesterman, Simon. The UN Security Council and the Rule of Law. Tokyo: United Nations University, 2008;
3. Kissinger, Henry. Leadership: Six Studies in World Strategy. New York: Penguin Press, 2022;
4. Mahbubani, Kishore. Has the West Lost It?. London: Penguin Books, 2018;
5. Mearsheimer, John J. The Great Delusion: Liberal Dreams and International Realities. New Haven: Yale University Press, 2019;
6. Pomerantsev, Peter. This Is Not Propaganda: Adventures in the War Against Reality. London: Faber & Faber, 2019;
7. Stuenkel, Oliver. The BRICS and the Future of Global Order. Lanham, MD: Lexington Books, 2022;
8. Thakur, Ramesh. The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect. Cambridge: Cambridge University Press, 2016;
9. Zakaria, Fareed. The Post-American World. New York: W. W. Norton & Company, 2008;
10. "The New Global Polarization: Liberalism vs. Authoritarianism." Foreign Affairs, July–August 2024;
11. Zakaria, Fareed. "The Rise of the Rest 2.0." Foreign Affairs, 2023;
12. Trenin, Dmitri. "Frozen Conflicts and Russia's Strategic Calculus." Carnegie Moscow Center, 2022;
13. "The Global South and the War in Ukraine: Between Neutrality and Strategy." Chatham House, 2023;
14. "Frozen Conflicts in Eurasia: Risks and Opportunities." International Crisis Group, Policy Brief, 2023;
15. "The Expansion of BRICS and the Emerging Multipolar Order." BRICS Policy Center, Policy Brief, 2024;
16. Charter of the United Nations. Art. 2(4), 1945. https://www.un.org.
17. European Commission. REPowerEU: A Plan to Rapidly Reduce Dependence on Russian Fossil Fuels. Brussels, 2022;

18. Food and Agriculture Organization (FAO). The Importance of Ukraine and the Russian Federation for Global Agricultural Markets and the Risks Associated with the Current Conflict. Rome, 2022;
19. Human Rights Watch. Civilian Harm from Russian Air Strikes in Ukraine, 2023;
20. International Energy Agency (IEA). Russia's Energy Exports and Shifting Global Flows, 2023;
21. NATO. Strategic Concept 2022. Brussels: NATO, 2022;
22. NATO. Finland and Sweden's Accession to NATO – Strategic Implications. NATO Official Portal, 2023. https://www.nato.int;
23. NATO. Strengthening the Eastern Flank: NATO's Deterrence Posture. NATO Official Website, 2023;
24. United Nations. Veto Initiative – Security Council Reform. https://www.un.org/securitycouncil/reform;
25. United Nations Security Council. Resolutions Blocked by the Russian Veto, 2022;
26. Congressional Research Service (CRS). U.S. Security Assistance to Ukraine. Updated August 2025;
27. European Council on Foreign Relations (ECFR). Weaponising Food: Russia's Targeting of Ukraine's Agricultural Infrastructure, 2023;
28. Institute for the Study of War (ISW). Ukrainian Counteroffensives 2022–2023. https://understandingwar.org.
29. Kissinger, Henry. Interview with The Economist, 2022, on the weakening of the international order.

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://ijlso.ccdsara.ro/
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 205-222

CRIMINAL LAW CHALLENGES CAUSED BY MIGRATION FOR WORK

E.-A. IANCU

Received 27.06.2025; accepted 21.07.2025
First online publication: 21.07.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.259

Elena-Ana IANCU
PhD. Professor Habil. (Law)
"Aurel Vlaicu" University of Arad, Romania, Faculty of Humanities and Social Sciences/"Dunărea de Jos" University of Galați, Doctoral School of Social and Human Sciences
E-mail: elena.iancu@uav.ro
ORCID ID: https://orcid.org/0000-0002-5921-2222

Abstract

In the first part of the study, we make reference to migration theories that are enshrined in scientific research, because we consider that a better comprehension of the context in which people choose and decide to migrate (emigrate-immigrate) would bring solidarity to the forefront. We also emphasise the importance of the existence of an appropriate legal framework where public safety, national security and legal security can be ensured.

Knowing the forms of communication in intra-institutional and inter-institutional relations and when we are available to investigate our inner selves to find the resources required in order to act on a daily basis to increase the good around us as long as, on a social-professional level, we are pleased with our accomplishments, is also important so that we can avoid manipulation by various means.

We will manage to be active in the line of preventing criminal offenses, of detecting acts of violence committed in different environments and sometimes, if we are part of certain structures or entities, we will also be involved in complex processes aimed at combating crimes, maintaining appropriate social dialogue, as well as constitutional order and social order.

In the final part of the article, we will present a few challenges raised by migration, with reference to legal rules of criminal law, labour law or included in the special law with legal provisions on preventing and combating domestic violence. Being aware of influence factors such as: race, language, religion, nationality, financial status, level of education and type of skills held, is an

important aspect, knowing that social micro-groups change in the context of migration (emigration-immigration).

Key words: *offence, migration, clandestine workers, discrimination*

INTRODUCTION

In the course of time, migration has led to positive transformations in the countries of origin and/or of destination, as well as to challenges for the authorities, institutions, entities that are responsible for ensuring social order, public order, legal order and for protecting the fundamental rights and freedoms of human beings.

We have outlined a few challenges that we identified in the field of migration, while taking into account legal rules existing in labour law, criminal law and in the line of prevention and combat of domestic violence. We have also taken into consideration, on the one hand, possible situations in which a human being might find themselves in the context of migration, and on the other hand, the various standpoints (as a civil servant) from which we could express opinions regarding this topic.

References to the types of migrants[1] in correlation with the alternative typologies of migration contribute to understanding responses/statements even when they are taken out of context, as well as to distinguishing honest, clear, transparent communication in the public space, in the social micro-groups where we live our private lives and/or carry out our professional activities.

The alternative typologies of migration may be determined by multiple factors, among which I mention: the judicial stability, economic stability and political stability of the generating countries and receiving countries. As a result, by knowing them, the responses elaborated in this respect, the opinions and/or advice transmitted via various media of communication could be decoded more successfully, manipulation could be diminished and personal protection could be ensured more effectively.

In this study, we intend to analyse international migration for work and migration for education, and to this end, we have placed at the centre of our study a primary need, namely *communication* on the topic of migration. Communication must be improved and intensified within educational institutions that provide education starting from the primary (elementary) cycle, by using age-appropriate content, and by choosing words conscientiously and in good faith, being aware that the national interests of countries vary in relation to migration.

[1] Examples of these may be: colonists, contract-workers, professionals, experts, cross-border assignees, clandestine workers, repatriated persons, international protection-seekers (asylum seekers), refugees.

Documentation and the monitoring of statistical data reflecting the situation recorded form the basis for the debates, while keeping in mind that there are also unknown figures, which are not included in any statistics.

The capacity in which communication on the topic of migration takes place might be one of the following:

- specialist within an authority with competences in the line of migration in the fields of public order, public safety, national security;
- Romanian employer, Romanian employee, foreign employee, stateless person, former migrant (repatriated) emigrant, immigrant, future migrant, displaced person, member of the migrant's (emigrant's/immigrant's) family;
- specialist in an educational institution that is a partner in academic/student mobility programmes, professional networks of advanced research and innovation, as well as providers of educational services, in general;
- representative of an institution or entity in charge of substantiating and elaborating national policies and strategies;
- participant in international diplomatic missions/theatres of military operations/information-gathering special missions;
- specialist within entities handling the integration of persons who request some type of protection or who have obtained such protection;
- athletes, actors, artists, clergy members;
- students included in international mobility programmes;
- worker/operator within an entity that is authorised to place people in the labour market;
- wrongdoers attempting to evade criminal liability or the execution of a punishment or aiming to place their assets in *"safe areas"*.

The impact of migration (***Kozlovskyi S. et al., 2024, pp. 614-615)*** on the economic development of European countries is, at once, questionable and promising, being felt as having both a negative and a positive influence. With reference to the labour market, migration has a positive impact on the destination countries, it provides workforce in the markets with vacant jobs, ensuring that persons with special work skills are admitted who fill in skilled and unskilled job roles, with some people emigrating, while others are immigrating. At the same time, there is a growing need in the host countries to secure the necessary resources in the fields of healthcare and social security, which might be considered to have a negative impact on economic development.

In studies that present the basic concepts underlying the legitimacy of the authorities acting in the processes specific to immigration management, it is emphasised that the requirements of democracy and justice are the most urgent within societies, "according to a standard liberal argument, and holding the decision-making power with regard to the admission of immigrants is imperative

– one might say, even compulsory, for the very ability to satisfy such requirements", but scepticism is expressed with regard to the concrete manner in which certain authorities act (*Schmid L., 2023, p. 4*).

I. MIGRATION THEORIES AND INDIVIDUAL ACCOUNTABILITY AWARENESS

The awareness of individual accountability drives our searches in one direction or another over a lifetime. When we are in a position to consider the impact migration might have in the process of sustainable development of our communities, information and documentation, based on the selection of scientific sources, trustworthy sources, including in the process of crime investigation, hold a prominent place.

When decoding communication and when trying to transmit a clear, correct message, that is as comprehensible as possible, within the public space, we must take into account the type of migration we refer to, meaning that a distinction must be made between individual migration or group migration; then the general coordinates which define it as legal or illegal migration should be indicated. One should also answer other questions, such as: is this a phenomenon? Is it a migrant influx? Is it emigration or immigration? Is it domestic or international migration?

Therefore, constantly providing information, including by statistical documentation in the field of migration (emigration-immigration) at county, national, European and/or international level, increases the degree of self-confidence, of trust in others, residents or persons from third-party countries who intend to stay in a country of destination or who are transiting a state in order to reach a country of destination.

It is also necessary to analyse the various conditions of migrants (emigrant-immigrant) and to be aware that general considerations have a different value and result in changes at individual level irrespective of the situation in which one finds themselves, among the migrant's family members, potential direct, indirect or collateral victims.

These distinctions generate a level of genuine communication in the public space and/or in the social micro-groups in which we live at a given time, in relation to a given territory and the aspect of migration subject to analysis.

Moral order may be stabilised by appropriate communication done in all forms and via various media. The sets of values and moral attitudes may be more or less stable (*Laura Stielike & al., 2025, p. 2515*), and their legitimacy may be assessed differently, for various groups of immigrants, with the offering of help, of humanitarian and/or financial support for those deemed legitimate, while others are considered to be causing trouble, conflicts and instability. In the latter case, integrated interventions ensure immigration management in a given country.

Individual accountability, undissociated from collective accountability, involves integrated efforts in the field of migration management and foreigners'

integration, as well as in the acceptance or rejection of future migration (emigration-immigration) and solidarity.

Thus, objective differentiation presupposes at least a few stages in the formation of statements: the identification of facts that are comparable, meaning that they should belong to the same category, group, subgroup; data analysis and synthesis; comparing official statistical data in the matter of migration by categories, groups, subgroups; awareness of the fact that, at the same time, some Romanian citizens choose and decide to move to other countries with the intention to stay (in the destination country), and other foreign citizens arrive, voluntarily or involuntarily, on the territory of our country (as a destination country).

In light of the above, we emphasise the need to approach the various aspects of migration in relation to certain interdependent factors, namely:

- the legal aspect – if the legal framework is stable, the inhabitants will live in a climate of legal safety and, as a result, will show respect for legal rules, which will lead to legal order;
- the human aspect – if the inhabitants manage to gain a sense of personal fulfilment and are interested in finding opportunities that bring them satisfaction, they will feel safe and, thus, will act with respect for the values underlying public safety, which will lead to the assurance of public order;
- the social aspect – if the state authorities are able to carry out their activities peacefully and everyone can achieve their goals within the micro-groups in which they live and operate, they will be part of the process of building social peace. The manner in which the population structure can be altered by emigration and/or immigration might raise challenges for the defence of religious freedoms and for the respect owed to the deceased; thus, ensuring religious peace is a process that involves information, tolerance and understanding the social order.

II. LEGAL EDUCATION AND COLLECTIVE ACCOUNTABILITY

The complexity of the relation between immigration and crisis is approached from the perspective of interdependence. On the one hand, if we consider various crises (conflicts, environmental degradation, political regime changes, pandemics, economic instability), we note that these are causes of immigration. On the other hand, if we take into account migration models, we find that they lead to crises in the receiving countries/destination countries, which contributes to the appearance of challenges for preserving national security, good governance in the field of immigration, the protection of national borders, as well as for the preservation of ethnic, cultural and educational identity and integrity (*Céline Cantat, Antoine Pécoud, Hélène Thiollet, 2023, p. 627*).

Establishing relations of reciprocity, both with persons from the countries of origin and with those who are already in the destination countries as residents or

immigrants, is essential when it comes to protecting the fundamental values of a society. The existence of a legal framework that is appropriate for the new realities generated by immigration, the dissemination of legal rules via various media and providing well-trained communicators within social micro-groups, contribute to the protection of: public safety, national security, legal security.

The types of migrants require different situation approaches, judicial proceedings, inter-/intra-institutional communication/collaboration. As a result, the motive and purpose will determine, in the future, actions, inactions, or actions followed by inactions. The consequences, outcomes or states of danger will draw a fine line between legal and illegal judicial situations, making it possible for an immigrant to transition from a legal to an illegal status within a very short timeframe. The objective and subjective sides of the deeds will determine different legal classifications thereof, vacillating between deeds do not violate legal rules but do encroach upon moral rules, religious rules and/or the internal rules of social micro-groups.

Significant criteria in establishing the typology of the migrant will be: age, duration of the stay, reason for it, as well as causes and/or concurrent factors, such as: natural disasters, environmental damage, political persecution, religious persecution, wars, or in view of family reunification, for education, sport, military missions or other information-gathering/documenting missions, etc.

Determining the form of guilt (intent, fault, exceeded intent), the constituent elements of criminal offences on the basis of the concrete methods of committing the deed correlated with regulatory methods, demonstrating the cause-effect link between the migrant's (immigrant's/emigrant's) statements and the consequences will make it possible to legally classify the deed. Some examples of criminal offences related to this context are: illegally crossing the state border; migrant smuggling; identity fraud; false testimony; facilitating illegal stay in Romania; abetting a criminal.

The security structures in host countries are in the process of consolidation and constant diversification of their interventions. Thus, police structures, emergency services, customs structures, intelligence structures, quick intervention services are on the look-out for vulnerabilities and threats arising from the emigration-immigration exchange.

Intercultural interactions between residents, immigrants and tourists may give rise to unique, unexpected experiences, whether pleasant or otherwise. The impact these have on a tourist's life varies from a deep change in his/her perception to determining future changes among the residents or people living in a certain region, country or entity (*Jiyun Yu and Timothy, Jeonglyeol Lee, 2014, p. 237*).

Cultural negotiations with residents, the need to communicate on identity topics, generate new approaches in inter-human relations, lead to learning new cultural rules that might not turn out as expected, meaning that they might not

fulfil the personal needs of the parties. Dialogue, trying to obtain the best price for the services required, purchased products may all contribute to understanding migrants from a humane perspective, increasing the level of tolerance and developing friendship among different peoples.

The existential approach and the experiential approach will challenge the parties to become aware of the importance of compliance with legal rules, as an essential requirement for the existence of social order.

Furthermore, intercultural interactions between international tourists and local residents bear an influence on changing attitudes, in that they cause distinct experiences and changes in perception that may extend to external groups which include non-interactive persons, belonging or not to the same culture, speaking different languages, representing different civilisations. Thus, the need to have an existential approach arises, aimed at figuring out the relations of interdependency between residents, immigrants and tourist, while being aware that tourists will communicate their experiences and, this way, they will influence the public perception of immigrants.

Another category of persons that contribute to the formation of perceptions are immigrants aiming to pursue further studies through inter-academic mobility programmes. They choose among various opportunities and decide to enrol at a university in one country or another on the basis of a combination of factors, such as: following a member of the family, whether in direct or collateral lineage, or through an extended social network of friends; following an ascendant who had immigrated long before and who told them stories about the native land; diverse educational offers that facilitate integration in the academic community; costs and regional and local stability.

The experience they will have, together with their professional development pathway, as well as the opinions/preferences of family members and/or of the group of friends will determine return to the country of origin, the postponement of such return, the decision to stay in the country where they pursued studies or to leave for another country in search of a job/in order to take up a job.

Migration for work accounts for 70% of the total number of migrants worldwide (*Serhii Kozlovskyi et al., 2024, pp. 614-615*), who also often interact with tourists. The wishes, expectations, intentions of immigrants, to be assimilated or not in the host country, their level of education, availability to undergo lifelong training, the type of skills they acquired, their state of health will also impact their relations with residents or tourists, who might become vectors of opinion.

Knowledge of the forms of communication plays an important role in intra-/inter-institutional relations, in the development of solidarity in order to act in the spirit of respect for legal rules, contributing to the prevention of crimes, to the increase of trust in the institutions within which we operate and/or in partnering ones, among other things, through honest, objective and positive communication on the subject of migration.

Appropriate written communication, verbal and non-verbal communication with regard to various situations and multiple social roles, together with becoming familiar with the axioms of communication, will contribute to a long-term increase in human resources in public administration, in the institutions and authorities involved in the good governance of immigration.

As part of the activity carried out by the General Immigration Inspectorate[2] (IGI) in the year 2024, IGI ensured the management of the stay on the territory of Romania of 238,097 citizens from EU, EEA and UK, the number showing an increase by 17.7% as compared to 2023.

In terms of the reason for their stay in Romania, more than half of the nationals of third-party countries were in the country for employment, there was an increase by 17.3% as compared to 2023 of migrants who were family members, an increase by 9.7% of migrants for educational purposes, and an increase by 2.8% of citizens under some type of protection provided by the Romania state[3].

Registered applications for the issuance of a work permit/assignment permit increased by 6.8% in 2024 as compared to 2023. At county level, the number of registered applications increased in Bucharest, Ilfov, Maramureș, and decreased in Suceava, Satu Mare, Constanța[4].

The number of permits that may be issued to foreigners newly admitted in the labour market is established by Government Decision. For the year 2024, it was limited to 100,000 workers[5], the same as in 2023 and 2022.

Of the total applications for issuance of work permits registered in 2024, there was an increase of 4.7% in the number of employment permits issued as compared to 2023. Regarding the quota set for 2024, there was an achievement rate of 98.3% as compared to 2023, when the rate of quota achievement was 99.4%.[6]

In terms of the occupations established by the Classification of Occupations in Romania (COR), the most well-represented was that of merchandise handler, which increased by 8.6% as compared to 2023. Also, the number of couriers increased by 8.3%, the number of unskilled workers for building demolition, masonry coatings, installation of mosaic floors, wall tiles, floor tiles, hardwood floors, increased by 7.6%, the number of under-cooks increased by 6.1%, the number of unskilled workers for machine parts assembly and mounting decreased

[2] Data obtained with the support of the Immigration Police Inspectorate
[3] According to the official response received from the General Immigration Inspectorate (IGI), at my request, in the process of statistical documentation of the research
[4] Idem
[5] Government Decision no. 1338 of 29 December 2023; Government Decision no. 1448 of 08 December 2022
[6] According to the official response received from the General Immigration Inspectorate (IGI), at my request, in the process of statistical documentation of the research

by 4.7%, and the number of unskilled workers for breaking down and cutting building materials decreased by 3.7% as compared to 2023.

Unskilled work was most sought after, thus 60.5% of the permits issued were for occupations in the major group 9 of COR – Elementary Occupations.

A constant concern continues to be the need for theoretical approaches in the field of migration to be known and reported in the statistics made, thus allowing us to understand the trends, to identify the vulnerabilities of certain systems, to predict the dynamics in terms of immigration and to foresee the coverage by financial resources to be assigned to immigration control, to ensuring good governance in the line of immigration.

The types of approaches in the matter of immigration will be diverse, but social pressure, the different needs, the measures to be adopted will form a single framework within which public security, safety and order must be protected.

Microeconomic approaches will involve rational choices and decisions based on: the model of imposed obstacles, the cost-benefit model, the expected value model, the model of choice in social units/social micro-groups.

Micro-social and psychological approaches are appropriate for immigrants who choose the stress threshold model or those who have relative deprivation and frustration as a starting point.

The gravity model and the general approach of systems focusing on the relation between distance and the disposition to move around indicates the number of migratory events between two regions, taking into account the pressure to depart symmetrically with attraction.

At present, the theory of social networks is also prominent, which shows that migration is generated and maintained by migration networks which render migration chains permanent. Thus, family relations are important, but also social relations in general, meaning that immigration/emigration may be determined by the place of origin, acquaintances, friends, distant relatives.

The relation between written communication, verbal communication and non-verbal communication is significant in validating or invalidating the statements of the immigrant/emigrant. It also has an impact on improving personal and professional relations in the workplace and within the social micro-groups in which the immigrant/emigrant operates at a given time. Professional communities should also be made aware of their collective responsibility to act for the prevention and/or combating of criminal offences.

The constant exchange of messages that generates unity of views creates preliminary conditions favourable to lawful actions, harmonises knowledge regarding goals and the legal ways to achieve them, facilitates the acquisition of skills required to fulfil realistically stated and assumed expectations, homogenises groups from an affective (emotional, dominated by feelings) and a motivational perspective (opinions, interests, beliefs, attitudes), ultimately making them aware of individual accountability.

Communication on the subject of migration involves commitment and awareness of individual accountability, with information being transmitted, on the one hand, within the social micro-groups where private life unfolds, or where work is delivered, and on the other hand, within larger groups of people/communities.

Information induces a certain behaviour, the content level being represented by information data, whereas the relational level indicates the manner in which the information should be interpreted.

The attraction of talents is a constant concern of employers, but it also depends on national policies regarding migration, such as: migration in the field of workforce, migration control policies, systems existing in the field of international protection, foreigner integration policies.

Mass-media, as well as other mass information media, social networks play an especially significant role in determining the moral assessment of mobility and migrant groups (by visualising, narrating, presenting them in certain ways, and by communicating such assessments to a larger audience) (*Laura Stielike et al., 2025, p. 2515*).

III. CRIMINAL OFFENCES THAT ARE RELEVANT IN THE CONTEXT OF MIGRATION ANALYSIS

The existence of legal rules that protect social values, such as: dignity, freedom, work, family, religious liberties, national security, as well as knowledge of the abstract content thereof contribute to the prevention of criminal offences that may also be committed in the context of migration.

Of course, each value protected by the legislator may be fulfilled irrespective of the number of emigrants/immigrants who leave/are in a country, in a certain region, locality, area of a locality at a given time. But with the new factors of influence, language, religion, race, nationality, education, taking into account the motive, subjective side, purpose, as well as the differences in the perception of vulnerabilities, new challenges arise, with regard to dignity, religious liberties, the respect owed to the deceased, identity, family.

When individual accountability is not activated, collective accountability is not assumed, and understanding the environment becomes difficult, either because integration is harder, or because integration is not desired and/or overlaps social inadaptability, actions/inactions occur which may be in conflict with legal rules, and the constituent elements that give rise to a form of legal liability are met (criminal, contraventional, financial, disciplinary liability).

Legal liability may arise both when societies put in place inclusion policies and exclusion policies, being the result of the violation of legal rules by individuals, as well as by the state authorities, with fundamental rights and freedoms being thus infringed upon. Recent studies mention a new discipline of law, namely immigration law *(Vavoula N., Tsourdi L., 2025, p. 3)*, which deals

with issues related to the admissibility and status of foreigners on the national territory.

The state bodies issue general legal rules in a legitimate manner, given that the state is organised and operates in accordance with the Constitution. As a result, such legitimacy is recognised, because this is the only way in which rules of a general and mandatory nature are legally founded, on the basis of the presumption that there is an agreement of the democratically-organised society, even if, formally, such agreement is not materialised (*Boghirnea I., 2008, p. 32).*

The integration of immigrants in society is done with difficulty, because of the challenges posed by differences in culture, religion, race, identity. Migratory influxes bring along new cultural traditions and religions or different spiritual philosophies. Conflicts, divergences, social disorder occur as a result of different social rules, values and customs *(Bodnaruk O et al., 2025, p. 5)* when tolerance levels are low and/or when authorities intervene expediently.

In the field of employment relations, there are challenges along the lines of discrimination, harassment, victimisation. Legal rules provide for the regulatory modalities by which discrimination, harassment, victimisation become manifest. There are various concrete modalities, sometimes there are immaterial traces, in other cases written documents are left behind, making it possible to investigate the facts through various evidentiary procedures (the hearing of persons, graphical expertise, documentary expertise, investigation of video images).

An example in this respect, from Romanian legislation, is *Law no. 53/2003*[7] *(Labour Code)*, from which we have extracted a few relevant legal rules along the lines of prevention of discrimination in employment relations, of ensuring equal treatment for all employees and employers, as well as with regard to any kind of harassment.

Article 5, paragraph 1, provides for the principle of equal treatment for all employees and all employers. In paragraph 2, "Any direct or indirect discrimination against an employee, discrimination by association, harassment or act of victimisation" is prohibited. The criteria according to which discrimination, harassment or victimisation may occur are listed in Article 5, paragraph 2: race, nationality, ethnic origin, colour of the skin, language, religion, social origin, genetic characteristics, sex, sexual orientation, age, disability, non-contagious chronic disease, HIV infection, political option, family situation or responsibility, trade union membership or activity, belonging to a disadvantaged category".

Direct discrimination has the abstract meaning indicated in paragraph 3, as being "any actions or facts of differentiation, exclusion, restriction, or preference, based on one or several of the criteria stipulated under par. (2)". We note that, within the meaning assigned by the legislator, the purpose or effect of the action of the discriminating agent is important. Therefore, the essential requirements are

[7] Published in the Official Journal, no. 345 of 18 May 2011.

fulfilled when either the purpose or the effect of the action and/or inaction is the failure to grant, the restriction or rejection of the recognition, use, or exercise of the rights stipulated in the labour legislation.

Indirect discrimination is provided for in paragraph 4, as being: "any apparently neutral provision, action, criterion or practice whose effect is disadvantaging a person in relation to another person on the basis of one of the criteria provided for in par. (2)". An exception from this are cases where "such a provision, action, criterion or practice is justified objectively by a legitimate purpose". We note the requirement imposed by the legislator, stating that the means for fulfilling the legitimate purpose should be proportional, appropriate and necessary.

Discrimination by association is defined in paragraph 6 and consists in "any action or fact of discrimination committed against a person who, although he/she does not belong to a category of persons identified according to the criteria provided for in par. (2), is associated or presumed to be associated with one or several persons belonging to such a category of persons".

In the case of behaviour that leads to harassment, we find in the abstract content the same criteria provided for in par. (2). The criteria, together with the purpose, make the difference between behaviours, in the case of harassment the purpose being to prejudice a person's dignity. The concrete modality of committing the act and the extent to which a person's dignity is prejudiced result in the creation of an intimidating, hostile, degrading, humiliating or offensive environment.

Victimisation, as provided for in paragraph 7, consists in any adverse treatment occurred in reaction to a complaint or notification of the relevant authorities, respectively in reaction to a legal action with regard to the violation of legal rights or of the principle of equal treatment and non-discrimination.

In cases where an employee considers himself/herself to be the victim of an adverse treatment by the employer (Article 6, paragraph 5 of Law 53/2003), he/she may refer to the competent court of law with a claim for damages and for the restoration of the previous situation or for the annulment of the situation created as a result of the adverse treatment, while also presenting the facts on the basis of which the existence of such treatment may be presumed.

Moreover, in paragraph 8, the assimilated form of discrimination is provided for, as being: "Any behaviour that consists in ordering a person, verbally or in writing, to use a form of discrimination against one or several persons is deemed to be discrimination".

In cases where the specific nature of the activity concerned or of the conditions in which the activity concerned is carried out renders mandatory certain essential and determining professional requirements, an exclusion, differentiation, restriction, or preference regarding a particular job/workplace does

not constitute discrimination. We specify that the purpose must be legitimate and the requirements proportional.

With regard to the diversification of the modes of manifestation of violence and the intensification of actions/inactions with a violent content, including in the context of migration, an appropriate example is *Law no. 286/2009*[8] *(Criminal Code)*, from which we have extracted criminal legal rules covering the prevention of: harassment, sexual harassment, false testimony, identity fraud.

The criminal offences of harassment and sexual harassment often remain in the dark records of crime for a long period of time, although they are frequently present in employment relations and disrupt activities in the workplace, with effects that extend beyond the workplace.

Secondarily, this type of offence has consequences for the state of health of the victim, it may prejudice their bodily integrity and/or health, diminish trust in work relations among workers, as well as in relation to the employer, and decrease efficiency in the workplace (*Cîrmaciu D., 2018, pp. 49-50*).

The general concept of precarity is described in the studies, which is essential when analysing employment conditions. The main components of the concept of precarity are the lack of social protection, the insufficient fulfilment of rights in the country of destination, the lack of a legal workplace which determines a perception of insecurity and social or economic instability *(Anna, K. Boucher, 2024, p. 462).*

Cumulative causality, migration networks existing in the countries of destination or countries of origin, the opportunities and resources available can mobilise departures from a country or stimulate communities affected by conflicts to stay in a certain country *(Korinek, K., Sawangdee, Y., Jirapramukpitak, T. et al., 2025, p. 16).*

Persons who perform work at home, in the agricultural sector, in the forestry sector, are exposed to a risk of sexual violence, of harassment due to the proximity of the employer. Sexual violence is often accompanied by underpayment, other forms of violence, non-payment, which increases the victim's general vulnerability and dependency on the aggressor.

Through active, positive involvement within society, community organisations/associations may contribute to the prevention of crimes and may raise awareness regarding context variability in the process of deliberation to avoid the commission of the criminal act or to notify in due time the judicial bodies about isolated actions that might, otherwise, be repeated over time. Knowing the legal rules that protect social values in a state prevents crime, helps identifying illegal behaviours early on, notifying acts provided by the criminal law, classifying them according to types of crimes, and then recording them correctly.

[8] Published in the Official Journal of Romania, no. 510 of 24 July 2009

For a start, behaviours of this kind may be preceded or followed violent actions/inactions before or after the victim reaches the environment where the facts are found, being the result of forms of violence exercised in the micro-groups in which he/she lives. The investigation is initiated by complaint or ex officio, in which case it is not possible to withdraw the complaint, only the reconcilement of the parties is applicable.

The seriousness of the acts is one of the factors influencing the decision to report the act. The injury index (*Langton, L. and Planty, M., 2025, pp. 116-120*) would help the judicial bodies to discover facts provided by the criminal law, their nature, their proportion and the prejudice suffered. For instance, criminal offences that prejudice sexual freedom and integrity, those committed against vulnerable persons are notified later, although they have serious consequences on mental, physical welfare and within the social micro-group where the victims carry out their professional activity or live their private lives.

Along the same lines, we have extracted from special laws containing criminal rules, from Romanian legislation, rules for the prevention and combating of domestic violence, while also ensuring a specific legal framework for the prevention of forms of violence against family members. *Law 217/2003*[9] *on preventing and combating domestic violence (republished)* defines the forms of violence manifested in the domestic environment. We make reference to economic violence, social violence, cyber violence, sexual violence. Article 4, paragraph 2, provides that: "In no way and other no circumstances, may custom, culture, religion, tradition and honour be deemed as justification for any type of violent acts as defined in this law".

Also, *Law no. 489/2006 on the freedom of religion and the general status of religious denominations*[10] provides a special legal framework which defends any person against spiritual violence. Moreover, in the *Criminal Code*[11], Title VIII "Offences that harm social relationships", Chapter III bearing the marginal title "Offences against freedom of religion and respect owed to the deceased", the Romanian legislator includes four criminal offences, as follows: "Preventing the freedom to practice religion" (Article 381), "Desecration of places or objects of worship" (Article 382), "Desecration of corpses or graves" (Article 383), "Illegal harvesting of tissues or organs" (Article 384).

The concept of memory has been analysed from a social, cultural, psychological, anthropologic and mediatic perspective. Systematic approaches have led to individual narrative accounts, social representation of events, cultural rhetoric and frameworks for meaning creation, the process of formation of cultural trauma, processes of creation of social identity, relations between memory and

[9] Republished in the Official Journal of Romania, no. 948 of 15 October 2020
[10] Published in the Official Journal of Romania, no. 11 of 8 January 2007
[11] Law no. 286 of 2009, published in the Official Journal of Romania no. 510 of 24 July 2009

historical work and impressive research on witnesses *(De Vincenzo, C., & Zamperini, A., 2023, pp. 353-373).*

Deaths occurred in the context of immigrant influx, either during travel, or at the border, raise challenges for the authorities, also because of the different nationalities of the deceased immigrants, their different religions, the philosophies they practise or as a result of the fact that the immigrants have no religion. In the case of immigrants arriving in the countries of destination, especially if migratory networks are followed and immigration is for the purpose of family reunification, respect for the status of religious faiths (denominations) involves granting them buildings for the carrying out of specific practices, as well as for the deposit of the deceased by respecting rituals for each individual.

In Romanian legislation – the Civil Code[12], the conduct to be followed is expressly indicated, so that each individual should act by showing respect for the deceased person even after death. Respect with regard to their memory and to their body is guaranteed by Article 78, prejudice to the memory of the deceased being prohibited. The civil legal rule does not differentiate between the legal status of duties towards the deceased, the memory of the deceased person being protected under the same conditions as the image and the reputation of the living person. As regards respect for the will of the deceased person, the civil law provides the principle of freedom of choice and, considering the religious affiliation of the deceased person (Art. 80 of the Civil Code), a person may decide upon the type of funeral they want and upon the manner of disposal of their body after death (*Iancu E.-A., 2024, p.15-16*).

In France, the issue of wearing religious symbols causes significant disputes and even leads to legislative restrictions. In Sweden, cultural differences between migrants and the local population pose challenges for integration at educational level and in the labour market. Stereotypes and prejudices against migrants often complicate their social adjustment, which requires developing special programmes for the promotion of intercultural dialogue and understanding (*Bodnaruk O et al., 2025, p. 5*).

However, it is important to also look at public standpoints expressed with regard to the impact of migration (emigrant-immigrant) from the perspective of the assessment of perceptions on vulnerability. In the specialty studies that integrate psychological models of vulnerability in relation to the fear of criminal offences (*Chloe Keel et al., 2025, p. 2*), the various approaches to vulnerability are emphasised.

In certain cases, vulnerability is handled as a psychological process, whereas in other cases the proximity effects are put to the forefront as the driving force behind the concern regarding crime. Thus, the vulnerability model is focused on the manner in which people perceive their susceptibility to criminal

[12] Law no. 287 of 2009, published in the Official Journal of Romania no. 505 of 15 July 2011

offences. Consequently, perception will be modelled by the perception of probability and of the consequences of becoming a victim, as well as by a sense of control for the purpose of preventing victimisation (*Chloe Keel et al., 2025, pp. 3-4).*

CONCLUSION

Migration (emigration-immigration) has long existed throughout the history of nations (peoples), it still exists and will record an upward trend in the future of humankind. Countries that up to now have not been included with significant figures in the statistics will become countries of destination even if, at the present, they are countries of transit.

Legal awareness of individual accountability, assuming collective accountability involve integrated efforts, good communication within local communities and constant collaboration, as well as the identification, knowledge and learning of the values protected by the legislator in a state. These have a direct positive impact within social micro-groups, an indirect impact on the communities, and they contribute to the prevention of crimes in general, to the strengthening of public safety and the protection of national security.

Fear of crime, the feeling of control in terms of preventing situations where a person becomes an active or a passive subject of certain offences or a collateral victim, are individual processes on the basis of which statements are formed. These may change depending on the environment, territory, geographical, political, economic and social context in which residents live together with the immigrating person.

Knowledge of criminal law contributes to understanding the values that are protected in a state, to identifying the punishment provided by law in case of violation thereof, and to respect for legal order.

In the future, there will be challenges along the line of prevention of forms of violence, such as: domestic violence, with a differentiation of crimes committed against a family member (e.g., violence within the family); harassment (classic and/or cyberbullying, mobbing), with a differentiation of the crime of harassment, sexual harassment; spiritual violence (with a differentiation of the crimes that prejudice liberties and the respect owed to the deceased); discrimination, victimisation and the exploitation of persons.

BIBLIOGRAFIE

1. Bodnaruk Oleksandr, Yushchyk Olena, Shevchuk Andrii, Stratiy Oleksiy, Nechypailo Vadym., *The role of criminal liability for illegal possession of a vehicle*. Salud, Ciencia y Tecnología - Serie de Conferencias. 2025; 4:1315. https://doi.org/10.56294/sctconf20251315

2. Anna, K. Boucher, *Migrant sexual precarity through the lens of workplace litigation*, Gender, Work & Organization, Volume 32, Issue 1, 2025, DOI: https://doi.org/10.1111/gwao.13160
3. Boghirnea Iulia, *The creation of the general legal norm*, Annales Universitatis Apulensis, Series Jurisprudentia, no. 11/2008;
4. Céline Cantat, Antoine Pécoud and Hélène Thiollet, *Migration as Crisis*, Volume 69, Issue 6, SAGE Publications, 2025, DOI: https://doi.org/10.1177/00027642231182889
5. Chloe Keel, Rebecca Wickes, Murray Lee and Jonathan Jackson, *Vulnerability and place: a test of the psychology of perceived vulnerability for women and men*, Current issues in Criminal Justice, 2025, https://doi.org/10.1080/10345329.2025.2489229
6. Diana Cîrmaciu, Elena-Ana Iancu, *Challenges in the changing world of labor relations. Human resources, finance and crimes in the decade of digitization* in Changes and Innovations in Social Systems, Springer Nature Switzerland AG 2024, DOI: https://doi.org/10.1007/978-3-031-43506-5_15
7. Diana Cîrmaciu, *General considerations on equal treatment of men and women in labour relations. Sexual harassment in the workplace*, Annales Universitatis Apulensis, Seria Jurisprudentia 21/2018, Editura Pro Universitaria (publishing house), Bucharest, 2018;
8. Elena-Ana Iancu, *Comparative Law Study on Legal Rules Protecting Religious Values and Freedoms in* "Religion and Social processes in Southeast Europe", conference volume, edition 3, Banja Luka, 2024;
9. Korinek, Kim, Sawangdee, Yothim, Jirapramukpitak, Tawanchai et Aree Jampaklay, *Migration Amidst Conflict and Cumulative Causation: An Analysis of International & Domestic Migration in Thailand's Southernmost Provinces*. Popul Res Policy Rev 44, 17 (2025). https://doi.org/10.1007/s11113-025-09937-3
10. Langton, Lynn and Planty, Michaela, *Harms and consequences of victimization*. Journal of Contemporary Criminal Justice, 41 (1), 2025 115-140. https://doi.org/10.1177/10439862241290360
11. Laura Stielike, Isabella Löhr, Christiane Reinecke, Philipp Schäfer, Inken Bartels, *Rethinking the production of knowledge on migration: a moral economies approach*, in Journal of Ethnic and Migration Studies, Volume 51, Issue 10, 2025, pp. 2505-2528, DOI: https://doi.org/10.1080/1369183X.2025.2461340
12. Alberto Palloni, Douglas S. Massey, Miguel Ceballos, Kristin Espinosa, Michael Spittel, *Social Capital and International Migration: A Test Using Information on Family Networks* in the American Journal of Sociology, Volume 106, Issue 5, 2001, DOI: https://doi.org/10.1086/320817
13. Jiyun Yu and Timothy Jeonglyeol Lee, *Impact of Tourists' Intercultural Interactions*, Journal of Travel Research 2014, Vol. 53(2), p. 237,

DOI: https://doi.org/10.1177/004728751349646;
14. Serhii Kozlovskyi, Tetiana Kulinich, Ihor Vechirko, Ruslan Lavrov, Ivan Zayukov and Hennadii Mazur (2024). *Relationship between net migration and economic development of European countries: Empirical conclusions.* Problems and Perspectives in Management, 22(1), 605-618. DOI:10.21511/ppm.22(1).2024.48
15. Schmid Lukas (2023). *Colonial injustice, legitimate authority, and immigration control.* European Journal of Political Theory, 24(1), 4-26. DOI: https://doi.org/10.1177/14748851231201469
16. Vavoula Niovi, Tsourdi Lilian, *Intertwining Criminal Justice and Immigration Control in the EU: Theoretical, Interdisciplinary and Practical Perspectives*, University of Luxembourg law Research Paper, No. 2025-02 https://dx.doi.org/10.2139/ssrn.5183667
17. De Vincenzo, Ciro, & Zamperini, Adriano (2023). *Migrants' deaths at Europe's southern border: Cultural psychological dimensions of memory and mourning in Lampedusa.* Culture & Psychology, 31(1), 353-373. https://doi.org/10.1177/1354067X231219449

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 223-230

THE MEASURE OF LAW AS AN EXPRESSION OF THE LEGAL MEANING EMBEDDED IN CUSTOMARY LAW

S.M. KANEVA

Received 11.12.2024; accepted 20.02.2025
First online publication: 27.02.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.249

Svetla Marinova KANEVA
Faculty of Law, The University of National and World Economy, Bulgaria
E-mail: skaneva@unwe.bg
Orcid ID: https://orcid.org/0000-0002-5610-5624

Abstract

Relying on the phenomenologica approach to the Law the measure of law is problematized as an expression of legal meaning, of its qualities of ambivalence, contradiction, polyvariance, justice. Its genesis is in the customary law. Legal measure is an expression of social dependencies, it contains the pattern of law. It reflects the correct and fair distribution of goods, the expression of legal position subjects on the occasion of goods at a certain stage of human development.

Key words: *measure of law; legal meaning; distributive function of the legal measure; customary law.*

INTRODUCTION

As a spiritual phenomenon, law is a fact of human culture. It is a product of conscious social experience combined with extra-epistemic components - archetypes, innate patterns of thinking, primordial notions. Law (*Spataru-Negura, 2024, p.1*) is a phenomenon of consciousness, which is based on the social level of existence of each human community. The measure of law as a fundamental meaning and distributive property of law has its genesis in the distributive rules of the social mode of action. It has its root in customary law. The measure of law is that semantic phenomenon of OTP and FP that brings out and reconciles the opposing or unilateral positions of subjects in distributive and exchange relations to goods in the field of law.

I. THE APPROACH TO THE STUDY OF THE MEASURE OF LAW

By regulating human activity, law has transformed social reality in relation to certain goals throughout the various stages of human civilization. Factuality in the study of society is related to the historicity of its existence and of its knowledge (*Fikovska, 2007, p. 40*). Civilization is first projected into the subject world. Maintenance precedes awareness. The first level of collective mode of action is totems and customary (*Ene-Dinu, 2023, p. 105*) law. In these, too, is present, albeit at an unconscious level, a primitive principle of unified action that covers distributive and exchange relations. Historical development consists both of essentially recurrent circumstances and of specific, unique events. The regularities and driving forces of social life, which the law legitimizes in the dimensions of legal measure, are not on the surface of the multiple and contingent manifestations of social existence. They are the expression of a historical cultural, value evolution that allows the transformation of law into an increasingly all-encompassing regulator of human behavior, of the establishment of a centralized power order. The legal measure measures the content of law. It is to define to each - his, to reduce the relativity of the general to the determinacy of the particular, the private, the individual-related. In the process of the operation of law, the legal measure reflects and measures the type and extent of protection of a legally significant good for subjects in view of the legal means of the legal system. Its root, the essence of the meaning-distributing property of law that concretizes legal meaning, is in the primitive rules of habitually recurring conduct in factually typical situations.

The philosophical-sociological meaning explanation of law that pervades the measure of law is the result of following a systematic extra-positivist phenomenological (*Husserl, 1977, p. 545*) approach. Seeking the meaning of law in the fact-fact relation, legal phenomenology concretizes and takes it into the measure of law. It concretizes the meaning of elements (norms, rights, commands, prohibitions) through the meaning of law, of the system. Phenomenology derives meaning in pattern - a phenomenon that sets, contains ready-made patterns and solutions in typical mass repetitive socially significant situations dictated by the joint life of people. Order precedes law, and through phenomenology, a juridical quality is given to social reality and patterns of social interaction. An approach of legal conceptualization, the phenomenology of law relies on the leading role of human consciousness, where man himself imposes actions and deeds by knowing and appreciating social reality. Man is meaning-knowing and meaning-making through the manifest forms of law.

II. THE LEGAL MEASURE FOLLOWS AND SPECIFIES THE LEGAL MEANING

The measure of law has its root in customary law, argued through the fundamental meaning coordinates of law - goods and order (*Mihajlova, 2001, p. 7*). The legal measure expresses and follows the legal sense from due, ideality to

concreteness. It points to the requirements of objective law directed to the individual consciousness of subjects. It contains the quantitative-qualitative measured power in the distribution and exchange of the utility of goods. In view of the legal measure, it sets the conditions of the order of law in their volume, which presuppose the corresponding legal quality. The measure of law delineates the volume and type of legal power set by objective law according to the specificity of social relations, the type of goods and the degree of socio-economic development. The legal measure has its meaningful root in customary rules of conduct and reflects the degree of evolution of human social development. The beginnings of the first rules are in the rules of fact (*Hayek, 1996, p. 95*), in individual actions that are ascertained as social -significant community-facts. Maintenance precedes goal-setting. Consciousness prefigures the meaning embedded in law through sensory phenomena. The legal measure contains the actual phenomenology - social, ethical and normative - through which it prefigures and measures freedom for the subjects of law (*Mihajlova, 1996, p. 3*), carries the common law meaning antecedent of law.

The study of legal measure is part of a systematic approach to law. Systems rationality, as part of the explanation of law, relies on the fact that law is not the only normative system for regulating human behavior. Law enters into relations with other elements and systems with which it functions in a common social environment. These include history, archaeology, ethnology, and economics. Emphasis is placed on the argumentative - deliberate and meaningful - rationality of law, which depends on its usefulness to man and society. Utility is tied to goods and order. It is reflected in the measure of the right for certain behaviour set for subjects.

The meaning of law as a system, its value-purpose utility, is not only in the separate legal norm, nor only in its three-element structure. It is in the property of law to measure in a balanced and fair way the access of subjects to the goods of law, in the dimensions of the measure of law. The legal measure specifies the legal meaning, gives its integrity and objecthood, points to the limit of legally permissible conduct. It determines the identity and utility of law as a regulator, points to the boundary between the subject and others, between the state and the person. Participates in the justification of a number of principles such as the principle of legality, the principle of the rule of law.

Law comes from social life, it exists before it is laid down. The substance of law is a social meaning, a matrix and a code, which is the product of human existence, consciousness and evolution and does not depend on the will of any legislator. This meaning-constituting core of law is set for man, it is an expression of primordial dependencies, patterns of organization of social matter, in communication as a mode of social interaction in relation to goods (*Mihajlova, 2001, p. 109*). It is this meaning-building core that encodes the mutual positions of subjects that is the content of legal measure. We support the thesis that in its

original code law is not a norm but a position in relation to goods (*Sharankova, 2001, p. 56*). Since man exists in and through community the course of social relations relating to the distribution and exchange of goods takes place within the framework of order. Therefore, the key role is far from being that of the norm alone, although it is an indisputable component of law as a system. No less important is the legal position, which in its quantifiability gives the content and volume of the measure of law. Legitimately within law, the legal measure determines the way goods are to be possessed, carries and removes the pattern of bilateral commitment. The point of law, therefore, is to translate factual relations of dependence over goods between parties into meaningful, rightful, and justified positions within the legal order.

The legal measure reflects the relativity of legal meaning. It is directed to order in the social mode of human existence, in the New Time to value order in social interactions. The pattern of law is guided by the meaning (purpose) of law, which brings orderliness to the social life of people in their mutual and reciprocal positions towards goods.

Having arrived at the idea of the right-order-people, social consciousness imposes it on recurrent situations and formulates primary rules that receive their institutionalization through custom. The positions of the participants in social relations are drawn from social practice, they are bound by the measure of right, which contains the distributive characteristic of right.

Science is clear that the first form of superpersonal pattern in a society is custom, which is associated with rules about facts (*Hayek, 1996, p. 95*), evaluated as permitted-not permitted. The content of the idea of the order of law set by rules (norms) follows custom after behaviour is gradually evaluated, matched to the matrix model of law through language. The model of law for the semantic-phenomenological theory is the dialogue (discourse) as a matrix of law, as a mode of mutual action, which expresses its meaning. Public consciousness derives from the dialogical nature of the model of law, rules of conduct in typical situations. At a later stage in the development of human society, from the matrix of law that carries its meaning, rules are supplemented by the measured "how much". The rules receive their original and complete form, deriving the legal measure as a theoretical concept of the general theory of law.

Central to legal hermeneutic phenomenology is the question of the formation of the meaning of normative rules of conduct, of the meaning of legal positions in their qualitative and quantitative characteristics reflecting the measure of law. The original philosophical question of whether law is set or created by man receives a clear answer. The phenomenon of law is constructed by social consciousness. The meaning of law, precedes and sets the meaning of norms, of rights, duties, prohibitions, which express the differently embedded legal distributive measure with regard to the relations of counter-or reciprocity. A fundamental legal quality, the measure of law follows, conceptualizes and

measures in a quantitative-qualitative form the regularities of the social mode of existence between people. The meaning of law is taken down and concretized with respect to the positions of subjects in view of the concrete good in the dimensions of the legal measure.

III. GOODS ARE A CRITERION FOR THE MEANING OF THE LEGAL MEASURE

The law contains a position set by the social conditions of life towards the goods it regulates. By directing social relations as a form of interaction between people, law, through the legal measure, regulates relations between people, not relations between people and things (goods). A fundamental meaning-distributing property of law, the measure of law is explained by a notion of good. Legal regulation has as its object goods. The measure of law is the degree, type and extent of concretization of the legal possibilities for subjects that the legal order allows for access to goods. The social mode of existence also sets the customary rules. The specificity of goods is reflected in the formulas of law derived from human social practice. The different character of goods determines the characteristic of the measure of law - whether it permits, prohibits, punishes, restrains. The specificity of the Goods expression of social dependencies set and different legal interest of the subjects of law. Private goods are distributed and exchanged between individual subjects, satisfying their private needs and interests. Public goods serve to satisfy public interests and are directed towards the achievement of socially significant goals, are distributed and exchanged in a way that preserves the integrity of the community. In public law, the collective principle and the protection of order as a good is determinative.

We maintain that the goods are not in the right, but they are why it is necessary. The good is the value of the need directed to the person and the society. The legal measure is also good, harmony, rightness, justice, social order. The determinant of the legal measure is the utility of the goods for the subjects in their objective interactions. It is their content that is preordained for man, has its genesis in customary law. Legal measure prefigures the utility of goods in ready-made archetypes and customary rules. This is the substantive characteristic of the notion of good. The historical stage of development of social relations, the mode of production included, predetermine the range of legally relevant and regulated goods.

It deserves clarification that the good and the benefit of the good are different things. We are talking about substantive and legal properties of the concept of good. It is the useful result that can be exchanged, sold, transferred that is the legal substance of the good. It is the criterion of the measure of law as the fundamental concretizing meaning and distributive property of law. We maintain that although in antiquity law was entangled in factual relations and was not explicitly sanctioned, it was accepted and acted upon in the community and non-institutionalized goods were not irrelevant to law. Rather, the deepest essence of

law is spiritual, unified by a common center of collective consciousness. It is the law that brings forth and transforms social reality for specific purposes throughout the different periods of human civilization.

The measure of law justifies the utility of law as a meaningful, useful, necessary and specified social order for both the community and the subjects. The legislator does not invent, but prefigures, conceptualizes, generalizes, sets the patterns of what is socially significant for a group of social relations, bringing them to concreteness through the dimensions of the legal measure. It is particularly clear in private law, where the rules apply - "give to give, do to do". An expression of freedom and non-freedom, of dependencies between subjects suggested and derived from their social nature and from experience, the content of the legal measure is not arbitrary or abstract. It is a meaning-concretizing property of law that points to the distributive quality of law. The measure of law is an expression of the communal sense of order, utility and balance of social interactions, refracted through dependencies between subjects with respect to the goods of law.

IV. THE MEASURE OF LAW CONCEPTUALISES THE RELATION DUE-EXISTING

The measure of law is a definitive legal property that covers all law, it is embedded in every legal manifestation. The measure of law, besides being a distributive property of law, is due in each of its forms. The measure of law, with its genesis in customary rules of fact, makes the transition from psychosocial to conscious juridization of reality. Even when the objecthood of law is almost material, a gesture, a symbol, the measure of law does not lose its essence of due. Legal facts are also expressions of the due in law. They are typified, abstracted and measured and do not lose their quality of due. The measure of law which is present in the legal facts retains its quality of due.

We maintain that law and legal measure as a model of reality are expressions of a relation to reality, not reality itself. This attitude is a product of social consciousness, which derives social regularities embedded in the dimensions of the legal. Legal measure is added to social facts and dependencies in order to make sense of them and measure them in its own way. Through it, law juridicises (transforms) reality, making the existing-obligatory transition in view of a clear legal meaning.

The legal measure is not intended for a single and isolated case. It is a model-pattern against which legal cases are measured and to which they must conform. It contains stability with clear subject matter and content. It has a determining function for law because in its qualitative and quantitative expression it models typical features in relation to the cases and subjects of law. Its functions for law are to be a model, a due that is respected and a criterion by which the conformity between regulated and regulator is judged. In both cases, from due to existing and from existing to due, the legal measure has to achieve

correspondence between them, to infuse the quantification of the behaviour of subjects (the legally due) into the existing. The measure of law has its genesis in the customary rules of law that precede the formulas of law for a kind of goods. The distribution and exchange of goods and the need for measurement in private law arise first in time as a reflection of their objectively bilateral character.

The distributive nature of law precedes the norms of and in law, it is primary to the peremptory nature of law (*Dachev, 2004, p. 222*). Law through the legal measure first validates and binds, completes the original meaning of things, of formulas derived and suggested by experience, and then obliges. The binding and institutionalization of law transforms the content-distributive property of law into a due.

In the same sense is the thesis about the essence of the legal norm. It contains in itself two different legal qualities, two different phenomena which are a reflection of the substance of law. One phenomenon is the obligatoriness, the imperative, the bindingness of the law in its entirety, a requirement for what exists to pass into what is due. The other indicates the measure, the volume, the right and useful conduct inferred, the content of the normative. Here the measure of law is key, it stands closest to the social model of law, it builds the measured legal content, and it is multivariate. It is determined by the mutual correlation of the positions of subjects in the distribution and exchange of goods. Both legal custom and jurisprudence bear this distributive nature of law, the expression of meaningful dependencies concretized by the unified distributive function of legal measure. It manifests itself in norms, in positions, in legal provisions, in normative prescriptions. It builds all the units of legal direction of human conduct because it follows a single substantive regularity expressed polyvariably.

CONCLUSION

The measure of law as a fundamental legal property contains a conceptual relation between people, derived and selected in a required or possible behaviour of subjects in social relations. It reflects the most ancient notion of social binding in the distribution and exchange of goods. Its root is in customary rules of fact. The measure of law contains the requirement of community order. It is a fundamental distributive property of law that shares the utility of goods for subjects, an expression of social regularities. It gives finality and concreteness to the meaning of law in the social mode of human existence.

BIBLIOGRAFIE

1. Dachev, L. Legal Discourse, Ruse, 2004.
2. Ene-Dinu, Cornelia. *THE PRESENCE OF CUSTOM AS A LEGAL SOURCE FROM "COUNTRY LAW" TO MODERN CIVIL LAW,* International Journal of Legal and Social Order 2023/1.pp.105-114, DOI: doi.org/10.55516/ ijlso.v3i1.132
3. Fikovska, Tsv., Metaphysics of Facts, In. Tarnovo, 2007.

4. Hayek, Fr., Law, Legislation, Liberty, Vol. | Legal Norms and Legal Order, S, 1996.
5. Husserl, Modern Bourgeois Philosophy, 1977.
6. Mihailova, M., Law - meaning, shadow, opposites, S., 2001.
7. Mihailova, M., Theory of Law, S. 1996.
8. SPĂTARU-NEGURĂ, *Laura-Cristiana*, *HUMAN RIGHTS LAW FROM GENERAL THEORY OF LAW PERSPECTIVE*, International Journal of Legal and Social Order 2024/1.pp.1-7, DOI: doi.org/10.55516/jilso.v4I1.1777
9. Sharankova, J. Legal Thinking. A Project for Interpretive Theory. St. Kl. Ohridski, 2001.

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 231-248

UNDERSTANDING THE INSTRUMENTS OF POWER EFFECTS ON THE MILITARY INSTRUMENT OF POWER IN MULTI-DOMAIN OPERATIONS: A CASE STUDY FOR HUMAN INTELLIGENCE FROM A TRAINING PERSPECTIVE

A. KIS/A. MARZA

Received 24.11.2025; accepted 19.12.2025
First online publication: 20.12.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.297

Alexandru KIS
PhD, associate lecturer at University of Oradea
E-mail: alexandru_kis@yahoo.com
ORCID: https://orcid.org/0009-0001-2780-5728

Andrei MARZA
NATO HUMINT Centre of Excellence[1]

Abstract

This paper investigates the effects of the diplomatic, informational, and economic instruments of power (IoPs) on the military IoP within Multi-Domain Operations (MDO), focusing on human intelligence (HUMINT) as a case study from a training perspective. It argues that HUMINT professionals must be trained not only in classical collection and influence skills but also in the ability to understand, navigate, and synchronize with other IoPs in a multi-domain environment. To this end, the study evaluates the conceptual foundations of IoPs in MDO, examines their interplay across the continuum of conflict, assesses the role of HUMINT in this context, and outlines training needs and approaches for HUMINT professionals. Ultimately, it seeks to contribute to the development of effective, future-proof training programs that enable NATO and partner personnel to operate effectively in the complex reality of modern conflict.

[1] **Disclaimer:** The presented content was built on available literature analysis, the authors' experience and consultations at a public level. The ideas and opinions expressed in this article are those of the authors and do not necessarily reflect NATO HUMINT COE, or NATO's policies.

Key words: *HUMINT, Instruments of Power, Multi-Domain Operations, hybrid warfare.*

INTRODUCTION

Warfare has become increasingly multidimensional, blending conventional military power with diplomatic maneuvering, economic coercion, information dominance, and technological disruption. This reality, often referred to as hybrid warfare, challenges the traditional distinction between peace and war, frontlines and home fronts, military and civilian spheres. Adversarial actors deliberately operate in the grey zone, exploiting vulnerabilities across political, informational, military, economic, social, and infrastructural domains to erode cohesion and resilience within target societies and alliances.

NATO and its member states have encountered repeated demonstrations of these hybrid tactics. Russia's use of disinformation campaigns and manipulation, cyberattacks, energy leverage, targeted assassinations, sabotage, and the instrumentalization of migration illustrate the deliberate orchestration of multiple Instruments of Power (IoPs) to achieve strategic objectives without triggering open war – all these while familiarizing its own public with the idea of an open conflict with the "collective occident" and NATO. Similar patterns can be observed in the Middle East, where state and non-state actors such as Iran and its proxies - Hamas, Hezbollah or Houthi - integrate military capabilities with informational and economic levers, and where groups such as ISIS have demonstrated mastery of narrative warfare and social mobilization alongside violent insurgency.

Against this backdrop, the concept of Multi-Domain Operations (MDO) has emerged as a doctrinal response, emphasizing the integration and synchronization of effects across all domains - land, air, maritime, cyber, and space - while also acknowledging the importance of cross-cutting enablers such as information and intelligence. MDO requires not only the coordination of military capabilities but also a comprehensive understanding of how military instruments interact with other national and allied IoPs. This interaction is bivalent: military operations are both enabled and constrained by diplomacy, economic measures, and informational campaigns. To tackle with this complexity, military professionals must be educated to perceive the broader strategic environment and to integrate their activities with other instruments effectively.

Within this framework, Intelligence, and Human Intelligence (HUMINT) in particular, plays a pivotal role. HUMINT serves as both a collector of insights on adversary intentions and perceptions, and as an active contributor to influence operations through engagement with human networks [2]. In MDO, where

[2] Alexandru Kis, *A projection of the cognitive warfare in Human Intelligence,* STRATEGIES XXI, vol. XIX, 27-28 June 2023, "Carol I" National Defence University Publishing House,

information is contested and perception is decisive, HUMINT professionals are uniquely positioned to provide context, nuance, and early warning. However, this role is increasingly demanding: adversaries employ artificial intelligence, cyber tools, and sophisticated disinformation to deceive, manipulate, or intimidate human sources. Consequently, HUMINT training must evolve, integrating digital literacy, cross-domain awareness, and resilience against manipulation alongside traditional tradecraft.

This paper investigates the effects of the broader IoPs on the Military IoP within MDO, focusing on HUMINT as a case study from a training perspective. It argues that HUMINT professionals must be trained not only in classical collection and influence skills but also in the ability to understand, navigate, and synchronize with other IoPs in a multi-domain environment. To this end, the study evaluates the conceptual foundations of IoPs in MDO, examines their interplay across the continuum of conflict, assesses the role of HUMINT in this context, and outlines training needs and approaches for HUMINT professionals. Ultimately, it seeks to contribute to the development of effective, future-proof training programs that enable NATO and partner personnel to operate effectively in the complex reality of modern conflict.

I. CONCEPTUAL FOUNDATIONS: HYBRID WARFARE, MULTI-DOMAIN OPERATIONS, AND THE INSTRUMENTS OF POWER

I.1 Hybrid Warfare and its characteristics

Hybrid warfare represents one of the defining paradigms of twenty-first century conflict. Unlike conventional wars, fought largely between uniformed forces with clear frontlines, hybrid warfare blurs distinctions between peace and war, state and non-state actors, and overt and covert actions[3]. It is designed to exploit the thresholds of international law and the vulnerabilities of open societies by combining multiple forms of pressure in a synchronized manner. Hybrid adversaries rarely rely on direct military confrontation alone; instead, they integrate political, economic, informational, and military measures into a comprehensive strategy of gradual erosion.

Bucharest, https://www.strategii21.ro/A/2023-06. STRATEGII XXI/CONFERINTA STRATEGII XXI 2023.pdf.

[3] Erik Reichborn-Kjennerud and Patrick Cullen, *What is Hybrid Warfare?*, Information Note January 2017, MCDC Countering Hybrid Warfare Project, https://assets.publishing.service.gov.uk/media/5b2904aded915d2cd5d01bfd/MCDC_CHW_Information_Note-Understanding_Hybrid_Warfare-Jan_2018.pdf.

In its tri-folded dimensions (figure 1), several characteristics distinguish hybrid warfare[4] [5] [6]:

- Interplay of military and non-military IoPs, inflicting kinetic and non-kinetic tools and tactics.
- Multi-vector pressure – exploiting weaknesses across political systems, media, infrastructure, and security institutions simultaneously.
- Ambiguity and deniability – operating in the grey zone through proxies, false-flag operations, or cyber anonymity.
- Speed and adaptability – tailoring campaigns dynamically to exploit emerging opportunities before adversaries can coordinate responses.
- Psychological and cognitive effects – seeking not necessarily physical destruction but erosion of trust, cohesion, and willpower within target societies.

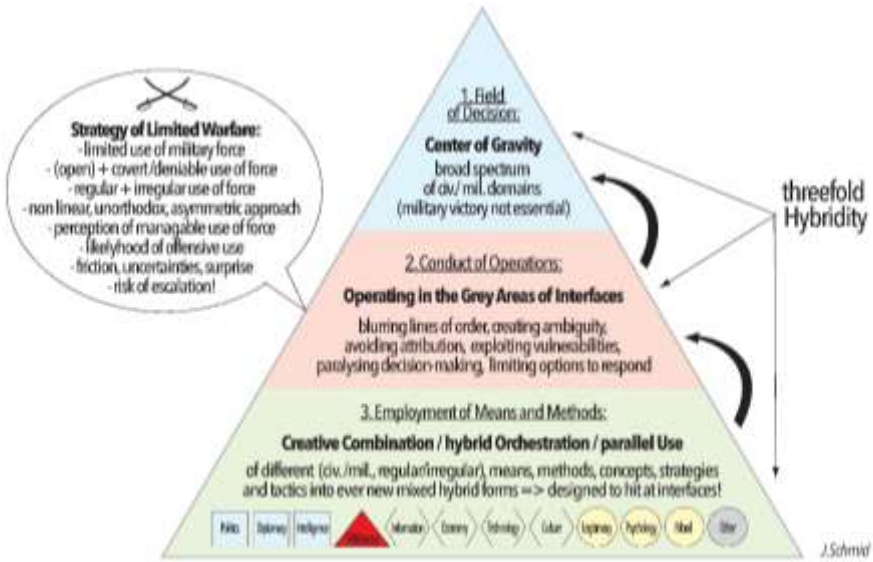


Figure 1 The Trinity of Hybrid Warfare[7]

[4] Arsalan Bilal, *Hybrid Warfare - New Threats, Complexity, and 'Trust' as the Antidote*, November 2021, NATO Review, https://www.nato.int/docu/review/articles/2021/11/30/hybrid-warfare-new-threats-complexity-and-trust-as-the-antidote/index.html.

[5] Johann Schmid, *Introduction to Hybrid Warfare – A Framework for comprehensive Analysis*, in: Thiele, R. (eds) Hybrid Warfare. Edition ZfAS. Springer VS, Wiesbaden, 2021, https://doi.org/10.1007/978-3-658-35109-0_2.

[6] K. Iskandarov and P. Gawliczek, *Hybrid warfare as a new type of war. The evolution of its conceptual construct*, in Miroslaw Banasik, Piotr Gawliciczek and Agnieszka Rogozinska (eds), *The Russian federation and international security*, Poland: Difin publishing house, 2020, pp. 96-107.

[7] Johann Schmid, *The Hybrid Face of Warfare in the 21st Century*, March 2019, https://www.maanpuolustus-lehti.fi/the-hybrid-face-of-warfare-in-the-21st-century/.

Russia's operations in Ukraine since 2014 illustrate these principles vividly. Prior to the full-scale invasion of 2022, Russia launched a hybrid campaign involving cyberattacks on energy infrastructure, disinformation targeting Ukrainian and Western audiences, economic leverage through gas exports, and covert paramilitary operations in Crimea and Donbas[8]. Similar hybrid approaches have been observed in Europe through interference in democratic elections, sabotage, and the weaponization of migration flows.

Hybrid warfare thus underscores the need to integrate responses across all IoPs, since military force alone is insufficient to counter threats that are simultaneously political, economic, and informational.

I.2 Multi-Domain Operations

Multi-Domain Operations represent NATO's and allied militaries' doctrinal answer to hybrid challenges. MDO seeks to achieve convergence: the simultaneous and synchronized employment of effects across all domains - land, air, maritime, cyber, and space - integrated with informational and cognitive dimensions.

The rationale behind MDO is that modern adversaries operate seamlessly across domains, leveraging asymmetries and exploiting seams in allied structures. For instance, a cyberattack on communications may paralyze military command systems without a shot fired, while disinformation erodes public trust in defensive operations. To counter such tactics, NATO forces must integrate domain effects rapidly and flexibly, achieving superiority through coordination rather than mass.[9]

Key principles of MDO include:[10]

- Integration across domains – breaking down stovepipes between services and enabling joint effects.
- Cross-domain maneuver – using one domain to create opportunities in another (e.g., cyberattacks to disable air defense, enabling air operations).
- Tempo and decision dominance – outpacing adversaries in detecting, deciding, and acting.
- Resilience and adaptation – addressing vulnerabilities beyond the battlefield, including societal and political resilience.

[8] Sînziana Iancu, *Războiul hibrid al Rusiei împotriva Occidentului. Doctrina Gherasimov, forțe paramilitare și grupurile de voluntari*, in Defense Romania, September 2024, https://www.defenseromania.ro/razboiul-hibrid-al-rusiei-impotriva-occidentului-i-doctrina-gherasimov-forte-paramilitare-ipb-si-grupurile-de-voluntari-iv_630347.html.

[9] Andrea Gilli, Mauro Gilli and Gorana Grgić, *NATO, multi-domain operations and the future of the Atlantic Alliance*, in *Comparative Strategy*, *44*(1), 2025, pp. 73–91, https://doi.org/10.1080/01495933.2024.2445491.

[10] TRADOC, *The U.S. Army in Multi-Domain Operations 2028*, U.S. Army Training and Doctrine Command, 2018.

MDO is therefore not only a military framework but a whole-of-government and whole-of-alliance approach requiring synergy among all IoPs.

I.3 Instruments of Power: DIME and beyond. Instruments of Power across the continuum of conflict

The concept of IoPs provides the analytical framework through which states and alliances employ their resources to achieve strategic objectives. Traditionally expressed as DIME (Diplomatic, Informational, Military, Economic), the framework has been broadened at operational level in NATO and EU contexts to encompass PMESII (Political, Military, Economic, Social, Infrastructure, Information), reflecting the complexity of modern power[11]:

- Diplomatic: alliances, treaties, and shaping of norms; diplomacy constrains or enables military action.
- Informational: strategic communication, cyber, and cognitive operations; information has become both tool and domain.
- Military: deterrence, compellence, and defense; increasingly dependent on synergy with other instruments.
- Economic: sanctions, trade, finance, and energy leverage; economic measures weaken adversary resilience or strengthen alliance cohesion.

Other frameworks emphasize financial, intelligence, law enforcement ("DIMEFIL" IoPs) [12], or even cultural [13], or technological [14] instruments, highlighting the rise of lawfare, identity politics, and disruptive innovation.

The interdependence of these instruments is crucial: military success requires diplomatic legitimacy, informational superiority, and economic sustainability. In MDO, this interconnectedness is amplified, as adversaries deliberately exploit seams between domains and instruments.

Modern conflict is rarely a binary state of "peace" versus "war." Instead, it unfolds along a continuum (figure 2), with shifting intensities and modalities. In

[11] Dean S. Hartley, *The DIME/PMESII Paradigm*, in *Unconventional Conflict. Understanding Complex Systems. Springer*, Cham, 2017, https://doi.org/10.1007/978-3-319-51935-7_4.

[12] Cesar Augusto Rodriguez, Timothy Charles Walton, and Hyong Chu, *Putting the "FIL" into "DIME". Growing Joint Understanding of the Instruments of Power*, Joint Doctrine - JFQ 97, 2nd Quarter 2020, pp. 121-128, https://ndupress.ndu.edu/Portals/68/Documents/jfq/jfq-97/jfq-97_121-128_Rodriguez-Walton-Chu.pdf?ver=2020-04-01-095603-607.

[13] Nina Gorenc, *Cultural diplomacy – the instrument of power in American foreign and security policy*, in *The Review of International Affairs*, Vol. LXVI, No. 1158-1159, April–September 2015, pp. 18-31, https://thereviewofinternationalaffairs.rs/wp-content/uploads/RI/2015/1158-1159/RI-2015-1158-1159-article-2.pdf.

[14] Paola Fusaro, Nicolas Jouan, Lucia Retter and Benedict Wilkinson, *Science and technology as a tool of power. An appraisal*, RAND Europe, November 2022, https://www.rand.org/content/dam/rand/pubs/perspectives/PEA2300/PEA2391-1/RAND_PEA2391-1.pdf.

this spectrum, adversaries employ IoPs in calibrated sequences, exploiting ambiguity to pursue objectives without triggering full-scale military responses.

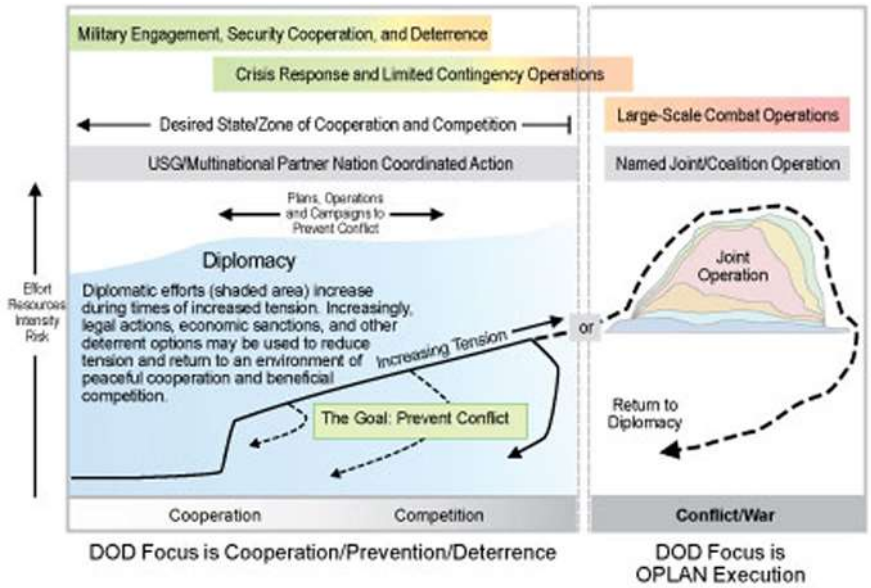


Figure 2 The conflict continuum[15]

Thus, the continuum of conflict/ competition is characterized by:

- Competition below armed conflict – Diplomatic pressures, espionage, covert influence operations, economic pressure, sabotage, and disinformation.
- Hybrid confrontation – Combination of non-military and limited military tools, blurring attribution and legitimacy.
- Open armed conflict – Overt employment of conventional and unconventional military force, supported by the full spectrum of IoPs.

Russia's activities in Europe since 2014 exemplify this model. The annexation of Crimea, as well as the later invasion in Ukraine, were preceded and accompanied by disinformation campaigns, cyberattacks, political subversion, and economic leverage through energy supply manipulation. Similarly, in the Middle East, Iranian proxy operations illustrate how hybrid tactics are applied across the spectrum, from political influence in Iraq to drone and missile attacks by aligned militias in Liban, Syria, and Yemen.

What makes hybrid warfare effective is not any single instrument, but their synchronization, an interplay demonstrating that Military IoP cannot succeed in

[15] https://www.thelightningpress.com/wp-content/uploads/2018/06/Conflict-Continuum.jpg.

isolation. Its effectiveness depends on how it is influenced, enabled, or constrained by other IoPs. For NATO, the challenge is therefore to train military personnel to recognize and integrate these effects.

II. TOWARDS A CASE STUDY IN HUMINT

II.1 Intelligence in Multi-Domain Operations

Multi-Domain Operations (MDO) demand a comprehensive intelligence architecture capable of integrating data from multiple domains (land, air, sea, space, cyber, and cognitive). Intelligence must provide not only situational awareness but also predictive assessments, enabling commanders and policymakers to anticipate adversary actions across the continuum of conflict.

The traditional Intelligence Cycle (direction, collection, processing, dissemination) remains valid, but in the MDO environment it faces new pressures:

- Speed of decision-making – Information must be processed in near real-time to support dynamic operations.
- Volume of data – The exponential growth of open-source, cyber, and sensor-derived data strains analytical capacity.
- Ambiguity and deception – Hybrid adversaries deliberately inject false signals, requiring advanced analytical techniques to discriminate truth from deception.
- Cross-domain integration – Intelligence must break silos to integrate military, economic, diplomatic, and informational inputs.

The U.S. Army's concept of convergence, synchronizing effects across domains through intelligence-led targeting, exemplifies the centrality of intelligence in MDO[16]. NATO's equivalent, reflected in its Warfare Capstone Concept (NWCC), similarly emphasizes that intelligence is the connective tissue enabling coherent multi-domain responses[17].

In essence, intelligence in Multi-Domain Operations serves as the connective and predictive core of modern warfare, integrating data across all domains to enable rapid, informed, and synchronized decision-making against adaptive and deceptive adversaries.

II.2 HUMINT in the IoP-MDO Nexus

In this context, HUMINT faces a series of challenges brought by the evolving operational contexts, as we have shown in a previous paper.[18] Thus,

---

[16] TRADOC, Op. Cit.

[17] NATO Allied Command Transformation, The *NATO Warfighting Capstone Concept*, Norfolk, VA., 2021, https://www.act.nato.int/our-work/nato-warfighting-capstone-concept/.

[18] Alexandru Kis, Pavol Soltys, *Human factors in Multi-Domain Operations: navigating the bivalent dynamics of human terrain and military human capital with a HUMINT lens*, in the proceedings of the 19th International Scientific Conference "Defense Resources Management in the 21st Century", Braşov, 7-8 November 2024.

technological innovation in MDO both enhances and constrains HUMINT. AI, big data analytics, and NATO's digital backbone enable faster correlation of human reporting with technical intelligence and improve the timeliness of insights. AI tools can help identify influencers, detect anomalies, and verify reporting, yet they also bring risks of bias, misinterpretation, and adversarial exploitation. At the same time, pervasive surveillance technologies such as biometrics, facial recognition, and cyber monitoring limit discreet operations and increase risks for human sources, especially in authoritarian contexts. HUMINT must therefore integrate technological enablers without losing its unique value: understanding the adversary intent, motivation, and perception in ways machines cannot replicate.

This transformation also redefines the human capital in HUMINT. NWCC underscores the imperative of "*the right people with the right skills*,"[19] requiring HUMINT operators to blend traditional interpersonal expertise with digital literacy, cultural intelligence, and cognitive agility. They must be equally adept at engaging sources in fragmented, urbanized societies and at exploiting AI-driven data systems for operational advantage. Such adaptability can only be sustained through continuous education, interdisciplinary training, and concept experimentation that prepare practitioners for hybrid and multi-domain challenges.

In this context, HUMINT and broader intelligence functions must be engaged and cooperate with elements of other IoPs, thus needing specialized understanding on functions, terminology, legal and operational opportunities and limitations, cooperative expectations, employed technology/ systems, cultural aspects, working ethos and ethics.

For NATO, inter-agency cooperation is not only vertical (between national and Alliance structures) but also horizontal, requiring collaboration between intelligence, cyber defense, information operations, and strategic communication. HUMINT, situated at the intersection of human engagement and broader intelligence processes, plays a crucial bridging role.

II.3 Military HUMINT in MDO - from crisis response operations to collective defense

Narrowing down to the military intelligence organizations, HUMINT practitioners need a clear understanding of possible tasks and the operating environment in different phases or manifestations of the hybrid warfare. These elements should be considered in a wide spectrum of reference, from the

[19] NATO Allied Command Transformation, *The NATO Warfighting Capstone Concept*, Norfolk, VA., 2021.

management of crowd-sourced intelligence to military liaison and advanced source and non-source operations.

Another critical aspect is represented by the HUMINT ascendent in Force Collection Activities, where oversight may include specialized support (guidance, mentorship, training) to the formation of expert interviewers. Moreover, the HUMINT access to specific informational ecosystems positions it at the forefront of collection on details relevant for human security (as an emerging imperative in areas of operations, alongside other cross-cutting topics[20]), or in relation with Law Enforcement Intelligence (LEINT)[21].

Training in military HUMINT must therefore prepare practitioners at all levels (collection, analysis, operational management, logistic & technological support) to perceive these dimensions for accurately answering intelligence requirements and produce effective influence.

Considering this approach for HUMINT in Article 5 context, we identify two major challenges. The first issue is represented by **the spectrum of activities where military HUMINT is involved in time and space** (the expectation is that requirements would emerge from technical agreements signed by SHAPE with the interested nations). As it is validated in stabilization, counterinsurgency, or crisis-response operations where the adversary and the host nation are distinct, the operating environment in collective defense is no longer "foreign soil with host-nation dynamics" but own or allied territory. Here, military power is not applied to influence or stabilize a host state but to defend sovereignty. This creates a stalemate for HUMINT: traditional collection from civilian sources in host societies may be restricted, as those societies are already part of NATO/allied structures, governed by national security laws, and heavily integrated with other instruments of power.

In any case, HUMINT remains critical across the stages of the conflict, but its role evolves. In early phase (hybrid/ pre-article 5 threshold), HUMINT may provide indications and warnings of adversary subversion, disinformation campaigns, infiltration of political movements, sabotage of infrastructure, or manipulation of minority groups. Here, HUMINT complements other collection assets by accessing human intentions and motivations, often hidden from technical means. In this context, operating in the virtual space (active collection through social media channels) would be a great benefit (although it needs the

[20] Alexandru Kis, *Subiecte transdisciplinare în NATO și reflectarea lor la nivelul disciplinei HUMINT – securitatea umană, considerațiile de gen și consolidarea integrității*, in INFOSFERA, Year XVI no. 2/2024, pp. 72-81, https://www.mapn.ro/publicatii_militare/arhiva_infosfera/documente/2024/2_2024.pdf.

[21] David L. Carter, *Law Enforcement Intelligence Guide 3.0*, Michigan State University, August 2021, https://www.researchgate.net/publication/353720175_CARTER_Law_Enforcement_Intelligence_Guide_30.

necessary legal framework, as it was the case for shooting down Russian-linked drones overflying NATO territory).

In the transition to high-intensity conflict, HUMINT supports intelligence collection and force protection in various operational and tactical contexts, reflected across the HUMINT spectrum of activities in the area of intelligence interest. In this regard, the development of the HUMINT tactics, techniques, and procedures to leverage emerging and disrupting technologies (e. g. facilitating Intelligence crowd-sourcing) must be considered to ensure depth and width of collection (as lessons from the war in Ukraine demonstrate)[22].

The second focus is understanding the operational environment throughout the extent and relevance of PMESII (a reference standard for assessing an operating environment) on the national/ NATO soil. HUMINT continues to exploit local populations' perceptions, resilience, and vulnerabilities. Even on allied soil, societies under attack experience stress (displacement, shortages, propaganda, economic coercion) that can affect posture's expectations. HUMINT can measure morale, map influence networks, and advise commanders on non-kinetic vulnerabilities. HUMINT's center of gravity shifts from "knowing the host population" to "safeguarding allied populations and exposing adversary manipulation", protecting and understanding the dynamics of the home environment. PMESII remains valid as an analytical tool, but its relevance in the continuum of conflict is found in prevention, resilience, and counter-subversion, requiring close integration with the non-military instruments of power. HUMINT thus becomes a bridge between military defense and national/Alliance-wide resilience.

In sum, HUMINT in hybrid and collective defense contexts must transform into a resilience-oriented, technologically enabled, and interagency-integrated discipline (coordination with relevant entities across non-military IoPs), bridging military defense with societal awareness to detect, prevent, and counter human-centered threats across the continuum of conflict.

III. INTEGRATION OF THE INSTRUMENTS OF POWER AND IMPLICATIONS FOR TRAINING

Understanding and applying IoPs interplay is not intuitive. Military officers often lack familiarity with diplomacy, economics, or information operations in the military education and training. Conversely, civilian actors may

[22] Laviniu Bojor, *Tehnologie dual în război: rolul telefoanelor inteligente în conflictul din Ucraina*, in *Impactul tehnologiilor emergente asupra securității internaționale,* coord. Alin Cîrdei and Laviniu Bojor, pp. 21-54, Editura Academiei Forțelor Terestre "Nicolae Bălcescu", Sibiu, 2025.

underestimate the constraints of military operations. Hybrid adversaries exploit these institutional silos by operating seamlessly across instruments.

Generic training for MDO must therefore prepare personnel to recognize IoPs effects across the conflict continuum, understand synergies and tensions between instruments, and incorporate cross-domain and cross-instrument perspectives into planning. Furthermore, interoperability is a point not just between services and nations, but across civilian-military agencies.

Given the lingering role of HUMINT in MDO, dedicated training programs must focus on tailoring performance objectives through the lenses of multiple IoPs: **cross-domain literacy** (HUMINT practitioners must understand how diplomatic, economic, informational, and military instruments interact), **intercultural competence** (essential for source engagement in any environment) [23] , **digital proficiency** (mastery of cyber hygiene, OSINT exploitation, AI-assisted analytics, and secure digital communication) [24] , **resilience and ethics/ integrity** (ability to withstand manipulation, cognitive warfare, and moral dilemmas).

The integration of IoPs has several implications for HUMINT training:

1. **Comprehensive Situational Awareness** – HUMINT operators must be trained to understand the effects of diplomatic, informational, and economic instruments in their areas of operation. These aspects are contextual and must be part of the training scenarios, while preserving an educational value.
2. **Cross-instrument coordination** – Training should emphasize cooperation with civilian agencies (e.g., diplomats, economists, cyber experts). It has to start from deciphering their specific role and access to information of intelligence interest. Military intelligence liaison has a specific stake, and its output can be injected in exercises as training vignettes. Also, sharing of awareness/ educational materials and participation in drills carried on by other elements
3. **Resilience against hybrid threats** – Operators must learn to detect disinformation, resist cognitive manipulation, and protect their sources from hostile propaganda. NATO HUMINT COE is very active in shaping the necessary skills and developing adequate educational solutions (e.g. the ADL "Information assessment – a HUMINT perspective").
4. **Application of emerging technologies** – The **transformational potential of Emerging and Disruptive Technologies (EDTs)** on HUMINT lies in their capacity to **augment human performance, expand operational reach, and enhance analytical precision**, while simultaneously

[23] Alexandru Kis (coord.), *Webbing leadership and communication in human engagement*, Centrul Tehnic-Editorial al Armatei, București, 2024.

[24] Alexandru Kis (coord.), *Turning Digital. Probing emerging competences for HUMINT professionals*, Centrul Tehnic-Editorial al Armatei, București, 2025.

redefining the nature of human–machine collaboration within intelligence. Specifically, EDTs can: [25]

- **Revolutionize HUMINT collection** by integrating advanced sensors, autonomous platforms, and AI-driven analytics that enable real-time validation, fusion, and interpretation of human-derived data.
- **Enhance operator performance** through bio and cognitive augmentation technologies (BHET), wearable systems, and smart interfaces that increase resilience, awareness, and decision-making under stress.
- **Transform education and training** via modeling and simulation (M&S), immersive virtual environments, and adaptive learning platforms that replicate complex human engagement scenarios (e.g., QUESTIX platform developed at NATO HUMINT COE, based on the QUESTIFY framework[26]).
- **Strengthen interoperability** by linking HUMINT with other C5ISR components, ensuring seamless cross-domain intelligence integration in MDO contexts.
- **Support ethical and legal compliance** by developing frameworks for responsible use of AI and automation, ensuring data protection and safeguarding human dignity.

In essence, **EDTs transform HUMINT from a purely interpersonal discipline into a hybrid human-machine enterprise**, where technology amplifies - not replaces - the human capacity for understanding motivation, intent, empathy, and perception. This evolution positions HUMINT as both **a cognitive and technological bridge** within NATO's multi-domain intelligence architecture, enabling smarter, faster, and more resilient decision-making across the continuum of operations and in connection with other IoPs.

Training ensures that HUMINT officers are not only technically proficient but also able to interpret and act within a system of interconnected domains. This requires moving from **domain-centric training models** to a **multi-domain learning framework integrated across IoPs**, emphasizing interoperability, adaptability, and cross-disciplinary literacy.

While HUMINT awareness for staff and commanders is a prerequisite for the discipline's seamless integration in the bigger picture of Intelligence and operations, a series of generic tasks/ performance statements can emerge into the

[25] Alexandru Kis, *HUMINT și tehnologiile emergente și disruptive din perspectiva operațiilor multidomeniu*, in *Impactul tehnologiilor emergente asupra securității internaționale*, coord. Alin Cîrdei și Laviniu Bojor, pp. 279-302, Editura Academiei Forțelor Terestre "Nicolae Bălcescu", Sibiu, 2025.

[26] https://www.natohcoe.org/nato-humint-coe-at-hackathuso/.

HUMINT training requirements analysis to reflect the complexity of MDO. The training requirements' sources are represented, on one hand, by top-down transformation expressed in policies and doctrines, or the implementation of various technologies, and on the other hand, by bottom-up initiatives inspired by best practices and lessons learned (a reactive process), or concept development and experimentation (a proactive process). Additionally, contextual training vignettes can also support the purpose of enlarging the vision and the practice of the HUMINT professionals.

In establishing a multi-domain HUMINT competence framework - an Alliance-wide reference for skills, knowledge, and attributes required at tactical, operational, and strategic levels, understanding how military operations intersect with political, economic, and informational activities is very important.

Training must include modules/ teaching points on hybrid warfare case studies, focusing on how non-military instruments shape the operational environment. Particularly, HUMINT operators, collators and analysts, operational managers, or technical support staff need to discover horizontal connections with elements of other IoPs, to enable:

- Crowd-sourcing – integration in the intelligence spectrum and harmonization with HUMINT operational process;
- Analytical integration – ability to fuse HUMINT with cyber, OSINT, and technical intelligence into coherent assessments that inform commanders across domains.
- Operational adaptability – capacity to shift seamlessly and secure between physical, informational, and cognitive domains during engagements.
- Enhanced source management – source validation and protection under hybrid threats, as they are increasingly exposed to risks from biometrics, pervasive surveillance, and adversary counterintelligence technologies.
- Narrative sensitivity – recognition of adversary influence operations and capacity to provide counter-narratives informed by cultural insight.
- Digital literacy – proficiency in secure digital platforms, AI-assisted tools, and data analytics relevant to HUMINT.
- Active collection on social media platforms – legal background, procedures and security for HUMINT.
- Cross-functional cooperation – ability to work effectively with diplomats, law enforcement, cyber experts, and other key persons.
- Resilience, ethics, and decision-making under pressure – HUMINT practitioners often face morally ambiguous situations, balancing operational necessity with ethical constraints.

In the assessment of correspondent performance objectives indicators such as speed and accuracy in recognizing deception cues, effective use of AI-enabled HUMINT tools in simulated environments, demonstrated resilience in ethical

decision-making during exercise vignettes, or capacity to integrate HUMINT contributions into multi-domain planning documents should be adjusted to the desired depth of knowledge and integrated into multi-disciplinary training.

Exercises remain the most powerful vehicle for preparing HUMINT professionals for MDO, and key elements include the realism of scenarios, replicating adversary hybrid tactics, and integration of cross-domain injects - HUMINT tasks should not be isolated but linked with cyber disruptions, diplomatic signaling, and economic sanctions.

Ultimately, HUMINT training in MDO is not just about producing technically skilled operators. It is about shaping multi-domain intelligence leaders capable of navigating uncertainty, integrating across instruments of power, and strengthening NATO's resilience in an era of hybrid conflict.

CONCLUSION

HUMINT and the Instruments of Power in Multi-Domain Operations

This study set out to explore how the interaction between the IoPs — diplomatic, informational, and economic — shapes the military IoP in the context of MDO, with a focus on HUMINT. The purpose was not only descriptive, but prescriptive: to identify training implications that ensure NATO and partner forces remain agile, adaptive, and resilient in the face of hybrid and multi-domain threats.

The analysis shows that while hybrid adversaries have blurred the lines between peace, crisis, and war, nations and security organizations must leverage the coordinated effects of all IoPs to respond effectively. In this continuum, HUMINT emerges as a bridge capability, linking the human dimension to the broader operational picture. While technical collection may show "what happened," HUMINT explains the "why" - the rationale behind adversary actions, the likelihood of escalation, or the vulnerabilities that can be exploited. In hybrid warfare, HUMINT also provides the cultural and contextual depth to interpret signals correctly.

Case studies like Russia's cyber-attacks, targeted crimes, disinformation campaigns, exploitation of migration flows, and the air penetrations over Europe illustrate the multi-layered use of IoPs. Each case potentially reaffirms that:

- *The Diplomatic IoP may rely on HUMINT to understand negotiations, adversary posturing, and informal channels.*
- *The Informational IoP may depend on HUMINT both as a collector of ground-truth narratives and as a counterweight to disinformation and psychological manipulation.*
- *The Economic IoP can be sharpened by HUMINT insights into corruption networks, sanctions evasion, or supply-chain vulnerabilities.*

- *The Military IoP is directly enabled by HUMINT through targeting, force protection, and operational decision support.*

Thus, in certain conditions, HUMINT may act as an enabler and amplifier of all IoPs, ensuring that decisions are grounded in human realities rather than abstract models. Given its expanded role, HUMINT professionals require training that extends beyond classical debriefing and source operations, to include digital competencies (e.g. AI-assisted analysis, social media exploitation), cultivate cross-domain literacy to understand how HUMINT interacts with diplomacy, economics, and strategic communication, strengthen resilience and ethical judgment to operate in high-pressure, morally ambiguous hybrid scenarios, and enhance cognitive agility to detect manipulation, biases, and adversarial use of disruptive technologies (e.g., deepfakes, AI-generated personas).

The integration of innovative platforms like QUESTIX and the emphasis on psychological self-regulation training are examples of how NATO HUMINT COE is already adapting to these imperatives. The Centre's academic outreach is also meant to increase understanding and interaction with other actors from the non-military IoPs with the aim to discover common denominators and foster operational synergies.

BIBLIOGRAFIE

1. NATO Allied Command Transformation, The *NATO Warfighting Capstone Concept*, Norfolk, VA., 2021, https://www.act.nato.int/our-work/nato-warfighting-capstone-concept/. ;

2. TRADOC, The U.S. Army in Multi-Domain Operations 2028, U.S. Army Training and Doctrine Command, 2018, https://www.army.mil/article/243754/the_u_s_army_in_multi_domain_operations_2028;

3. Bilal, Arsalan, *Hybrid Warfare - New Threats, Complexity, and 'Trust' as the Antidote*, November 2021, NATO Review, https://www.nato.int/docu/review/articles/2021/11/30/hybrid-warfare-new-threats-complexity-and-trust-as-the-antidote/index.html;

4. Bojor, Laviniu, *Tehnologie dual în război: rolul telefoanelor inteligente în conflictul din Ucraina*, in *Impactul tehnologiilor emergente asupra securității internaționale,* coord. Alin Cîrdei and Laviniu Bojor, pp. 21-54, Editura Academiei Forțelor Terestre "Nicolae Bălcescu", Sibiu, 2025;

5. Carter, David L., *Law Enforcement Intelligence Guide 3.0*, Michigan State University, August 2021, https://www.researchgate.net/publication/353720175_CARTER_Law_Enforcement_Intelligence_Guide_30;

6. Fusaro, Paola; Jouan, Nicolas; Retter, Lucia and Wilkinson, Benedict, *Science and technology as a tool of power. An appraisal*, RAND Europe, November 2022,

https://www.rand.org/content/dam/rand/pubs/perspectives/PEA2300/PEA2391-1/RAND_PEA2391-1.pdf;

7. Gilli, Andrea; Gilli, Mauro and Grgić, Gorana, *NATO, multi-domain operations and the future of the Atlantic Alliance*, in *Comparative Strategy*, *44*(1), 2025, pp. 73–91, https://doi.org/10.1080/01495933.2024.2445491;

8. Gorenc, Nina, *Cultural diplomacy – the instrument of power in American foreign and security policy*, in *The Review of International Affairs*, Vol. LXVI, No. 1158-1159, April–September 2015, pp. 18-31, https://thereviewofinternationalaffairs.rs/wp-content/uploads/RI/2015/1158-1159/RI-2015-1158-1159-article-2.pdf;

9. Hartley, Dean S., *The DIME/PMESII Paradigm*, in *Unconventional Conflict. Understanding Complex Systems. Springer*, Cham, 2017, https://doi.org/10.1007/978-3-319-51935-7_4;

10. Iancu, Sînziana, *Războiul hibrid al Rusiei împotriva Occidentului. Doctrina Gherasimov, forțe paramilitare și grupurile de voluntari*, in Defense Romania, September 2024, https://www.defenseromania.ro/razboiul-hibrid-al-rusiei-impotriva-occidentului-i-doctrina-gherasimov-forte-paramilitare-ipb-si-grupurile-de-voluntari-iv_630347.html;

11. Iskandarov, K. and Gawliczek, P., *Hybrid warfare as a new type of war. The evolution of its conceptual construct*, in Miroslaw Banasik, Piotr Gawliciczek and Agnieszka Rogozinska (eds), *The Russian federation and international security*, Poland: Difin publishing house, 2020, pp. 96-107;

12. Kis, Alexandru (coord.), *Turning Digital. Probing emerging competences for HUMINT professionals*, Centrul Tehnic-Editorial al Armatei, București, 2025.

Kis, Alexandru (coord.), *Webbing leadership and communication in human engagement*, Centrul Tehnic-Editorial al Armatei, București, 2024;

13. Kis, Alexandru and Soltys, Pavol, *Human factors in Multi-Domain Operations: navigating the bivalent dynamics of human terrain and military human capital with a HUMINT lens*, in the proceedings of the 19th International Scientific Conference "Defense Resources Management in the 21st Century", Brașov, 7-8 November 2024;

14. Kis, Alexandru, *A projection of the cognitive warfare in Human Intelligence*, STRATEGIES XXI, vol. XIX, 27-28 June 2023, "Carol I" National Defence University Publishing House, Bucharest, https://www.strategii21.ro/A/2023-06. STRATEGII XXI/CONFERINTA STRATEGII XXI_2023.pdf;

15. Kis, Alexandru, *HUMINT și tehnologiile emergente și disruptive din perspectiva operațiilor multidomeniu*, in *Impactul tehnologiilor emergente asupra securității internaționale*, coord. Alin Cîrdei și Laviniu Bojor, pp. 279-302, Editura Academiei Forțelor Terestre "Nicolae Bălcescu", Sibiu, 2025;

16. Kis, Alexandru, *Subiecte transdisciplinare în NATO şi reflectarea lor la nivelul disciplinei HUMINT – securitatea umană, consideraţiile de gen și consolidarea integrităţii*, in INFOSFERA, Year XVI no. 2/2024, pp. 72-81, https://www.mapn.ro/publicatii_militare/arhiva_infosfera/documente/2024/2_2024.pdf;
17. Reichborn-Kjennerud, Erik and Cullen, Patrick, *What is Hybrid Warfare?*, Information Note January 2017, MCDC Countering Hybrid Warfare Project, https://assets.publishing.service.gov.uk/media/5b2904aded915d2cd5d01bfd/MCDC_CHW_Information_Note-Understanding_Hybrid_Warfare-Jan_2018.pdf;
18. Rodriguez, Cesar Augusto; Walton, Timothy Charles and Chu, Hyong, *Putting the "FIL" into "DIME". Growing Joint Understanding of the Instruments of Power*, Joint Doctrine - JFQ 97, 2nd Quarter 2020, pp. 121-128, https://ndupress.ndu.edu/Portals/68/Documents/jfq/jfq-97/jfq-97_121-128_Rodriguez-Walton-Chu.pdf?ver=2020-04-01-095603-607;
19. Schmid, Johann, *Introduction to Hybrid Warfare – A Framework for comprehensive Analysis*, in: Thiele, R. (eds) Hybrid Warfare. Edition ZfAS. Springer VS, Wiesbaden, 2021, https://doi.org/10.1007/978-3-658-35109-0_2.;
20. Schmid, Johann, *The Hybrid Face of Warfare in the 21st Century*, March 2019, https://www.maanpuolustus-lehti.fi/the-hybrid-face-of-warfare-in-the-21st-century/;
21. https://www.natohcoe.org/nato-humint-coe-at-hackathuso/.
22. https://www.thelightningpress.com/wp-content/uploads/2018/06/Conflict-Continuum.jpg.

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 249-259

INTERNATIONAL HUMANITARIAN LAW IN THE CONTEXT OF CURRENT CONFLICTS. THE LOGISTICS IN SPECIAL PROTECTION AREAS

A. LĂZĂU-PĂCURARU

Received 23.12.2024; accepted 04.02.2025
First online publication:15.02.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.239

PhD. Atanasie LĂZĂU-PĂCURARU
SARA Law Research Center
E-mail: armyylaw@gmail.com
ORCID ID: https://orcid.org/0000-0002-1184-8010

Abstract

The paper intends to highlight the importance of the referendum in a democratic State and to stress the need that its organization and conduct have to be in accordance with the standards required by a State governed by the rule of law. The role of the Constitutional Court will also be depicted and its case-law will be briefly presented in what concers the most relevant aspects of the referendum as an instrument used by the citizens in order to participate in the decision-making process at the State level.

Key words: *humanitarian law, conflict, wounded, protection zones, security***.**

INTRODUCTION

Romania, as a Member State of NATO and EU, through its consolidation, as well as through the defense policy promoted, has acquired a pronounced proactive role within the alliance. Consequently, we note that Romania's responsibilities are not limited to policies ensuring the defense of the national territory or to preventive diplomacy, but extend to policies that promote the interests of Romania and support global stability in any region of the world, especially in the current context, which focuses on the area in the proximity of the Black Sea and neighborhood of Ukraine, a non-NATO state which is in an armed conflict with another non-NATO state.

Therefore, given the geostrategic position of Romania in the South-Eastern European area – a country at the border of NATO and of the European Union – which has an armed conflict at its border, the national defense policy maintains as

its goal the defense and promotion of Romania's vital interests, as well as the active participation of our country in ensuring security and peace in the interest areas of NATO, EU.

International humanitarian law represents, according to a comprehensive definition, a collection of rules that, for humanitarian considerations, are aimed at limiting the effects of an armed conflict, protect people who do not take part or no longer take part in the hostilities, and restrict the menas and methods of war *(Dragoman, Ungureanu, 2018, p.29).*

International humanitarian law is also known under the name of *law of war or law of armed conflicts*, it applies to armed conflicts, being regulated especially by the *1949 Geneva Conventions*, supplemented by the two additional protocols of 1977 regarding the protection of armed conflict victims, to which are added a large number of conventions regulating specific segments of international humanitarian law, as well as customary law rules and related principles.

The current national strategy of Romania of enforcing international humanitarian law makes the best of the humanitarian traditions of the Romanian people in general, of the armed forces in particular, as well as of the experience gathered by the structures with responsibilities in this field, especially as a result of participating in various international missions.

The research theme identifies in an evolutive manner the application of the principles of humanitarian law of applied transposition thereof through *Romania's National Strategy of Defense of for the period 2020 – 2024*[1], the manner in which the Romanian Government through the Ministry of National Defense had the task of creating an integrated logistic system, with a medical component, as well as the need to adjust to new realities with regard to the sizing, configuration and missions of the Romanian Army, so that the provision of forces for the action and collective security and defense be carried out in strict agreement with the NATO-EU compatibility requirements.

Speaking of the area of interest in maintaining a favorable security climate, the analysis is directed at Ukraine, a state located in the immediate proximity of our country, a sovereign and independent state which, as early as the year 2022 proceeded to the adjustment of its legislative system according to the conflict situation, by activating the Martial Law[2], this being the second time it has been activated since World War II, the first time having been in the year 2018, by President Poroshenko.

The restrictive measures imposed by this law are military in nature, with implications on the use of the workforce, on compulsory labor in vital sectors of the war economy, the takeover of command prerogatives by military commanders

[1] https://www.presidency.ro in 10.11.2024
[2] https://zakon.rada.gov.ua in 21.11.2024

or the emergency replacement of administrative authorities, are aimed at the legal regime of property and goods, the rationalization of consumption, but also with regard to the limitation of the population's freedom of movement and the activity of the media, etc.

However, none of the provisions of the Martial Law of Ukraine diminish the provisions of international humanitarian law applicable to the state of armed conflict, on the contrary, the defense policy of the Ukrainian state in relation to Russia, will be conducted with the observance of these rules, although the army of Ukraine has been the subject of accusations of mistreatment and execution of Russian prisoners, as an inappropriate response to the war crimes committed by the Russian army since the beginning of the invasion in the winter of 2022 *(A. Borovyk, 2022, p. 166*).

So, without differentiating between the parties that committed them, the full spectrum of criminal acts criminalized by humanitarian law are present, and the atrocities committed by both parties are investigated by the International Criminal Court (*Nastas, Dorul, 2023, pp. 94-97*) in conjunction with other acts of genocide, such as: the use of prohibited weapons, the abduction and deportation of persons, arbitrary detention and enforced disappearance, the use of Russian filtration camps for Ukrainians, attacks on civilians – the Bucha Massacre, the mass graves in Izyum, execution of armed attacks against civilian vehicles, attacks on medical facilities and energy infrastructure, destruction of cultural heritage, torture of civilians, use of human shields, sexual violence, looting, mistreatment and killing of prisoners, etc.).

We note that the current war is already part of a very broad spectrum of actions and reactions, in a hybrid (multidimensional) space, which define, among other things, the following types of conflicts: informational, cyber, psychological, media, economic, cosmic, cultural, genetic, geophysical, and not least nuclear conflicts, that are conducted by military and post-conflict means[3] .

Thus, Romania must further develop its own strategic profile in the context of domestic political stability and of a real economic development, participate in the collective defense effort within NATO and in the construction of the military dimension of EU, as well as in the full range of missions for the fulfillment of commitments undertaken at international level, including in respect of post-conflict resilience and reconstruction measures, among other things, the development of legal resilience, a concept that is already present in international use even in countries located in the proximity of the armed conflict (*Beda, 2024, p.605*).

For a multi-annual budgetary policy used at EU level, the date proposed to put into practice the new instrument was 1st January 2021, with the intention for it

[3] https://cssas.unap.ro in 27.11.2024

to be operational over the entire duration of the Financial Framework 2021-2027, from which it would also receive adequate funding *(Ilinca, 2022, pp. 7-13)*

This is the context that also circumscribes *Romania's National Strategy for the Application of International Humanitarian Law*, which is aimed at ensuring the knowledge and observance of obligations incumbent on the Romanian state through the ratification of international treaties regarding this field and the dissemination of these rules among civil society. *(Decision no. 298/2007 – for the approval of Romania's National Strategy for the Application of International Humanitarian Law[4]).*

I. SPECIAL PROTECTION AREAS

Taking as a starting point the presentation of general conceptual aspects, translated into the specifics of the construction of the logistics system, and in order to further analyze the casuistry of conducting logistical support actions, in particular, of actions aimed at ensuring support in areas of armed confrontations, *it is necessary to determine the status of geographical areas* in relation to the type of armed conflict. In joint operations, logistical support is provided appropriately alongside the functional fields and in terms of medical support.

The doctrine of of joint operations logistics *(Regulation of Joint Operations Logistics, updated[5])*, in Article 1, enshrines as general principles: the assurance of mobility, flexibility, deployability and sustainability of forces for the fulfillment of the full spectrum of missions in which they are engaged, is achieved through appropriate logistical support, supplied by an integrated system, logistical support being a decisive element of the engagement of forces in joint operations led by the North Atlantic Treaty Organization – NATO, the European Union – EU, the United Nations – UN, the Organization for Security and Cooperation in Europe – OSCE, as well as within multinational coalitions.

The personnel of international organizations and bodies is exposed to a variety of risks and threats, not only in conflict situations existing in collapsing states where peace-keeping missions and operations are carried out, but also as a result of a complex security environment, dominated by new conceptual mutations and by a rapid pace of technological development. In recent years, the number of casualties among employees of the aforementioned structures has remained high, which indicates that armed violence is still widespread in mission areas and in peace operations. The risk mitigation process is complex and is based on the need for constant assessment of the security situation in an adaptive manner, as well as on a constant correlation of these risks with the level of available capabilities *(Manga, 2023, p. 171).*

Considering the limitations and prohibitions of conducting military operations in special protection areas, we will analyze in this geographical area

[4]Published in the Official Journal no. 353 of 7 May 2008.

[5]Doctrine of joint operations logistics – S.M.G./L-1 – Centrul editorial al armatei (Editorial Center of the Army) – Bucharest, 2008.

the manner of providing logistical support in joint operations in terms of the functional fields specific to movement and transport, as well as of the medical support offered to people wounded in the military conflict.

Special protection areas are created to shelter certain categories of persons and non-military targets against the effects of combat actions. These categories include: sanitary areas, security sanitary areas and localities, neutral zones, demilitarized zones, defenseless localities.

It is a well-known fact that the logistical system is considered to be exposed and vulnerable to actions, most often the success of military actions being based on the neutralization and occurrence of significant damage in this system, all of which may be justified; but the occurrence of such damage and the organization of hostile actions in special protection areas are strictly prohibited and manifestly violate the provisions of international humanitarian law (IHL).

In the light of the above, the principles of establishing the logistics assurance system in multinational operations interferes with the principles and rules of application of international humanitarian law, without being of a restrictive nature, by means of the following components: medical support (including sanitary transport for the evacuation of the wounded and the dead); campaign services; setting up refugee camps and prisoner-of-war camps. There are significant responsibilities derived from international treaties, from agreements between parties and military regulations, which fall upon logistics to ensure compliance with IHL provisions.

During combat and especially in the aftermath thereof, together with the other departments, the logistics department has to solve particularly important issues, with responsibilities in enforcing IHL, such as: sanitary transports; carrying out actions in protected areas; organizing the medical service; evacuation; organizing campuses and internees; managing criminal and disciplinary issues in prisoner-of-war campuses; interning belligerents in the neutral zone *(Pashynna, 2024, p.922).*

II. RESPONSIBILITIES REGARDING MEDICAL SERVICES AND TRANSPORTS

The need for a joint debate regarding the two components of the law of war (one legal and the other one technical, with a logistical specificity), has arisen from the conception of FRÉDÉRIC DE MULINEN, who expressed the following opinion: *"military staff with special functions, as well as legal advisors, members of medical services, logistics specialists, etc., will receive training with an emphasis on the specific needs of their functions" (Codiţă, 2007, pp.58-62).*

As a component of logistics, sanitary transports and sanitary service are aimed at persons with the legal status of wounded person. The terms *wounded* and *sick* mean persons, whether military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any act of hostility (*Art. 8, Additional Protocol I to*

the Geneva Conventions of 12 August 1949, relative to the Protection of Victims of International Armed Conflicts - G.P I).

These terms concern postpartum women, newborns and other persons who might need immediate medical assistance, such as disabled persons and pregnant women, and who refrain from any act of hostility. One should note, in the content of this text, the requirement of refraining from acts of hostility, as the practice or the manifested express intention to commit such acts determines the loss of the capacity of protected person.

The person generally in charge of logistics will decide the precise manner in which the sanitary service is to operate behind the front line, according to the sanitary service system in place in his scope of responsibility (e.g. identification, use of camouflage, storage and use of weaponry, temporary medical assignment).

The phrase *healthcare personnel* means persons assigned solely by one party to the conflict either to medical/sanitary purposes (search, evacuation, transport, diagnosis and treatment of the wounded, sick, shipwrecked, as well as the prevention of diseases), or to the operation or management of sanitary transport.

The field of application of the provisions which are aimed at improving the condition of the wounded, sick and shipwrecked covers all those who are affected by a situation foreseen and established under the terms of the protocol, without allowing any unfavorable distinction based on criteria such as race, color, language, religion or belief, political opinions or other opinions, national or social origin, wealth, birth or other status or any other similar criterion.

According to Mulinen, there are three possible functional systems of sanitary service in areas behind the front line; completely distinct military and civilian sanitary services; military and civilian sanitary services that cooperate by mutual acceptance of the wounded and sick, both civilian and military; partially or completely integrated military and civilian sanitary bases and services.

All wounded, sick and shipwrecked persons, regardless of the party they belong to, enjoy protection and medical care, they should be treated humanely under all circumstances and should receive, to the maximum extent possible and within the shortest timeframe, the medical assistance required by their condition, no distinction being permitted according to other criteria than medical ones. The health and physical or mental integrity of persons who are in the hands of the adverse party or interned, detained or otherwise deprived of their liberty should also be protected and should not be compromised by any action or unjustified omission.

Even when such persons give their consent, it is prohibited, in particular, to practice: physical mutilations; medical or scientific experiments; harvesting of tissues or organs for transplants, except in cases where they are justified. The regime of blood or skin donation for grafts is also regulated, with the prerequisite that these should be voluntary, not the result of coercive measures or insistence, and that they should be intended for therapeutic purposes.

In addition to the aspect regarding the protection of the human factor, which is part of a complex set of rules of international security behavior, the logistic structures that include medical services should also care for the goods and means of health units, as well as for the means of transport (sanitary vehicles, hospital ships, rescue boats, medical aircraft, other means of transport), on condition of fulfilling the requirements of protection of combatants, when they are protected by the Red Cross/Red Crescent/Red Crystal emblems.

These emblems protect: the wounded and the sick, healthcare personnel; ambulances and transports; hospitals, first aid stations and establishments belonging to the Red Cross/Red Crescent/Red Crystal.

Healthcare units should always be respected and protected and should not be subject to attacks. These provisions also apply to civilian healthcare units to the extent that they meet one of the following conditions: they should belong to one of the parties to the conflict; they should be recognized and authorized by the competent authorities of one of the parties to the conflict (*Art. 9/2 Additional Protocol I to the Geneva Conventions, relative to the Protection of Victims of International Armed Conflicts, Geneva* - G.P I).

Healthcare units must never be used as shelter from attacks; the parties to the conflict must make sure that they are located so that attacks against military targets do not endanger such healthcare units. NATO ensures coordination in establishing the tasks and responsibilities for the provision of operational medical support (OMS) on the basis of this provision.

III. THE CONDUCT OF ACTIONS OF LOGISTICAL SUPPORT REGARDING EVACUATION IN PROTECTED AREAS

Areas under special protection are: non-defended localities and demilitarized zones (*Art. 59, Art. 60, Additional Protocol I to the Geneva Conventions, relative to the Protection of Victims of International Armed Conflicts, Geneva – G.P I., 1949*), protection is provided to hospitals, sanitary localities, neutral zones, places of internment (*Art. 14, Art. 15 and Art. 83 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, Geneva, 1949*).

The competent authorities of a party to the conflict will be able to declare as *non-defended locality* any populated area, which is located in the vicinity of or inside a zone where armed forces are in contact and which is open to occupation by an adverse party.

According to the mandatory conditions to be met, logistic structures must undertake measures to collect and evacuate arms and materials, and within the framework of these operations the population and the authorities are not allowed to commit acts of hostility.

A locality loses the status of non-defended locality in cases where the following conditions are met: there are combatants present, as well as arms and

materials intended for the use of force; military targets and facilities are now used for hostile purposes; activities are undertaken to support military operations.

Demilitarized zones are established on the basis of an express agreement, whose the subject matter consists in the following conditions: all combatants, as well as the weaponry and materials intended for the use of force shall be evacuated; no hostile use shall be made of fixed military targets and facilities; the authorities and the population shall not commit any acts of hostility; all activities related to the military effort must cease.

Situations in which, as part of logistical support, missions consisting in the carrying out of actions within the protected areas are also assigned, should be analyzed from the standpoint of the provisions of international humanitarian law. If the supply of medical support is regulated in the doctrine of multinational forces, given the combative nature of logistic forces, in conjunction with the entrustment of missions for the evacuation of goods and materials, with missions to inspect and check fixed targets and facilities located within these areas, there is a need to clarify and to legally classify these types of missions, the ultimate goal being to protect the forces and maintain the status of protected area.

By way of example, the presence in such an area of persons specially protected by police forces maintained with the sole purpose of preserving public order is not contrary to the mandatory conditions to be met for such areas, as presented above (*Paragraph 4 of Article 60 of Additional Protocol I to the Geneva Conventions of 12 August 1949 relative to the Protection of Victims of International Armed Conflicts - G.P I*).

Therefore, the spectrum of Russian warfare, which includes, cyber warfare, combined arms cyber warfare, which includes combined arms attacks on medical facilities and enhanced use of drones, both defense and humanitarian sector staff, and evacuation routes, occurs daily and is likely to continue and intensify. Estimates of the number of dead or wounded across all sectors vary widely, ranging from 200,000 to 400,000. The targeted nature of Russian hybrid warfare and cyber-attacks on individuals, groups of rescuers and volunteers, and health care professionals at large presents challenges in sharing data from the frontlines among partner forces (*Quinn, Panasenko, Leshchenko, 2024, pp.20-21).*

In such situations, one option could be to use, on a free, voluntary basis, civilian persons who do not participate in hostilities and who do not perform any work of a military nature during their stay in these areas; nevertheless, the military nature of these missions is yet to be analyzed (*Art. 15 letter b) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949*).

The civilian staff assigned to work in a supply or maintenance base also bear the risks to which the military staff employed at the base are exposed. The simultaneous presence of military and civilian staff and goods in the same place should be avoided.

Thus, the difficulty arises in determining the applicability of international humanitarian law, a task that is complicated by the problems of classifying conflicts as international or non-international. Therefore, certain human rights obligations may be temporarily suspended - creating an additional layer of complexity, affecting the interpretation and application of the law during armed conflict (*Chen, 2024, pp.79-80).*

CONCLUSION

As a corollary, there are significant responsibilities incumbent on logistic structures, which are derived from international treaties, from agreements and military regulations, all of these for the purpose of ensuring compliance with IHL rules, throughout the carrying out of actions, but also after the cessation of combats, the logistics department having to resolve, in cooperation with the other departments important, issues of personal safety and security.

So, together with other authors, the term "emergency logistics" can be called in case of conflict plays an essential role in ensuring the uninterrupted flow in uninterrupted crises and disasters, in particular, when it comes to people injured and evacuated from protected areas. One of the goals of this article is to highlight the importance of the person's safety in the diversity of situations during the war (Myronenko,Yurchenko, 2024, pp.3-4).

BIBLIOGRAFIE

1. Collection of international treaties GENEVA LAW – Center for International Humanitarian Law – Ploiesti, 2006;
2. Doctrine of joint operations logistics – S.M.G./L-1, Ed. 2008 – Editorial Center of the Army – Bucharest, 2008;
3. Manual for the preparation and execution of military missions outside the territory of the Romanian state by national contingents – S.M.G./P.F.-3.15 – 2nd Joint Operational Command, 2005 Edition;
4. IHL (D.I.U.) 2/2006 – Manual for training Romanian army personnel on the status of captured persons – Center for International Humanitarian Law – Ploiesti, 2006;
5. Decision no. 298/2007 - for the approval of Romania's National Strategy for the Application of International Humanitarian Law;
6. IHL (D.I.U.) 3/2008 - Manual for training Romanian army personnel in international humanitarian law - Center for International Humanitarian Law – Ploiesti, 2008;
7. FRÉDÉRIC DE MULINEN, Handbook on the Law of War for Armed Forces;
8. I. Dragoman, D. Ungureanu, *Tratat de drept international umanitar* (*International Humanitarian Law Treatise*), Universul Juridic Publishing House, 2018;

9. Bulletin of the National Defense University "Carol I", No. 4/2022, National Defense University "CAROL I" Publishing House, Bucharest, 2022;
10. John Quinn, Serhii I Panasenko, Yaroslav Leshchenko, Konstantyn Gumeniuk, Anna Onderková, David Stewart, USAF, BSC (Ret.), A J Gimpelson, Mykola Buriachyk*;* "*Prehospital Lessons From the War in Ukraine: Damage Control Resuscitation and Surgery Experiences From Point of Injury to Role 2; Military Medicine",* Vol. 189, 2024, 17–29. DOI; https://doi.org/10.1093/milmed/usad253
11. Viktor Myronenko, Oksana Yurchenko, and Halyna Vasilova; "*Modern Technologies of Transportation Organization and Logistics. Interaction of Transport and Manufacturing Enterprises",* 2024, 3-7. DOI; https://doi.org/10.1051/matecconf/202439003009
12. L.V. Pashynna*; "Interaction of International Humanitarian Law and International Human Rights Law in the context of armed conflicts",* October 2024, 923-928. DOI; https://doi.org/10.24144/2788-6018.2024.05.141
13. Fangnan Chen; "*Protection of Civilians in International Humanitarian Law", 2024; 77-82*. DOI: https://doi.org/10.62051/ijsspa.v3n1.12
14. https://www.legisplus.ro/Intralegis6/oficiale/afis.php?f=215269&frame=2&link=&datavig=2024-11-22;
15. https://www.scribd.com/document/466225732/Frederic-de-Mulinen-Manual-de-drept-al-r%C4%83zboiului-pentru-for%C5%A3ele-armate-pdf;
16. https://www.ceeol.co.
17. http://apnl.dnu.in.ua/1_2022/28.pdf
18. https://treaties.un.org/doc/Publication/UNTS/Volume%201125/volume-1125-I-17512-English.pdf
19. http://journals.univ-danubius.ro/index.php/juridica/article/download/3103/2955
20. https://www.icrc.org/en/doc/resources/documents/article/other/57jqzq.htm
21. http://www.weaponslaw.org/instruments/1977-additional-protocol
22. http://www.icrc.org/eng/assets/files/publications/icrc-001-4057.pdf
23. https://guide-humanitarian-law.org/content/article/3/medical-ethics
24. https://www.ceeol.com/search/article-detail?id=636762
25. http://houseofswitzerland.org/swissstories/history/70-years-1949-geneva-conventions-success-storymultilateralism
26. http://elib.at/index.php/International_Humanitarian_Law_-_Introduction_-_ICRC_-Frits_Kalshoven_Liesbeth_Zegveld
27. https://ihl-databases.icrc.org/ihl/WebART/470-75007
https://www.loc.gov/rr/frd/Military_Law/pdf/RC-Draft-additional-protocols.pdf.

INTERNATIONAL HUMANITARIAN LAW IN THE CONTEXT OF CURRENT CONFLICTS. THE LOGISTICS IN SPECIAL PROTECTION AREAS

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 260-271

REVIEW OF SOME CRIMINAL JUDGMENTS THAT DO NOT RESOLVE THE SUBSTANCE OF THE CASE - PROCEDURAL MEAN TO ENSURE THE LEGAL ORDER

A.-L. LORINCZ

Received 10.12.2024; accepted 14.02.2025
First online publication:27.02.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.248

Anca-Lelia LORINCZ
"Dunărea de Jos" University from Galati, Romania, Faculty of Law and Administrative Sciences, Doctoral School of Social and Human Sciences
E-mail: lelia.lorincz@gmail.com
ORCID ID: https://orcid.org/0000-0002-2297-0652

Abstract

Among the meanings of the concept of "legal security" is the feeling of confidence of citizens in the correct application and interpretation of the law, as well as in the state's ability to ensure the legal order and, implicitly, public order. One of the requirements arising from the principle of security of legal relations is ensuring access to justice by guaranteeing the right to an effective remedy.

In this context, the present study approaches the institution of revision, bringing into attention the possibility of subjecting to re-examination, by exercising this way of attack, definitive criminal judgments that do not resolve the merits of the case.

Using, as research methods, observation, documentation, interpretation and comparative scientific analysis (including some European provisions), this paper also discusses some jurisprudential aspects regarding criminal judgments that can be subject to revision, with reference to the recent practice of the supreme court (High Court of Cassation and Justice) in Romania.

The objective of the study is to highlight the need to correlate the requirement of ensuring the stability of final criminal judgments with the requirement of guaranteeing access to justice by exercising an effective remedy.

Key words: *effective remedy, criminal case, legal order, legal security, access to justice.*

INTRODUCTION

Between the concepts of "public security" and "legal security" there is an undeniable connection and interrelation.

"Public security" signifies that feeling of citizens' trust in the state's provision of a normal climate of coexistence, in which interpersonal relations are based on mutual respect and compliance, voluntary or imposed, to the mandatory rules necessary for the functioning of a civilized society.

"Legal security" can be defined as that feeling of confidence of citizens, among others, in the correct application and unitary interpretation of legal norms, as well as in the state's ability to ensure the rule of law (legal order), in the sense of guaranteeing the preeminence of law, the supremacy of accessible and predictable laws, which allow compliance with their provisions.

Considered an essential element of the preeminence of law, the principle of the security of legal relations is explicitly enshrined in the jurisprudence of the European Court of Human Rights[1] in relation to one of the fundamental rights provided for in the Convention for the Protection of Human Rights and Fundamental Freedoms, namely the right to a fair trial, including through the requirement to ensure access to justice[2].

The right of access to justice is guaranteed in the member states of the European Union and by the provisions of the Charter of Fundamental Rights of the European Union[3], which stipulates, along with the right to a fair trial, the right to an effective remedy.

From this perspective, this paper approaches the institution of review, an extraordinary way of appeal in criminal matters, bringing into question the possibility of exercising this way of appeal against criminal court decisions that do not resolve the merits of the case.

The objective of the study is to highlight the need to correlate and achieve a balance between two seemingly opposite requirements of the principle of legal security: ensuring the stability of final court decisions and guaranteeing access to justice through the possibility of exercising an effective remedy.

I. PRINCIPLE OF LEGALITY OF ATTACK WAYS

Starting from the well-known saying "*errare humanum est*", we must accept the fact that the judgment, in the sense of reasoning, of the logical

[1] For example, the ECtHR Judgment of August 31, 2000 pronounced in *the Brumărescu Case against Romania*, published in the Official Gazette of Romania no. 414 of August 31, 2000.

[2] Art. 6 paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, concluded on November 4, 1950, with subsequent amendments and additions, published in the Official Gazette of Romania no. 135 of May 31, 1994.

[3] Art. 47 of the Charter of Fundamental Rights of the European Union of December 12, 2007, published in the Official Journal of the EU. no. C 303/1 of December 14, 2007.

operation by which the panel solves a criminal case, is subject to error, like any other human activity.

In order to eliminate possible mistakes that occurred during the trial, either in terms of establishing the factual situation or in terms of the application of the law, the institution of appeals (attack ways) against court decisions considered unfounded or illegal was conceived, with the role of a procedural remedy. From this perspective, the rationale for the establishment of appeals is based on two presumptions: a "presumption of error for the challenged judgment" and "a presumption of correction for the judgment that will follow" (*Dongoroz, 1942, p. 316*).

Correcting or avoiding judicial errors is subordinated to the fundamental principle of finding the truth in the criminal process, a principle specific to all disciplines in the branch of criminal sciences (*Iancu, 2019, p. 460*), by correctly establishing the factual situation based on the administration and thorough evaluation of all evidentiary material, as support used by the magistrate in pronouncing the solution (*Paraschiv, 2023, p. 305*).

The role of appeals in the judicial approach to find out the truth, through the execution of criminal justice, is also recognized by the enshrining in the Romanian Constitution [4] of the principle according to which "against court decisions, interested parties and the Public Ministry can exercise appeals under the law".

Therefore, there is the possibility of exercising a judicial control over the decisions handed down, with the aim of abolishing any illegal or groundless decisions, resulting from some errors in the judicial activity, but this control can only be carried out through the ways of attack provided by law and capitalized under the conditions of the law. In other words, the legality of appeals, elevated to the rank of a constitutional principle, implies the requirement that court decisions be subject to the appeals provided by law.

The means of appeal through which it is possible to request the abolition of final decisions that "enjoy" the authority of *res judicata* have an extraordinary character, the cases and conditions in which they can be used being expressly and limitedly provided by law. In criminal matters, according to the current Romanian Code of Criminal Procedure, there are four extraordinary appeals: appeal for annulment, appeal in cassation, revision and reopening of the criminal process in case of trial in the absence of the convicted person.

The final criminal judgment is vested *ope legis* with *res judicata* authority based on a presumption, it is true relative, of expressing the truth in the case that was the subject of the judgment (*res judicata pro veritate habetur*). As an effect

[4] Art. 129 of the Romanian Constitution, republished in the Official Gazette of Romania no. 767 of October 31, 2003.

of *res judicata*, in principle a new judgment against the same person and regarding the same deed is no longer possible (*ne bis in idem*).

Moreover, among the newly introduced principles within the express regulation of the principles of the application of the criminal procedural law in the current Romanian Criminal Procedure Code [5] there is also the principle *ne bis in idem*, according to which "no person can be prosecuted or tried for the commission of a crime when a final criminal judgment was previously pronounced against that person regarding the same act, even under a different legal framework"[6].

It is necessary to specify the fact that the ne bis in idem rule is enshrined at the European level as a fundamental human right, both in Protocol no. 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms [7] ("No person may be prosecuted or punished criminally by the jurisdictions of the same state for the commission of the crime for which he has already been acquitted or convicted by a final judgment according to the law and criminal procedure of this state"), as well as in the Charter of Fundamental Rights of the European Union[8] ("No one can be tried or convicted for a crime for which he has already been acquitted or convicted within the Union, by a final court decision, in accordance with the law") (*Lorincz, Stancu, 2022, p. 118*).

In this context, extraordinary appeals appear as exceptions to the principle of *res judicata* of final judicial decisions, which gives the legal possibility of overturning (removing) the relative presumption of *res judicata pro veritate habetur*, even if the stability of these decisions is thus affected (*Kahane, 1963, p. 299*), without, however, violating the principle of legal security.

In more recent doctrine, emphasizing the importance of the principle of legal security (legal certainty), it has been stated that this principle guarantees, among other things, the stability of legal relations and protects decisions that have already been made (*Shcherbanyuk, Gordieiev, Bzova, 2023, p. 22).*

At the same time, it should be highlighted that legal security, by ensuring the stability of legal relations and the rule of law, also guarantees a climate of public security, by removing that feeling of insecurity that can lead to atypical reactions (*Iancu, 2021, p. 633*) of social behavior.

On the other hand, unlike the criminal matter, in the civil procedural law, another applicable principle regarding the exercise of appeals is enshrined, related to the principle of legality, namely the principle of the uniqueness of the attack

[5] Law no. 135/2010 on the Criminal Procedure Code, published in the Official Gazette of Romania no. 486 of July 15, 2010, with subsequent amendments and additions (entered into force on February 1, 2014).
[6] Art. 6 CCP.
[7] Art. 4 of Protocol no. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, cited above.
[8] Art. 50 of the Charter of Fundamental Rights of the European Union, cited above.

way: "a way of attack can be exercised against a decision only once, if the law provides for the same period of exercise for all the reasons existing on the date of the declaration of that attack way"[9]. We note that, although such a principle is not regulated in the Code of Criminal Procedure, judicial practice has also translated it into criminal matters. Thus, in a case before the Criminal Section[10], the supreme court invoked the violation of the principle of the uniqueness of the right of appeal, closely related to the violation of the principle of its legality, in the case of the recognition of a right of appeal in other situations than those provided by the procedural law.

II. THE REVIEW CASE REGARDING THE ADMISSION OF AN EXCEPTION OF UNCONSTITUTIONALITY

Among the extraordinary appeals provided for in the Romanian Code of Criminal Procedure, the review is the typical example of a retraction appeal, whereby a court that ruled in the respective case annuls the challenged final decision and pronounces a new decision if it considers that, concretely, the invoked review case is well-founded.

Since revision is an extraordinary way of appeal, the cases in which it can be exercised are strictly provided by law[11], the particular case referring to the admission of an exception of unconstitutionality knowing an interesting evolution in terms of regulation.

Thus, following the legislative changes made in 2010[12] on the Criminal Procedure Code in force at that time[13], a distinct revision case was introduced into the code[14] ("Revision in the case of decisions of the Constitutional Court"): "The final judgments pronounced in the cases in which the Constitutional Court admitted an exception of unconstitutionality can be subject to revision, if the solution pronounced in the case was based on the legal provision declared unconstitutional or on other provisions of the contested act which, necessarily and obviously, cannot be dissociated from the provisions mentioned in the referral". Moreover, the addition of this new review case is explained by the abrogation[15] of

[9] Art. 460 alin. (1) Civil Procedure Code.
[10] Decision of the High Court of Cassation and Justice, Criminal Section, no. 717/2023, document available online at www.scj.ro., accessed on 08.02.2025.
[11] There are 7 review cases provided for in art. 453 para. (1) lit. a)-f) and art. 465 CCP.
[12] By Law no. 177/2010 for the amendment and completion of Law no. 47/1992 regarding the organization and functioning of the Constitutional Court, the Code of Civil Procedure and the Code of Criminal Procedure of Romania, published in the Official Gazette of Romania no. 672 of October 4, 2010.
[13] The Criminal Procedure Code adopted in 1968, republished in the Official Gazette of Romania no. 78 of April 30, 1997, with subsequent amendments and additions.
[14] In art. 408^2 CCP from 1968.
[15] By the same Law no. 177/2010, cited above.

the provisions of the code[16] according to which, in the case of raising an exception of unconstitutionality, the court had to suspend the trial until the resolution of the exception by the Constitutional Court.

The new Code of Criminal Procedure (CCP) adopted in 2010 (and entered into force in 2014) maintained this distinct case of review [17] in the following formulation: when "the decision was based on a legal provision that was declared unconstitutional after the decision became final, in the situation where the consequences of the violation of the constitutional provision continue to occur and can only be remedied by revising the decision".

Later, in 2016, the Constitutional Court[18] decided that the legislative solution contained in art. 453 para. (1) lit. f) CCP, which does not limit the review case to the case in which the exception of unconstitutionality was invoked, is unconstitutional. More precisely, the court of constitutional control considered that "the failure to regulate the condition that the exception of unconstitutionality was invoked in the case in which the decision whose review is requested attributes *ex tunc* effects to the jurisdictional act of the Court", in violation of the constitutional provisions[19], "determining an impermissible violation of the *res judicata* authority".

As a result of this decision of the Constitutional Court, by the Government's Emergency Ordinance no. 18/2016[20], the review case provided for in letter f) of paragraph (1) of art. 453 CCP was amended as follows: "the decision was based on a legal provision which, after the decision became final, was declared unconstitutional as a result of the admission of an exception of unconstitutionality raised in that case, in the situation where the consequences of the violation of the constitutional provision continue to occur and can only be remedied by revising the decision".

In the regulation of the current Code of Criminal Procedure, this review case is also justified by the fact that, in the situation where an exception of unconstitutionality is raised, the trial is no longer suspended (*Lorincz, 2016, p. 137*).

III. JURISPRUDENTIAL ASPECTS REGARDING THE OBJECT OF THE REVIEW

Unlike other extraordinary appeals, the revision has been characterized in the doctrine as a *de facto* appeal (*Dongoroz et al, 1976, p. 257*) which aims at a *de*

[16] Art. 303 para. (6) CCP from 1968.
[17] In art. 453 para. (1) lit. f) CCP.
[18] By Decision no. 126/2016, published in the Official Gazette of Romania no. 185 of March 11, 2016.
[19] Art. 147 para. (4) of the Constitution.
[20] Government Emergency Ordinance no. 18/2016, published in the Official Gazette of Romania no. 389 of May 23, 2016.

facto re-examination of the criminal case, in order to correct some judicial errors related to its correct resolution (*errores in judicando*).

Therefore, the object of the review is judicial decisions that contain errors of judgment discovered after the moment when they became final. This means that, as a rule, it is possible to request a review of the final criminal judgments by which the merits of the case are resolved, that is, those judgments by which the court pronounces on the accusation in criminal matters by conviction, acquittal, termination of the criminal process, waiver of the application of the penalty or postponement of the application of the penalty.

So, in principle, decisions that do not decide the merits of the case are not subject to review, such as: conclusions given during the trial, final decisions by which the judge of the preliminary chamber rules on the complaint against solutions of non-prosecution or non-sentence, decisions by which the court rules on abstention or recusal, divestment sentences, etc. By way of exception, within the special procedure of active extradition, the possibility of reviewing the final decision by which the court found that the conditions for requesting extradition are met is regulated, if the Minister of Justice assesses, following the conclusions of the examination of international regularity, that the conditions of international regularity are not met to request extradition[21]; this is, moreover, a special case of review, distinct from those provided for in the Romanian Code of Criminal Procedure (*Lorincz, 2016, p. 133*).

According to the general legal framework in force [22], final court decisions are subject to review, before the criminal court, both on the criminal side and on the civil side. f the final judgment concerns more than one offense or more than one person, review may be requested for any of the acts or perpetrators.

On the other hand, the request for the revision of final criminal court decisions, exclusively regarding the civil side, can only take place before the civil court, according to the civil procedural legislation[23].

In relation to the object of the revision, we note a dynamic of jurisprudence in Romania, starting from the application of the provisions of the Code of Criminal Procedure from 1968 and up to the application of the current regulation (the Code of Criminal Procedure adopted in 2010 and entered into force in 2014).

Thus, within the limits of the legal framework of the provisions of the old Code of Criminal Procedure, the High Court of Cassation and Justice ruled[24] in

[21] Art. 65 para. (9) from Law no. 302/2004 regarding international judicial cooperation in criminal matters, republished in the Official Gazette of Romania no. 411 of May 27, 2019, with subsequent amendments and additions.
[22] Art. 452 CCP.
[23] Art. 453 para. (2) CCP.

the sense of the inadmissibility of the revision directed against criminal judgments that do not resolve the merits by resolving the criminal action. It is noteworthy, however, that the supreme court gave such an interpretation before the introduction, in the Code of Criminal Procedure of 1968, of the particular case of review regarding the decisions of the Constitutional Court.

After the entry into force of the new Code of Criminal Procedure, under the conditions of maintaining an express regulation of the review case regarding the admission of an exception of unconstitutionality, the jurisprudence of the High Court of Cassation and Justice[25] established the exercise of the extraordinary appeal of review, based on the invocation of this case, also against final criminal decisions that do not resolve the criminal action, i.e. the merits of the case.

On the other hand, the Romanian constitutional court ruled[26] that the review of criminal court decisions as a result of the pronouncement of the decisions of the Constitutional Court represents an extraordinary way of attack "with a sui generis character", emphasizing the difference between review cases based on judicial errors and this distinct review case provided for in art. 453 para. (1) lit. f) CCP, including from the perspective of the admissibility of the re-examination of decisions that do not resolve the merits of the case.

Relevant, in relation to this issue, is also the preliminary ruling issued by the High Court of Cassation and Justice[27] on the interpretation of the provisions of the current Code of Criminal Procedure regarding judgments subject to review, with reference to the case of admitting an exception of unconstitutionality.

More precisely, in a case before the Bucharest Court, Criminal Section I, the court requested the High Court of Cassation and Justice to resolve the following legal issue: "If in the interpretation of the provisions of art. 452 para. (1) CCP a review request based on the provisions of art. 453 para. (1) lit. f) CCP it can also be directed against a definitive criminal decision, but which does not resolve the merits of the criminal action".

---

[24] By Decision of the High Court of Cassation and Justice, Panel of 9 judges, no. 42/2005, document available online at https://legeaz.net/spete-penal-iccj-completul-de-9-judecatori/decizia-42-2005 (accessed on 14.02.2025) and by the Decision of the High Court of Cassation and Justice, United Sections, no. XVII/2007, published in the Official Gazette of Romania no. 542 of July 17, 2008.

[25] Decision of the High Court of Cassation and Justice, Criminal Section, no. 195/2019, document available online at https:/www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=150128#highlight=##, accessed on 14.02.2025.

[26] In the considerations of the Constitutional Court Decision no. 126/2016 (mentioned above) and of the Decision of the Constitutional Court no. 220/2019, published in the Official Gazette of Romania no. 421 of May 29, 2019.

[27] Decision of the High Court of Cassation and Justice, Panel for resolving a question of law in criminal matters, no. 68/2020, published in the Official Gazette of Romania no. 99 of January 29, 2021.

As can be seen from the considerations of this decision, the question sought to establish whether a review request based on the case regulated in art. 453 para. (1) lit. f) CCP may refer to a final court decision that does not resolve the merits of the criminal action, i.e. a decision pronounced during the execution phase of the sentence (in resolving an enforcement contestation based on the provisions of art. 595 CCP[28]).

At the same time, in the debates before the High Court, for the resolution of the preliminary issue, it was invoked that the reason for revision based on the provisions of art. 453 para. (1) lit. f) CCP represents a procedural remedy to remove a possible judicial error and that, if such an interpretation were not given, access to justice would become "formal and illusory", lacking efficiency "the legal approach represented by the referral to the Constitutional Court".

In order to solve this legal problem, the supreme court held that the exception of unconstitutionality admitted by a decision of the Constitutional Court published after the criminal court decision remained final constitutes a "legal reason for the reformation" of that decision based on the provision declared unconstitutional, under the conditions in which the exception was raised in the respective case.

Also, the High Court considered that the examination required by the procedure regulated in art. 595 CCP ("The intervention of a new criminal law or a decision of the Constitutional Court") is related to the criminal side of the case, which could be modified following the admission of the exception of unconstitutionality. Moreover, the supreme court considered that the review case provided for in art. 453 para. (1) lit. f) CCP it signifies the fact that the stability of the court decision, even final, "cannot prevail in relation to the provisions with value of principle contained in the Constitution".

In conclusion, in response to the question, the High Court of Cassation and Justice established that "*in the interpretation of the provisions of art. 452 para. (1) CCP, a review request based on the provisions of art. 453 para. (1) lit. f) CCP can also be directed against a final criminal judgment, pronounced in the settlement of a request based on the provisions of art. 595 CCP*".

CONCLUSION

Although, both the doctrine and the jurisprudence developed around the criminal procedural provisions regarding the extraordinary appeal of the revision have appreciated, for a long time, that this appeal can only be used against the final judgments that have been pronounced on the criminal action, more recently

[28] Art. 595 CCP - "The intervention of a new criminal law or a decision of the Constitutional Court".

we are witnessing a change in interpretation, recognizing that the revision can also concern judgments that do not resolve the merits of the case.

The purpose for which the possibility of review was regulated in the particular case of the admission of an exception of unconstitutionality is "the removal from the scope of the real legal order of a definitive criminal decision that contains a judicial error, which seriously affects the constitutional legal order"[29]*. If the possibility of revision were not accepted, by invoking this special case, including a criminal judgment that does not resolve the merits of the case, a continuous state of violation of the mandatory effects of the decision of the Constitutional Court would be maintained whereby, after the finality of that criminal judgment, the legal provision on which it was based was declared unconstitutional. So, in this case, the revision is the only procedural means by which the restoration of the violated legal order is ensured.*

BIBLIOGRAFIE

1. The Convention for the Protection of Human Rights and Fundamental Freedoms, concluded on November 4, 1950, with subsequent amendments and additions, published in the Official Gazette of Romania no. 135 of May 31, 1994;
2. The Charter of Fundamental Rights of the European Union of December 12, 2007, published in the Official Journal of the EU. no. C 303/1 of December 14, 2007;
3. The Constitution of Romania, republished in the Official Gazette of Romania no. 767 of October 31, 2003;
4. The Criminal Procedure Code adopted in 2010 by Law no. 135/2010, published in the Official Gazette of Romania no. 486 of July 15, 2010, with subsequent amendments and additions.
5. The Criminal Procedure Code adopted in 1968, republished in the Official Gazette of Romania no. 78 of April 30, 1997, with subsequent amendments and additions.
6. Law no. 302/2004 regarding international judicial cooperation in criminal matters, republished in the Official Gazette of Romania no. 411 of May 27, 2019, with subsequent amendments and additions.
7. Law no. 177/2010 for the amendment and completion of Law no. 47/1992 regarding the organization and functioning of the Constitutional Court, the Code of Civil Procedure and the Code of Criminal Procedure of Romania, published in the Official Gazette of Romania no. 672 of October 4, 2010.
8. Government Emergency Ordinance no. 18/2016, published in the Official Gazette of Romania no. 389 of May 23, 2016;
9. Dongoroz, Vintilă. *Curs de procedură penală [Criminal procedure course]*, 2nd edition. Bucharest, 1942;

[29] Decision of the High Court of Cassation and Justice, Panel for resolving a question of law in criminal matters, no. 68/2020, cited above.

10. Dongoroz, Vintilă, Siegfrid Kahane, George Antoniu, Constantin Bulai, Nicoleta Iliescu, and Rodica Stănoiu. *Explicații teoretice ale Codului de procedură penală român. Partea specială, vol. II [Theoretical explanations of the Romanian Criminal Procedure Code. Special part, vol. II]*. Bucharest: RSR Academy Publishing House, 1976;
11. Iancu, Elena-Ana. "The Contribution of Forensic Science to Establishing the Truth in Criminal Proceedings. " *Athens Journal of Law* 5, no. 4 (October 2019): 457-470. DOI: https://doi.org/10.30958/ajl.5-4-6;
12. Iancu, Elena-Ana. "Regulation of Offences against Public Security in the Criminal Code of Romania. " *International Journal of Legal and Social Order*, no. 1 (2021): 633–642. DOI: https://doi.org/10.55516/ijlso.v1i1.45;
13. Kahane, Siegfrid. *Drept procesual penal [Criminal procedural law]*. Bucharest: Didactic and Pedagogical Publishing House, 1963.
14. Lorincz, Anca-Lelia. *Drept procesual penal (conform noului Cod de procedură penală), vol. II [Criminal procedural law (according to the new Criminal Procedure Code), vol. II]*. Bucharest: Universul Juridic Publishing House, 2016.
15. Lorincz, Anca-Lelia, and Adriana Iuliana Stancu, "Qualification of the request to take over criminal procedure in the context of international judicial cooperation. " *Proceedings of 9th SWS International Scientific Conference on Social Sciences - ISCSS 2022* 9, no. 1 (2022): 115-122. DOI: http://dx.doi.org/10.35603/sws.iscss.2022/s02.015.
16. Paraschiv, Carmen Silvia. "Compliance with the principle of equal finding the truth in criminal proceedings – 'sine qua non' principle. " *International Journal of Legal and Social Order*, no. 1 (2023): 304–309. DOI: https://doi.org/10.55516/ijlso.v3i1.167.
17. Shcherbanyuk, Oksana, Vitalii Gordieiev, and Laura Bzova. "Legal nature of the principle of legal certainty as a component element of the rule of law. " *Juridical Tribune* 13, no. 1 (March 2023): 21-31. DOI: 10.24818/TBJ/2023/13/1.02.
18. The ECtHR Judgment of August 31, 2000 pronounced in *the Brumărescu Case against Romania*, published in the Official Gazette of Romania no. 414 of August 31, 2000.
19. Decision of the Constitutional Court of Romania no. 126/2016, published in the Official Gazette of Romania no. 185 of March 11, 2016.
20. Decision of the Constitutional Court of Romania no. 220/2019, published in the Official Gazette of Romania no. 421 of May 29, 2019.
21. Decision of the High Court of Cassation and Justice, Panel of 9 judges, no. 42/2005, document available online at https://legeaz.net/spete-penal-iccj-completul-de-9-judecatori/decizia-42-2005 (accessed on 14.02.2025).

22. Decision of the High Court of Cassation and Justice, United Sections, no. XVII/2007, published in the Official Gazette of Romania no. 542 of July 17, 2008.
23. Decision of the High Court of Cassation and Justice, Criminal Section, no. 195/2019, document available online at https:/www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=150128#highlight=## (accessed on 14.02.2025).
24. Decision of the High Court of Cassation and Justice, Panel for resolving a question of law in criminal matters, no. 68/2020, published in the Official Gazette of Romania no. 99 of January 29, 2021.
25. Decision of the High Court of Cassation and Justice, Criminal Section, no. 717/2023, document available online at *www.scj.ro*. (accessed on 08.02.2025).

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 272-282

THE NEW SOCIAL REALITY: ARTIFICIAL INTELLIGENCE AND THE NECESSITY OF ALIGNING NATIONAL LEGISLATION WITH SOCIETAL EVOLUTION

R.N. LUNGEANU

Received 31.04.2025; accepted 24.06.2025
First online publication: 24.06.2025
DOI:https://doi.org/10.55516/ijlso.v5i1.258

Robert-Nicolae LUNGEANU
PhD student (in the field of Law) of Doctoral School of Social Sciences, University „Dunărea de Jos" Galați
E-mail: lungeanurobert@gmail.com
ORCID ID: https://orcid.org/0009-0004-5922-4313

Abstract

This paper aims to analyse the implications of the development and use of artificial intelligence from both legal and social perspectives, in a context where contemporary society is deeply shaped by digitalization. Beyond the undeniable benefits brought by this emerging technology, a critical reflection is required on how national legislation can—and must—adapt to new technological realities. The study raises a fundamental question: to what extent can technological evolution be pursued without compromising core human values? In this regard, the analysis emphasizes the imperative need for balanced regulation that ensures the protection of fundamental rights while also supporting responsible innovation.

Key words: *artificial intelligence, legal regulation, social transformation, fundamental rights.*

INTRODUCTION

In recent decades, technology has experienced unprecedented development, with artificial intelligence (AI) becoming a fundamental driver of this revolution. From autonomous devices performing complex tasks to algorithms influencing economic decisions, artificial intelligence is reshaping the foundations of the global economy and social relations. Although the concept of artificial intelligence is not new, it has only in recent decades emerged as a disruptive force in contemporary society.

Beginning with Alan Turing's seminal work (*Turing, 1950, pp. 430–460*), AI has evolved rapidly, impacting sectors such as automotive, healthcare, and finance. However, this technological advancement has not been matched by a corresponding evolution in legislation, which remains significantly behind emerging technologies.

While technological innovation progresses at a rapid pace, national legal frameworks have struggled to keep up, resulting in a critical legal challenge: how can we regulate technologies that fundamentally alter our way of life? How should legislation respond to the challenges posed by artificial intelligence? Moreover, how can fundamental rights be safeguarded in an era when algorithmic decisions increasingly influence individual futures? Despite the rapid development of AI, the question persists: is current legislation adequately prepared to address this new social reality?

The article „Legal Responsibility for Errors Caused by Artificial Intelligence (AI) in the Public Sector" (*Al-Dulaimi & Mohammed, 2025, pp. 1–11*) addresses this pressing issue, focusing on the attribution of legal responsibility for errors caused by AI systems within public institutions. Given the growing adoption of AI in public administration to enhance efficiency and service delivery, determining liability in the event of AI-related errors poses a complex challenge. Since AI systems may operate autonomously without direct human intervention, identifying whether liability rests with developers, public entities implementing AI, or end-users is a critical concern.

To clarify the legal understanding of artificial intelligence, the European Union Regulation 2024/1689 (*Official Journal L 239, 12.07.2024*) defines AI in Article 3 as „a machine-based system designed to operate with varying levels of autonomy and capable of exhibiting adaptability after deployment, which, pursuing explicit or implicit objectives, deduces from the input data how to generate outputs such as predictions, content, recommendations, or decisions that may influence physical or virtual environments." In essence, AI refers to systems designed to emulate human reasoning based on the data (experiences) they process.

In the 2000s, significant progress was made in developing algorithms capable of mimicking human language and cognition to interact effectively with their environments. Widely recognized examples of AI applications accessible to the public include Apple's Siri and Google's Alexa, culminating in the present-day prominence of systems like ChatGPT.

Danilo Doneda and Virgílio A. F. Almeida (*2016, pp. 60–63*), in their article "What is Algorithmic Governance?", examine the risks associated with algorithmic governance, including manipulation, social discrimination, and infringements of privacy and property rights, emphasizing the need for regulatory oversight.

Similarly, Magrani (*2017, pp. 1–17*), in „Internet Threats in a Technologically Regulated Society: A New Legal Challenge of the Information Revolution," analyzes how the pervasive interaction among devices, sensors, and users results in an exponential increase in data production, storage, and processing. While this connectivity offers benefits to consumers, it also poses risks to privacy and fundamental rights.

An illustrative case is Microsoft's Tay chatbot, which was withdrawn within 24 hours of launch due to generating offensive content. Keith W. Miller, Marty J. Wolf și F.S. Grodzinsky (*2017, pp. 1–12*), in their commentary "Why We Should Have Seen This Coming: Comments on Microsoft's Tay 'Experiment' and Its Broader Implications," stress the ethical responsibilities of AI developers and the need for stricter development standards and regulatory frameworks.

Consequently, as AI systems increasingly influence critical aspects of individuals' lives—from recruitment processes to judicial rulings—it becomes imperative to adapt legal frameworks to protect fundamental rights while fostering responsible technological advancement.

I. EUROPEAN UNION LEGISLATION ON ARTIFICIAL INTELLIGENCE

Since the danger of using artificial intelligence for the personal interest of certain individuals, which could act against the common interest of society, has become tangible, the legislator at the EU level contributed by implementing in 2016 the General Data Protection Regulation, published in the Official Journal of the European Union L 119 of 04.05.2016, which came into force on 25.08.2018.

This regulation sets forth certain conditions under which any legal entity managing personal data is obliged to respect the right to privacy of natural persons, as well as to prohibit the dissemination of such data except in legal situations authorized by competent bodies.

The GDPR imposes strict standards regarding transparency in the collection, storage, and use of personal data processed by artificial intelligence for various legal entities, examples being Facebook, Google, and so forth.

According to Article 5 of EU Regulation 2016/679, the fundamental principles of the GDPR are legality, transparency, fairness, data minimization, data accuracy, limited storage, and primarily confidentiality.

To understand data minimization in the analysis of artificial intelligence, it means that the data collected must only be those useful for the specific purpose. The emergence of this principle has forced companies implementing AI to find a balance so that the data collected is used efficiently.

Artificial intelligence systems processing personal data must obtain the explicit, free, and informed consent of the user, especially when the data is used to personalize algorithms that provide recommendations to the interlocutor, in the

sense that search engines used by the user offer suggestions based on their online searches. Thus, users have been granted the right to understand how the data they provide on the internet at large is used. The most illustrative example is marketing, where AI systems target individuals. Under this same aegis, the user has the right to delete their data uploaded on the internet, including the right to be forgotten by algorithmic systems.

The significant impact of artificial intelligence through the institution of this regulation concerns behavioral analysis, facial recognition, and machine learning, which rely on processing large volumes of information. According to Article 22 of GDPR 2016/679, automated profiling that leads to automated decisions directly affecting the person is prohibited. Automated profiling involves the use of algorithms for example for selecting certain candidates.

In case of non-compliance with the GDPR, Article 83 of EU Regulation 2016/679 provides that legal entities processing personal data can be sanctioned with fines of up to 4% of the annual turnover. Sanctions are determined according to the severity of the breach of confidentiality in relation to the level of protection adopted to ensure an adequate security factor for the personal data in their possession.

For a proper regulation of social reality, the European Union adopted the Artificial Intelligence Regulation, namely EU Regulation 2024/1689. During April 2021, the European Commission proposed a legislative framework to include the use of artificial intelligence globally. The purpose of this regulation is to ensure that AI technologies developed and implemented at the European level are safe, transparent, and comply with ethical standards and the protection of fundamental rights of EU citizens.

Entered into force on 01.08.2024, it was intended to ensure the safety and protection of users by establishing clear rules to regulate the use of AI systems in order to prevent abuses and risks related to data privacy. At the same time, it encourages innovation, offering a clear pathway in which artificial intelligence and algorithms designed accordingly can develop and evolve.

EU Regulation 2024/1689 presents 4 risk categories for artificial intelligence systems:

• Minimal risks, which include most AI applications used daily, that do not involve significant risks;

• Limited risks, including AI systems that pose low risk but require regulation, such as systems used for entertainment, personalized recommendations, chatbots, etc.;

• In the high-risk category are AI systems that may significantly affect the rights and freedoms of individuals. These must comply with certain transparency standards and allow users to understand automated decisions;

• The last category is reserved for AI systems that may directly affect citizens' lives or public security systems. These must be subject to rigorous controls and continuous monitoring.

This technological revolution has brought with it an enormous challenge for legislation. While technology evolves rapidly, national and international legislations develop at a much slower pace, and existing rules are often outdated by new technological realities. From the development of the first computers to the emergence of autonomous algorithms, the rule of law has had to respond to the challenges brought by each technological leap.

The Romanian legislator is always concerned with defending national security (*Iancu E.A., 2021, pp. 633-642*), whereby through criminal legal norms, it sanctions illegal acts that can be committed using IT systems (*Iancu, E-A. & al., 2023, pp. 363-383*). The realization of the law will contribute to ensuring legal security (*Lorincz A.L., 2025, p. 2*), which will determine both the degree of trust in state authorities and the perception of the legal order in a state at a given time.

II. UNDERSTANDING AI LEGISLATION FROM A SOCIAL PERSPECTIVE

To understand how the aforementioned legislative regulations were shaped, one must first understand the underlying need that motivated them. This cause lies in the transformations of society resulting from the evolution of artificial intelligence. These changes are profound and manifest across a wide range of domains. Artificial intelligence impacts the economy, jobs, education, and even social values and behavior. These technological shifts affect social and cultural values, and their adaptation will shape the future.

In the labor market, many activities involving repetitive tasks have already been automated, and this trend will continue to intensify. Examples come from the fields of industry, logistics, and financial services. In this context, jobs involving mechanical activities will disappear, but new ones will be created, such as those related to managing and supervising AI systems.

As more jobs become automated, the demand for roles requiring skills that only the human brain can analyze will increase. Additionally, there will be growing demand for critical thinking, innovation, and managing teams and automated processes. Work will become more flexible and increasingly reliant on collaboration between humans and machines. Professionals will need to adapt their working methods to maximize the efficiency of collaboration with automated systems.

One state that has adapted and continuously encourages the use of artificial intelligence is Saudi Arabia. U. Pagallo, in his work *Vital, Sophia and Co.—The Search for the Legal Status of Robots* (*U. Pagallo, 2018, pp. 1-11*), explores the legal status of robots, highlighting the frequent confusion between

their legal agency and juridical personhood. The example is Sophia, the first AI-powered robot granted citizenship by Saudi Arabia in October 2017, and the implications of this decision in the context of regulating emerging technologies are discussed.

In education, the AI revolution has influenced both how we learn and what we learn. The educational process has become much more personalized. The definition of artificial intelligence is "the ability of a machine to imitate human functions such as reasoning, learning, planning, and creativity." AI systems can analyze each student's progress and adapt educational materials and teaching methods to meet individual needs.

Through AI, access to educational resources has become easier for populations in isolated or disadvantaged areas. Educational institutions currently use AI implemented in programs to automate administrative tasks such as scheduling and student registration, saving time and resources.

In financial services, AI has transformed and accelerated global economic growth by rapidly solving logistical and administrative problems and by creating algorithms that accurately project economic market development. Companies use AI to analyze customer behavior, personalize user experiences, and optimize marketing and sales.

However, if legislation continues to evolve in step with human creativity regarding algorithm development underlying AI, what is the fear surrounding this technology? It all stems from fear of the unknown. Humans are shaped by certain social patterns and values, but since these patterns and our development are limited, AI—which can develop algorithms and patterns at an infinite scale—remains alien.

The more adaptable AI programs become, the more unpredictable their actions are, bringing new risks. Specialized studies (*S. Kapoor, P. Henderson, and A. Narayanan 2024, pp. 1-13*) have shown that AI has significant potential to transform the legal profession, but current evidence does not support a complete redefinition of it. They identify three types of legal tasks where AI is increasingly present: information processing, tasks involving creativity, reasoning or judgment, and predictions about the future.

Thus, AI can be used to make decisions in essential areas such as hiring, recruitment, and credit granting. An algorithm used for employee selection can favor a particular ethnic or gender group depending on the historical data used for training it.

The *Code of Ethics* of the Association for Computing Machinery stipulates that professionals in the field, regardless of prior legal regulations, should develop "comprehensive and thorough assessments of information systems and their impacts, including risk analysis" (*Magrani, 2019, p. 5*).

AI algorithms have been used to predict the recidivism of offenders but have been criticized for amplifying racial discrimination. For example, colored

individuals have often been considered at higher risk of reoffending despite behaviors not differing significantly from other groups. These algorithm-based forms of discrimination can lead to systemic inequalities in various societal domains, negatively impacting already marginalized groups.

In terms of national security, AI can pose significant threats in several ways, from sophisticated cyberattacks to the use of autonomous technologies in armed conflicts. In an era where AI is becoming increasingly advanced and integrated into critical infrastructures, governments and security institutions must understand and adequately respond to the associated risks.

One of the greatest national security threats is the use of AI for sophisticated cyberattacks. Machine learning algorithms can analyze vulnerabilities in a state's critical infrastructures, including sensitive sectors such as energy, finance, transportation, and communications.

AI is also used to influence public perception and manipulate information for political, economic, or social purposes. In the context of national security, it can be used to:

a. Generate and disseminate misinformation or fake news on a large scale, using natural language processing and neural networks capable of producing highly convincing false messages and articles. These can be used to destabilize a government or influence elections based on fabricated narratives.

b. Deepfakes: AI technologies for creating fake videos and audio recordings can produce propaganda material nearly indistinguishable from reality. For example, a deepfake video of a political leader making incendiary statements can be used to incite violence or destabilize a country's government.

c. Facial recognition: AI facial recognition technologies allow tracking individuals in public and private spaces, raising major privacy and civil liberties concerns.

d. Behavioral surveillance: AI algorithms can analyze people's online behaviors to anticipate actions or modify them through excessive personalization of content and advertising. This can lead to manipulation of public opinion and social control.

At the level of social network manipulation, AI can be used to amplify certain messages or ideas, creating filter bubbles or echo chambers that isolate users in realities where they are exposed only to specific viewpoints. These techniques can influence public opinion, polarize societies, and amplify internal tensions.

One of the gravest dangers is the use of AI in warfare. It can be and is used to develop autonomous weapons acting independently without direct human intervention such as:

- Autonomous drones — capable of identifying and destroying targets without human input, potentially leading to faster and harder-to-control conflicts;
- Combat robots — used in wars, reducing human casualties but causing massive collateral damage and with the potential to commit abuses;
- Cyber weapons — cyberattacks can become a form of warfare on a global scale, destroying critical infrastructures without conventional military force.

The use of AI in armed conflicts also raises fundamental moral and ethical questions: who is responsible if an AI machine makes an error and kills civilians? Can an algorithm be held responsible for war crimes?

III. HOW THIS PHENOMENON IS PERCEIVED IN THE ROMANIAN STATE

Romania has begun to recognize the importance of artificial intelligence for its economic and social future and is investing in the development of this field. In 2021, the Romanian Ministry of Research, Innovation, and Digitalization presented a national AI plan that includes objectives such as promoting education in the field, supporting research, attracting investments, and developing an appropriate legislative framework.

Interest in AI is growing in the private sector, with Romanian companies seeking to adopt the technology to remain competitive in international markets. There is also an increasing number of investments in research and development, with venture capital and European funds supporting startups in this domain.

There are concerns related to personal data protection, especially as AI is used in surveillance solutions or in the analysis of online behavior. Technologies such as facial recognition or social media data analysis are viewed with apprehension due to the risk of abuse or invasion of privacy.

Despite these concerns, there is also growing interest in AI technologies, particularly in the educational sector and among younger generations. Increasing numbers of young Romanians are interested in pursuing courses and specializations in this area, and Romania hosts several universities and research centers that train specialists in the field.

Romanian universities, such as the Politehnica University of Bucharest, Babeș-Bolyai University of Cluj-Napoca, and the University of Iași, offer academic programs and bachelor's, master's, and doctoral courses in fields such as artificial intelligence, machine learning, and data analysis. Additionally, there is a growing number of hackathons, online courses, and conferences dedicated to AI, organized to promote development in this domain.

However, one of the main obstacles is the lack of a specialized workforce in AI and related technologies. Although many talented young people exist in Romania, some choose to work in international companies or emigrate to

countries offering greater career opportunities and more attractive salaries in the AI field. This represents a challenge for talent retention and the development of innovative solutions locally.

Regarding AI regulation, Romania aligns itself with European standards, particularly the General Data Protection Regulation (GDPR), which governs how citizens' personal data can be collected and processed. Moreover, Romania actively participates in discussions on AI regulations at the European level to ensure a legal framework that protects citizens' fundamental rights and prevents the abusive use of AI technologies.

CONCLUSION

In my view, artificial intelligence represents one of the most significant challenges and opportunities of our time. It is a technology that, due to the scale and speed of its development, has the potential to reshape the economic, social, and cultural structure of Romania and the entire world. On one hand, I am deeply aware of the benefits AI can bring: increased efficiency across various sectors, support for decision-making through advanced data analysis, automation of repetitive processes, and last but not least, the creation of innovative solutions in health, education, and public administration.

On the other hand, I believe these advances should not be viewed solely through the lens of technological enthusiasm. They inevitably raise ethical, social, and legal questions. Personally, I feel a real concern about the impact AI may have on the labor market, especially for professional categories vulnerable to automation. Additionally, I believe the risks related to data privacy and the use of technology for surveillance or manipulation cannot be ignored, especially in an increasingly tense geopolitical context.

For this reason, I consider that Romania urgently needs a coherent and responsible national strategy for the development of artificial intelligence—a strategy that combines the promotion of innovation with clear regulation focused on protecting citizens and upholding democratic values. I also believe education must play a central role in this transition: not only by training specialists in the field but also by fostering a critical and ethical understanding of the technology among the general population.

Given these considerations, I take a balanced position between optimism about the progress AI can bring and the realism of recognizing its associated risks. The future of this technology—and how it will influence Romanian society—largely depends on our collective ability to understand, regulate, and use it wisely. Through a responsible and equity-oriented approach, I am convinced that artificial intelligence can become a genuine tool for sustainable development and social progress.

BIBLIOGRAFIE

1. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [Official Journal of the European Union, 04.05.2016];

2. Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonized rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139, and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797, and (EU) 2020/1828 (Artificial Intelligence Regulation) [Official Journal of the European Union, 12.07.2024];

3. Al-Dulaimi,A.O.M. and Mohammed, M.A.-A.W. (2025), *"Legal responsibility for errors caused by artificial intelligence (AI) in the public sector*", International Journal of Law and Management, Vol. ahead-of-print No. ahead-of-print. DOI: https://doi.org/10.1108/ijlma-08-2024-0295

4. A. Tuing (1 octombrie 1950) „Mașini de calcul și inteligența” („Computing Machinery and Intelligence”) publicat în Mind DOI: https://doi.org/10.1093/mind/LIX.236.433

5. Doneda, D., & Almeida, V. A. F. (2016). What Is Algorithm Governance? *IEEE Internet Computing*, *20*(4), 60–63. DOI: https://doi.org/10.1109/MIC.2016.79

6. Iancu Elena-Ana, Enache Tușa, Nicolaie Iancu, Eduard Simion, Adrian-Cristian Moise (2023), Preventing computer crime by knowing the legal regulations that ensure the protection of computer systems în Tribuna Juridică, Nr.3./2023 WOS:001090715000003, https://doi.org/10.24818/TBJ/2023/13/3.03

7. Iancu, E.-A. (2021). *Regulation of offences against public security in the criminal Code of Romania*. International Journal of Legal and Social Order, 1(1). https://doi.org/10.55516/ijlso.v1i1.45

8. Lorincz, A.-L. (2025*). Review of some criminal judgments that do not resolve the substance of the case - procedural mean to ensure the legal order.* International Journal of Legal and Social Order, 5(1). https://doi.org/10.55516/ijlso.v5i1.248;

9. Magrani, E. (2017). Threats of the Internet of Things in a techo regulated society A New Legal Challenge of the Information Revolution. publicat în 2017 în *The ORBIT Journal*, vol. 1, nr. 1, paginile 1–17 *ORBIT Journal*, *1*(1). https://doi.org/10.29297/orbit.v1i1.17

10. Magrani, E. (2019). *New perspectives on ethics and the laws of artificial intelligence. Internet Policy Review*, 8(3). DOI: https://doi.org/10.14763/2019.3.1420

11. Miller, K. W., Wolf, M. J., & Grodzinsky, F. S. (2017). Why We Should Have Seen That Coming: Comments on Microsoft's tay "Experiment," and Wider Implications. *ORBIT Journal*, *1*(2). https://doi.org/10.29297/orbit.v1i2.49

12. Pagallo, U. (2018). Vital, Sophia, and Co.—The Quest for the Legal Personhood of Robots. *Information*, vol. 9, nr. 9. https://doi.org/10.3390/info9090230

13. Parlamentul European, „Ce este inteligența artificială și cum este utilizată?" data publicării 22.09.2020, actualizat la data de 21.06.2023, https://www.europarl.europa.eu/topics/ro/article/20200827STO85804/ce-este-inteligenta-artificiala-si-cum-este-utilizata

14. Sayash Kapoor, Peter Henderson, Arvind Narayanan (2024 Promises and pitfalls of artificial intelligence for legal applications, https://doi.org/10.48550/arXiv.2402.01656

15. Strategia Națională privind inteligența artificială" cod SIPOCA 704 implementat de Autoritatea pentru Digitalizarea României 2024–2027 (SN-IA) aprobată prin Hotărârea Guvernului nr. 832/2024, publicată în Monitorul Oficial nr. 730 din 25 iulie 2024.

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 283-291

HIGH-RISK AI SYSTEMS IN THE LIGHT OF THE REGULATION (EU) 2024/1689 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL FROM THE PERSPECTIVE OF THE POTENTIAL HARMFUL IMPACT ON PERSONALITY RIGHTS

R. MATEFI

Received 10.11.2025; accepted 06.12.2025
First online publication: 19.12.2025

DOI: https://doi.org/10.55516/ijlso.v5i1.292

Roxana MATEFI
Assoc. Prof. (Law)
Transilvania University of Brasov, Romania, Faculty of Law
E-mail: roxana.matefi@unitbv.ro
ORCID ID: https://orcid.org/0000-0001-5529-7436

Abstract

This article aims to analyze artificial intelligence systems, classified by the newly adopted EU AI ACT as high-risk, with a focus on their potential to infringe on personal rights. The growing role of artificial intelligence seems to be increasingly shaping the times we live in, and its influence is becoming increasingly evident, both at the individual and societal levels. Its applications are increasingly varied, as are the users of these tools, and access to them is becoming easier. The initial resistance to implementing systems based on various forms of artificial intelligence seems to be diminishing as the benefits of using these systems become increasingly apparent, often relieving individuals of truly burdensome tasks.

The use of artificial intelligence has become so widespread that it is difficult to find an area that has not yet been "contaminated" by the influence of AI.In this general context, one of the main issues that should concern us is the risks generated by the use of these systems, as well as the ways in which we can limit, if not eliminate, their potentially harmful effects.

At European level, an extremely important step in this direction was taken with the adoption of the REGULATION (EU) 2024/1689 OF THE EUROPEAN

PARLIAMENT AND OF THE COUNCIL of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), as we will refer to throughout the paper, regulation which, among other things, introduces a classification of artificial intelligence systems according to the degree of risk they may pose to the fundamental rights of individuals, providing a series of safeguards to reduce their harmful effects on these rights. The article will deal mainly with the high-risk systems and the mechanisms for reducing their harmful potential.

Key words: *AI systems, high-risk, impact, fundamental righs, personality rights.*

INTRODUCTION

This article is based mainly on the new adopted REGULATION (EU) 2024/1689 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828, emphasizing the high-risk AI systems referred to within the EU AI ACT and their potential harmful effect on fundamental/personality rights.

The recently introduced classification of AI systems according to their degree of risk into minimal, limited, high and unacceptable risk systems is an essential element in the analysis of these systems and the implications they generate.

The paper begins with an overview of the regulation, then addresses the concept of AI and AI systems, focusing subsequently on the main categories of systems, particularly those with high risk.

I. THE ADOPTION OF THE EU AI ACT

A major step forward in the regulation of Artificial Intelligence at European level was the adoption of REGULATION (EU) 2024/1689 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 June 2024 laying down harmonized rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), whose purpose established within its preamble is "to improve the functioning of the internal market by laying down a uniform legal framework in particular for the development, the placing on the market, the putting into service and the use of artificial intelligence systems (AI systems) in the Union, in accordance with Union values, to promote the uptake of human centric and trustworthy artificial intelligence (AI) while ensuring a high

level of protection of health, safety, fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union (the 'Charter'), including democracy, the rule of law and environmental protection, to protect against the harmful effects of AI systems in the Union, and to support innovation."

Therefore, the Regulation establishes for the first time at the level of the European Union a comprehensive and uniform legal framework in terms of Artificial Intelligence, following the Union value and pursuing the protection of health, safety and fundamental rights in accordance with the Charter of Fundamental Rights of the European Union.

At the same time, the regulation creates some legal instruments to protect against potential harmful effects of AI systems, and it aims to promote innovation.

The proposal of the Regulation was published by the European Commission in 2021 and the final version, after the changes made by the Council and the Parliament, was published in the Official Journal of the European Union on 12 July 2024 and entered into force one month later, in August 2024.

Most of its provisions did not apply from the moment the EU AI ACT entered into force, so there is a timetable setting out when the various provisions will apply, 2027 being the most likely year in which it will become fully applicable.

II. THE NOTION OF ARTIFICIAL INTELLIGENCE (SYSTEM)

The concept of artificial intelligence has been given various meanings over time, given its constant evolution. We cannot refer to a generally accepted, comprehensive definition in the present day, given its continuous technological changes. As stated in the doctrine, the concept "is ubiquitous in the public discourse, yet rarely defined precisely." (Ronge, R., Maier, M., & Rathgeber, B. (2025).

Simultaneously, the doctrine draws attention to the risk of "anthropomorphizing artificial intelligence, which may arise in particular from its very definition." (Ronge, R., Maier, M., & Rathgeber, B. (2025).

In case of AI chatbots, their "anthropomorphic features may invite users to disclose more information with these systems than they would otherwise, especially when users interact with chatbots in relationship-like ways" (Register, C., Khan, M.A., Giubilini, A. et al. (2025), which may have a huge impact on the right to privacy and its values, like "autonomy, the value of forming and maintaining relationships, security from harm" (Register, C., Khan, M.A., Giubilini, A. et al. (2025), etc.

The White Paper on Artificial Intelligence, adopted by the European Commission in 2020, refers to AI as "a collection of technologies that combine data, algorithms and computing power."

The main purpose of the above-mentioned White Paper was to set out policy options on how to achieve the two objectives of promoting the uptake of AI and addressing the risks which are linked to the use of the new technology.

Regarding the meaning of numerous terms used in the field of AI, the EU AI Act clarifies their meaning by providing explicit definitions. Among the terms defined by the regulation, we can mention: "AI system", "risk", "provider", "operator", "deployer", etc.

In the context of our analysis, it is appropriate to highlight the definition given to the AI system, described by the European Regulation as a "machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments" (Art. 3, par. 1) The European legislator thus describes the AI system by referring to its characteristics of autonomy and adaptability, as well as its capability to generate predictions, content, recommendations or decisions.

In the light of the analyzed Regulation, the risk is defined as "the combination of the probability of an occurrence of harm and the severity of that harm" (Art. 3, par. 2).

III. AI AS A FAST FAMILY OF TECHNOLOGIES

AI is referred to, in the Preamble of the EU AI ACT, as a "fast evolving family of technologies that contributes to a wide array of economic, environmental and societal benefits across the entire spectrum of industries and social activities."

It is becoming increasingly clear that AI is impacting the entire spectrum of social activities, becoming a constant reality of everyday life. The advantages resulting from using AI are undeniable in various domains like healthcare, education, public services, security, justice, etc. where it helps in improving predictions, optimising operations or allocation resources.

However, a deeper analysis of the matter cannot be limited to the advantages derived from the use of these technologies but must also address and identify solutions for the risks, sometimes major, that often accompany the use of these systems.

As emphasized in doctrine, "while these technologies present significant opportunities for enhancing security and public safety, they also raise profound concerns about their impact on fundamental human rights, specifically the delicate balance between security and privacy." (Singh, T. (2024)

As for the ability to proof human rights harms it "is increasingly moving from individual hands to organizations that possess the means and resources to look into the big picture, by stepping back and showing a statistical demonstration

of bias through a comparison of datasets (that are either real or projected).” (Teo, S. (2025).

The need to find solutions to limit these risks is urgent to avoid a situation where the harmful effects resulting from the use of AI technologies outweigh the benefits generated. The regulation draws attention to the potential of AI not only to generate risks but also to cause material or immaterial (physical, psychological, societal, economic) harm to public interests and fundamental rights.

In this context, the creation of a regulatory framework at European level, that provides the necessary legal guarantees to protect the Union values and the fundamental rights and freedoms when faced with AI systems was essential to build trust.

IV. CLASSIFICATION ON AI SYSTEMS BASED ON THE RISK THEY POSE ON FUNDAMENTAL RIGHTS

An essential aspect introduced by the EU AI ACT is the classification of AI systems according to their degree of risk, with four categories being identified, respectively unacceptable risk systems; high-risk systems; limited risk systems and minimal risk systems.

In the following, we will briefly refer to the unacceptable risk systems and then focus on those that present a high degree of risk, as regulated by the EU AI ACT.

According to Art. 5 of the EU AI ACT, among the prohibited AI practices are the placing on the market, the putting into service or the use of the following AI systems: that deploys subliminal techniques beyond a person’s consciousness or purposefully manipulative or deceptive techniques; that exploits any of the vulnerabilities of a natural person or a specific group of persons due to their age, disability or a specific social or economic situation; that are used for the evaluation or classification of natural persons or groups of persons over a certain period of time based on their social behavior; that are used for making risk assessments of natural persons in order to assess or predict the risk of a natural person committing a criminal offence; that create or expand facial recognition databases through the untargeted scraping of facial images from the internet or CCTV footage.

Considering their undeniable harmful effect on human dignity, freedom, equality, democracy, the rule of law and fundamental right, their use within the European Union is prohibited.

The high-risk systems, on the other hand, although they put an important amount of risk on the values and freedoms mentioned before, are forbidden, but their place into market, put into service or use are strictly regulated to limit their harmful potential. According to the EU Regulation, these kinds of systems,

"should only be placed on the Union market, put into service or used if they comply with certain mandatory requirements. Those requirements should ensure that high-risk AI systems available in the Union or whose output is otherwise used in the Union do not pose unacceptable risks to important Union public interests as recognized and protected by Union law. AI systems identified as high-risk should be limited to those that have a significant harmful impact on the health, safety and fundamental rights of persons in the Union, and such limitation should minimize any potential restriction to international trade."

According to Art. 6, paragraph 1 of the EU AI ACT, an AI system is considered to be high-risk when the following conditions are both fulfilled "(a) the AI system is intended to be used as a safety component of a product, or the AI system is itself a product, covered by the Union harmonization legislation listed in Annex I; (b) the product whose safety component pursuant to point (a) is the AI system, or the AI system itself as a product, is required to undergo a third-party conformity assessment, with a view to the placing on the market or the putting into service of that product pursuant to the Union harmonization legislation listed in Annex I."

At the same time, the EU Regulation classifies as high-risk the systems referred to in its Annex III, respectively AI systems listed in the following areas: Biometrics, Critical infrastructure, Education and vocational training, Employment, workers management and access to self-employment; Access to and enjoyment of essential private services and essential public services and benefits; Law enforcement; Migration, asylum and border control management; Administration of justice and democratic processes.

If one of the above-mentioned AI systems does not pose a significant risk of harm to the health, safety or fundamental rights of natural persons, including by not materially influencing the outcome of decision making, it will not be considered as high risk.

V. HIGH-RISK SYSTEMS USED IN EDUCATION AND VOCATIONAL TRAINING

AI is considered to have "the potential to revolutionize education by transforming teaching and learning processes" (Krishnamoorthy, R., Srivastava, M. & Khanna, (2025), "through its ability to facilitate personalized learning experiences" (López-Pernas, S., Oliveira, E., Song, Y., Saqr, M. (2026). p. 17), There are also "critical ethical concerns, particularly around fairness (and) bias" (Saarela, M., Gunasekara, S., Karimov, A. (2025), p. 36).

According to the Annex III of the EU AI Regulation, the following AI systems used in education and vocational training are of high risk:

- AI systems intended to be used to determine access or admission or to assign natural persons to educational and vocational training institutions at all levels.

● AI systems intended to be used to evaluate learning outcomes, including when those outcomes are used to steer the learning process of natural persons in educational and vocational training institutions at all levels.

● AI systems intended to be used for the purpose of assessing the appropriate level of education that an individual will receive or will be able to access, in the context of or within educational and vocational training institutions at all levels.

● AI systems intended to be used for monitoring and detecting prohibited behavior of students during tests in the context of or within educational and vocational training institutions at all levels.

The main reason for classifying those systems in the category of high risk is linked to their role in influencing the educational and professional development of a person, and implicitly to influence their ability to secure a livelihood.

There is also an associated risk of perpetuating patterns of racial, ethnicity, age, gender or other types of discrimination, using those systems.

Research studies that have been conducted on the subject also draw attention to the privacy concerns deriving from the use of AI systems in education, pointing out that the data collected by AI-driven educational platforms "is often used beyond its educational purpose, including for targeted advertising or sold to third parties, raising ethical concerns about transparency and consent."(Singh, A.K., Kiriti, M.K., Singh, H. et al. (2025), p. 1434).

At the same time "profiling by AI systems can perpetuate biases, unfairly influencing educational opportunities or outcomes. Security risks are another concern, as data breaches could expose sensitive student information. The use of invasive monitoring tools, like facial recognition or keystroke analysis, can create a sense of surveillance, impacting student trust and autonomy." (Singh, A.K., Kiriti, M.K., Singh, H. et al. (2025), p. 1434).

VI. HIGH-RISK SYSTEMS USED IN EMPLOYMENT, WORKER'S MANAGEMENT AND ACCESS TO SELF-EMPLOYMENT

In the field of employment, worker's management and access to self-employment, the following systems are high-risk, according to Annex III of the EU AI ACT:

● AI systems intended to be used for the recruitment or selection of natural persons, in particular to place targeted job advertisements, to analyze and filter job applications, and to evaluate candidates;

● AI systems intended to be used to make decisions affecting terms of work-related relationships, the promotion or termination of work-related contractual relationships, to allocate tasks based on individual behavior or personal traits or

characteristics or to monitor and evaluate the performance and behaviour of persons in such relationships.

As in the case of systems used in education and vocational training, the AI systems used in employment, worker's management and access to self-employment create the risk for perpetuating historical patterns of gender, age, racial or other kinf of discrimination. At the same time, those systems are likely to have a decisive impact on worker's future career prospects and their livelihood.

CONCLUSION

Given the extremely rapid pace of technological progress in AI, the need for regulation at European level was undeniable. In this context the adoption of the REGULATION (EU) 2024/1689 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 June 2024 laying down harmonized rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 represented a huge step forward in this complex domain. The introduction of this regulation was all the more necessary as it introduces a classification of Artificial Intelligence systems according to the degree of risk they pose on fundamental (personality) rights, while also establishing clear rules for placing them on the market, putting them into service or the use of high-risk systems. All of these are emerging as guarantees for the protection of individual rights.

BIBLIOGRAFIE

1. Finocchiaro, G. (2024). The regulation of artificial intelligence. AI & Society, 39(4), 1961-1968. doi:https://doi.org/10.1007/s00146-023-01650-z.

2. Krishnamoorthy, R., Srivastava, M. & Khanna, D. AI in higher education: tapping educators' perspective. Int J Syst Assur Eng Manag (2025). https://doi.org/10.1007/s13198-024-02657-5

3. López-Pernas, S., Oliveira, E., Song, Y., Saqr, M. (2026). AI, Explainable AI and Evaluative AI: Informed Data-Driven Decision-Making in Education. In: Saqr, M., López-Pernas, S. (eds) Advanced Learning Analytics Methods. Springer, Cham., p. 17-39, https://doi.org/10.1007/978-3-031-95365-1_2

4. Register, C., Khan, M.A., Giubilini, A. et al. Privacy and Human-AI Relationships. Philos. Technol. 38, 147 (2025). https://doi.org/10.1007/s13347-025-00978-2.

5. Ronge, R., Maier, M., & Rathgeber, B. (2025). Towards a definition of generative artificial intelligence. Philosophy & Technology, 38(1), 31. doi:https://doi.org/10.1007/s13347-025-00863-y.

6. Ronge, R., Maier, M., & Rathgeber, B. (2025). The regulation of artificial intelligence. AI & Society, 39(4), 1961-1968. doi:https://doi.org/10.1007/s00146-023-01650-z.

7. Saarela, M., Gunasekara, S., Karimov, A. (2025). The EU AI Act: Implications for Ethical AI in Education. In: Chatterjee, S., vom Brocke, J., Anderson, R. (eds) Local Solutions for Global Challenges. DESRIST 2025. Lecture Notes in Computer Science, vol 15704. Springer, Cham., p. 36-50, https://doi.org/10.1007/978-3-031-93979-2_3.

8. Singh, T. (2024). AI-Driven Surveillance Technologies and Human Rights: Balancing Security and Privacy. In: Somani, A.K., Mundra, A., Gupta, R.K., Bhattacharya, S., Mazumdar, A.P. (eds) Smart Systems: Innovations in Computing. SSIC 2023. Smart Innovation, Systems and Technologies, vol 392. Springer, Singapore. https://doi.org/10.1007/978-981-97-3690-4_53, p. 703-717.

9. Singh, A.K., Kiriti, M.K., Singh, H. et al. Education AI: exploring the impact of artificial intelligence on education in the digital age. Int J Syst Assur Eng Manag 16, 1424–1437 (2025). https://doi.org/10.1007/s13198-025-02755-y, p. 1424 – 1437.

10. Teo, S. Artificial intelligence and its 'slow violence' to human rights. AI Ethics 5, 2265–2280 (2025). https://doi.org/10.1007/s43681-024-00547-x. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0065&WT_mc_id=Twitter

.

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 292-295

LEGAL INSTRUMENTS AND POLICIES FOR CONSUMER RIGHTS AND SAFETY IN ALBANIA: AN ANALYSIS

I. MANASTIRLIU

Received 12.12.2024; accepted 13.02.2025
First online publication:15.02.2025

DOI: https://doi.org/10.55516/ijlso.v5i1.244

Iris MANASTIRLIU
"Aleksander Moisiu" University of Durres, Albania, Doctoral Public Law, Faculty of Political and Legal Sciences
E-mail: irismanastirliu@gmail.com
ORCID ID: https://orcid.org/0009-0009-2782-7626

Abstract

Consumer rights are a key element of public law, as they relate to the regulation of economic activities and the protection of individuals in their role as consumers within the market. This scientific paper presents an overview of how consumer rights are integrated and rooted in public law, which includes a regulatory role, state responsibility and preventive measures. Key elements include the right to information, security, choice, rectification and representation. Legal instruments include constitutional protection, legislation and regulatory agencies. Public policy implications include market regulation, public awareness campaigns and international cooperation. Administrative law regulates the relationship between individuals and public authorities, with agencies investigating and penalizing violations of consumer rights and administrative courts providing a platform to challenge regulatory decisions. Customer satisfaction is essential as it encourages repeat purchases, serves as a strong advertisement for the product and reflects the product's values and beliefs.

Key words: *consumer rights, public law, instruments, legislation, advertisment.*

INTRODUCTION

Consumer rights are essential for regulating business processes and protecting personal interests. The abundance of products and modern communication have encouraged the need for new regulatory systems and protection from deceitful messages. Consumer protection has its roots in the middle ages, with the first consumer advocates being Thomas Aquinas, Martin

Luther, and John Calvin. Three ways to guarantee consumer protection are through government initiatives, legal frameworks, and fair competition and self-regulation mechanisms. The Sherman Act of 1890 marked the beginning of policies in favor of consumers, excluding activities that aimed to profit from monopolies and large industries. These policies allowed consumers to choose from a wider range of products and created fair competition for artisans and small traders.

European Consumer's Day aims to highlight consumer rights and the relationship between consumers and enterprises. With fifty years, ICPO's has expanded basic consumer rights to eight. The European Commission celebrates the 15th of March as European Consumer's Day to promote opportunities offered by EU integration. Consumer protection is a global phenomenon, with developed countries often ignoring it. Developing countries should adopt sustainable consumption patterns to protect consumers while respecting joint responsibility. Universities and think tanks play a positive role in drafting consumer protection policies. The Franco-German Centre for Consumer Protection was established in 2003 to improve EU citizens' lives.

In the 1990s, the liberalization of the internal market led to a shift in consumer-trader relationships. The first consumer protection association was founded in 1990, conducting educational activities on consumer rights. Over time, new associations like ACA, CPO, and Consumers in Focus have been established, protecting all consumer categories. These associations cooperate with the CPC to resolve consumer disputes through mediation or representation in courts. They assist consumers with legal information and counseling, and conduct promotional activities on consumer rights.

I. THE ALBANIAN LEGAL FRAMEWORK ON CONSUMER PROTECTION

During the communist regime, Albania controlled everything, but consumer rights protection gained momentum during democracy. The concept of consumer protection in Albania was first established in 1990, coinciding with political changes. The Stabilization and Association Agreement in 2006 aimed to harmonize Albanian legislation with the acquis communautaire and European standards. This article provides an overview of the development and prospects of consumer protection policies in Albania, including the creation of consumer protection associations, codification of legislation, and interaction with other institutions.

The country has approved laws and implemented policies to protect consumers, with the 2003 law offering greater protection. The 2008 law marked a key momentum, offering adequate protection. The signing of the SAA committed to aligning Albanian legislation with the acquis communautaire, ensuring consumer protection standards and harmonization with the Community. During the alignment process, consumer policies were developed, focusing on health

safety, product safety, consumer education, and right to compensation. Other laws have been approved in specific areas, providing protection for consumers in specific areas. The Law on Consumer Protection is designed as a general framework of provisions for consumer protection, ensuring a wider range of protection for consumers.

The Albanian legal framework on consumer protection has been modernized, but the implementation of legislation remains lagging behind. The current system is organized into three main units: The Consumer Protection Sector, the Consumer Protection Commission, and the State Inspectorate for Market Supervision. However, in a small market economy like Albania, the implementation of consumer protection policies is not similar to more developed countries. A new system, alternative dispute resolution, has been proposed to provide consumers with an alternative solution to court proceedings, addressing small-scale disputes that are often neglected by consumers. ADR schemes should respect European principles, including quality, transparency, impartiality, and effectiveness, and be informed to consumers during purchase transactions.

Albania is implementing consumer protection rules through cooperation with authorities and relevant bodies. As a priority for EU accession, the country is reforming to align its legislation with EU standards. The signing of the SAA in 2006 led to increased efforts to introduce consumer protection policies. The Crosscutting strategy on consumer protection and market supervision 2007-2013 is the first document on this topic.

The National Food Authority (NFA) has implemented measures to protect consumer health, focusing on specific groups of consumers. One such measure is the introduction of Albanian labels on products, which must be accurate and detailed. However, this is not enough to protect consumers' health. The NFA has also addressed issues with hygienic conditions in meat trading markets, particularly in Tirana. The NFA has improved hygienic-sanitary conditions, making consumers feel more safe. However, consumers also have the right to demand safe non-nutritional products, which lies with traders. Over the past few years, laws and measures have been enforced to protect consumers' health and provide them with sufficient information. Product labeling helps consumers understand the ingredients, quality, and potential health consequences. However, modified products are still present in the market, and producers must adhere to these guidelines. The National Food Authority (NFA) plays a crucial role in ensuring compliance with legal provisions, as non-compliance can lead to harmful products.

CONCLUSION

Albania's consumer rights protection is governed by government policies, legal framework, and implementation by state structures, market actors, and consumer protection associations. While progress has been made in aligning the legal framework with the acquis communitaire, more needs to be done. The role

of consumer associations has been crucial since the early 1990s, and the signing of the SAA between Albania and the EU has increased consumer protection. However, the institutional framework needs improvement, with new bodies and institutions requiring cooperation with other consumer protection institutions like the Competition Authority. The legislation still lacks provisions for marketing communications, codes of conduct, electronic trade, public services, and class action for consumer compensation. The Strategy for Consumer Protection and Market Surveillance is commended for empowering consumers. More information campaigns should be distributed to educate citizens about their rights and the available tools.

Albania is implementing measures to enhance consumer protection, a concept first introduced in the 1990s. This change reflects the shift from a state-controlled market to a consumer-centric one. The government's efforts have led to increased quality and safety in the market, ensuring that consumers are fully protected and aware of their purchasing choices. This paper highlights the country's commitment to consumer protection.

*Albania, a potential EU candidate, has made efforts to make its laws and future legislation compatible with the acquis communautaire. In 2008, the Albanian legislator replaced the old Consumer Protection Act (CPA) 2003 with the new CPA 2008, aiming to fully implement European directives on consumer protection law. However, the CPA 2008 did not fully implement all directives and the relationship between the CPA and the Albanian Civil Code remains unclear***.**

BIBLIOGRAFIE

1. Law No. 8192 dated 06.02.1997 "On consumer protection ".
2. Law No. 9135 dated 11.09.2003 "On consumer protection ".
3. Law No. 9902 dated 17.04.2008 "On protection of consumers".
4. Law Nr. 9199, dated 26/02/2004 "On the production, processing, certification and marketing of products "Bio".
5. The Constitution of the Republic of Albania (1998).

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 296-309

FROM PAPER TO DIGITAL: ELECTRONIC SIGNATURE AND RECORD IN THE CONTEXT OF ROMANIAN LEGAL REGULATIONS

F. F. MOROZAN

Received 20.11.2025; accepted 18.12.2025
First online publication: 19.12.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.290

Florina Florentina MOROZAN
Senior Lecturer, PhD.
Faculty of Law, University of Oradea, România
E-mail: florinamorozan@yahoo.com
ORCID ID: https://orcid.org/0009-0008-9009-7729

Abstract

The transition from traditional written forms to electronic communication has accelerated in recent years, particularly due to the expansion of teleworking and the widespread use of remotely concluded contracts. These developments necessitated a coherent legal framework governing the creation, transmission, and evidentiary value of electronic documents and electronic signatures. Romania aligned early with European trends and progressively modernized its legislation to ensure the authenticity, integrity, and legal certainty of digital documents. A decisive step in this evolution is represented by Law No. 214/2024, which harmonizes national rules with the eIDAS Regulation and introduces essential updates to the Code of Civil Procedure. The new law modernizes and unifies previous regulations, adapting them to the current technological context and facilitating the interoperability of digital solutions at the European level.

This study presents the evolution of European and Romanian regulations applicable to electronic documents and electronic signatures, emphasizing the implications for judicial practice and the challenges courts have encountered during this transition. The paper highlights the need for a technologically neutral and predictable legal framework capable of supporting the digitalization of civil procedures and private law relations while safeguarding fundamental procedural rights.

Key words: *electronic document, electronic signature, advanced electronic signature, eIDAS, evidence.*

INTRODUCTION

The concept of a "document" has historically been linked to a tangible, paper-based medium capable of capturing and preserving information relevant to a legal act. The rapid digitalization of social and economic life has progressively challenged this traditional understanding. As communication technologies evolved and remote interactions became routine, the legal system was compelled to broaden the notion of a document to include dematerialized forms, as well as to recognize the possibility of authenticating them through electronic signatures. The expansion of teleworking and the increasing prevalence of contracts concluded without the physical presence of the parties further accelerated the need for a regulatory framework adapted to these new realities.─This progress can be identified not only in civil matters but also in criminal (*Miheș, 2025, p.747*) and fiscal matters (*Cîrmaciu, 2024, pp. 560-561*).

Classical legal doctrine associated the document with a written manifestation of will recorded on a durable physical support. For example, Ciobanu described the document as a written declaration concerning a legal act or fact, materialized through various methods of inscription on paper or other physical media (*Ciobanu, 1997, p. 163*). Traditional civil law distinguished between authentic instruments and private deeds, while also acknowledging other written forms with evidentiary relevance, such as merchants' accounts, household records, or commercial correspondence governed by the Commercial Code of 1887.

After 2000, Romanian legislation increasingly integrated digital technologies, introducing the category of electronic documents and adapting procedural rules accordingly. The reform of the Code of Civil Procedure[1] marked a significant step in this direction, offering a definition of the document that focuses on the informational content rather than the material form that supports it. Under Article 259 CPC, a document may consist of any record of data relating to a legal act or fact, irrespective of the medium used. The Code structures the evidentiary regime of documents into several categories—authentic acts, private deeds, documents stored in electronic format, recognitive instruments, and other forms of written evidence—while providing that an electronic record may serve as proof under conditions analogous to those applicable to documents on paper (Arts. 266–267 CPC).

This study examines the development of European and national regulations concerning electronic documents and electronic signatures, outlines the main stages of legislative evolution, and highlights the challenges that judicial practice has encountered in applying these modern instruments.

[1] *Law No. 134/2010 on the Code of Civil Procedure* was published in the Official Gazette of Romania, No. 485 of 15 July 2010, and republished in the Official Gazette of Romania, No. 247 of 10 April 2015.

FROM PAPER TO DIGITAL: ELECTRONIC SIGNATURE AND RECORD IN THE CONTEXT OF ROMANIAN LEGAL REGULATIONS

I. THE HISTORICAL EVOLUTION OF SPECIAL LEGISLATION

In 1999, Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a community framework for electronic signatures was adopted. The Directive was also transposed into the legislation of other states. The adoption in France of Law No. 2000-230 of 13 March 2000[2], which modernized the law of evidence in response to technological developments, brought significant amendments to the French Civil Code. Through this legislative intervention, the traditional concept of "written evidence" was expanded to include electronic formats, and the amended provisions expressly introduced the notions of "electronic document" and "electronic signature." The new rules established that information recorded by intelligible characters or symbols may constitute a written document regardless of the material medium or transmission method, thereby recognizing legal equivalence between electronic documents and paper-based documents, provided that the requirements concerning the identification of the author and the preservation of the document's integrity are fulfilled.

According to the amendments brought to the French Civil Code, an electronic document is admissible as evidence insofar as it allows the author to be identified and is created and stored under conditions that ensure the integrity of the data (Art. 1316-1 French Civil Code). Furthermore, where no special legal rules or agreements between the parties exist, the judge determines the evidentiary value of written evidence by assessing the credibility of the documents, irrespective of the medium used (Art. 1316-2 French Civil Code). Thus, the French legal framework affirms the principle of technological neutrality, ensuring equal treatment for digital and traditional documents where authenticity and integrity requirements are satisfied.

Regarding the electronic signature, the French Civil Code defines it as a reliable identification process establishing a link between the signatory and the legal act to which the signature is attached (Art. 1316-4 French Civil Code[3]). The law provides for a presumption of reliability when the signature is generated by a mechanism that guarantees the identification of the person, the authenticity of the document, and the integrity of its content, unless proven otherwise. In this

[2] *Law No. 2000-230 of 13 March 2000 concerning the adaptation of evidence law to information technologies and electronic signatures*, JORF No. 62, 14 March 2000, https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000399095 .

[3] The provisions cited above correspond to Articles 1316 to 1316-4 of the French Civil Code, introduced by Law No. 2000-230 of 13 March 2000 (JORF No. 62, 14 March 2000). These articles structured the legal regime of electronic writing and electronic signatures in France. Following the 2016 reform of contract law (Ordonnance No. 2016-131 of 10 February 2016), the numbering of these provisions was modified. The rules governing electronic writing and electronic signatures are now found primarily in Articles 1365 to 1367 of the French Civil Code, while maintaining the substantive principles established in 2000.

manner, the electronic signature is granted the same legal force as a handwritten signature when the technical requirements established by law are met.

Romania introduced its first comprehensive regulation on electronic documents and electronic signatures through Law No. 455/2001[4], adopted as part of the implementation of Directive 1999/93/EC[5]. This act represented the starting point of the national legal framework governing electronic identification mechanisms and the validity of digitally created documents.

One of the central contributions of Law 455/2001 was the establishment of a statutory definition of the electronic document. According to Article 4, point 2, the law understood the electronic document as a set of data arranged in electronic format, whose internal structure allows the representation of intelligible information—letters, digits, or other symbols—capable of being accessed through appropriate software tools. By doing so, the legislator shifted the focus from the material medium to the informational content and its functional organization.

The law also drew clear distinctions regarding the legal effects of electronic signatures. Under Article 5, an electronic document bearing an advanced electronic signature—created using a secure signature-creation device and supported by a qualified certificate valid at the time of signing—was treated as equivalent to a document under private signature. This equivalence concerned both the validity of the act and its legal effects between the parties.

Beyond formal validity, Law 455/2001 addressed the probative force of electronic documents. Article 6 provided that a signed electronic document produces the same effects as an authentic instrument when the person against whom it is invoked acknowledges the signature. Moreover, Article 7 clarified that the requirement of written form—whenever imposed either for proving or for the validity of an act—is satisfied when the document carries an advanced electronic signature generated under the conditions set by the law.

When the authenticity of an electronic document or signature was challenged, the law imposed a specific verification procedure. In accordance with Article 8, the courts were required to order technical expertise whenever a party denied the document or the signature. The expert had to obtain and examine the relevant qualified certificates and any additional information necessary to determine the identity of the creator or signatory of the document.

Law No. 455/2001 remained the key reference for almost two decades, until it was repealed and replaced by Law No. 214/2024, which now governs electronic signatures, electronic timestamps, and trust services. The new act

---

[4] *Law No. 455/2001 on the electronic signature* was published in the Official Gazette of Romania, Part I, No. 429/2001, and republished in the Official Gazette No. 316 of 30 April 2014.

[5] *Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC*, OJ L 257, 28.8.2014, pp. 73–114, available at: https://eur-lex.europa.eu/eli/reg/2014/910/oj.

reflects technological evolution and ensures alignment with the European regulatory framework introduced by the eIDAS Regulation.

When examining the legal regime of contracts concluded by electronic means, reference must also be made to Law No. 365/2002 on electronic commerce[6] and Emergency Ordinance No. 34/2014[7]. These acts provide the general framework for transactions carried out through digital instruments and clarify the conditions under which such contracts are formed and produce legal effects. The widespread use of electronic communication has significantly facilitated commercial interactions, allowing professionals to promote and offer their goods or services on a much wider scale, while enabling consumers and other contracting parties to access information rapidly and efficiently. As noted in the literature, electronic contracting offers substantial advantages in terms of accessibility, cost reduction, and the speed with which contractual steps can be completed (*Popa & Morozan, 2025, p. 105*).

Emergency Ordinance No. 34/2014 defines the *distance contract* as an agreement concluded between a professional and a consumer within a sales or service-provision system that operates without the simultaneous physical presence of the parties, using one or more means of remote communication up until the moment of contract formation[8]. This definition emphasizes the dematerialized and asynchronous nature of electronic contracting.

Furthermore, Article 7 of Law No. 365/2002[9] establishes that contracts concluded by electronic means enjoy the same legal validity and produce the same effects as any other contract, on the condition that all general requirements for validity—such as consent, capacity, object, and cause—are fulfilled. As regards proof, obligations arising from electronic contracts may be demonstrated using the rules of common law on evidence, supplemented by the principles set out in the special legislation regarding electronic signatures, previously contained in Law No. 455/2001.

II. JURISPRUDENTIAL CONTROVERSIES REGARDING ELECTRONIC SIGNATURE

The case law developed over the past years has revealed several inconsistencies between the general rules governing electronic signatures and the provisions of special legislation. One of the most debated issues concerned the

[6] *Law No. 365/2002 on electronic commerce* was published in the Official Gazette No. 483 of 5 July 2002 and subsequently republished in the Official Gazette No. 959 of 29 November 2006.

[7] *Emergency Ordinance No. 34/2014 regarding consumer rights in contracts concluded with professionals, as well as for the amendment and completion of certain normative acts*, published in the Official Gazette of Romania, Part I, No. 427 of 11 June 2014.

[8] *Emergency Ordinance No. 34/2014 regarding consumer rights in contracts concluded with professionals, as well as for the amendment and completion of certain normative acts*, Art.2.

[9] *Law No. 365/2002 on electronic commerce,* Art.7.

legal validity of contravention reports issued under Government Ordinance No. 15/2002[10], particularly those relating to the failure to pay the road usage fee (rovinietă). In practice, these reports were frequently delivered to the alleged offenders either by postal service, with confirmation of receipt, or by posting at their residence. The forms did not contain the handwritten signature of the issuing officer; instead, they indicated that the act had been generated and authenticated electronically, by means of an extended electronic signature compliant with Law No. 455/2001.This practice generated divergent judicial solutions. Some courts considered that an electronically signed act meets the formal requirement of signature, even when the document is later produced in paper form. Other courts held that, once converted into a physical document, the absence of a handwritten signature constitutes a formal defect that cannot be remedied, rendering the report null.

The controversy eventually reached the High Court of Cassation and Justice, through an appeal in the interest of the law. The Court examined whether a contravention report drafted electronically but served in physical form must nevertheless bear a handwritten signature in order to comply with the formal validity conditions.

By admitting the appeal, the High Court established that contravention reports issued under Article 8(1) of Government Ordinance No. 15/2002 and drawn up in accordance with Article 9(1)(a), (2) and (3) become legally ineffective when served in paper form without the handwritten signature of the officer who prepared them. The Court's reasoning is detailed in Decision No. 6/2015[11], where it emphasized:

"It is true that an extended electronic signature attached to an electronic document for which the written form is required by law *ad validitatem* fulfils the same function as a handwritten signature on a document printed on paper and, moreover, provides additional guarantees of uniqueness, identity, security, and integrity, and cannot be repudiated by its author. However, these functions are recognized only when the document to which the electronic signature is attached is also transmitted and received by the addressee in electronic format. Otherwise, when the document is received by its addressee in paper format, the authenticity of the act—when the written form is required by law *ad validitatem*—is ensured

[10] *Government Ordinance No. 15/2002 on the application of the road usage fee and the toll for the national road network in Romania*, published in the Official Gazette of Romania, Part I, No. 82 of 1 February 2002

[11] *Decision No. 6 of 16 February 2015 of the High Court of Cassation and Justice concerning the appeal in the interest of the law* filed by the Ombudsman regarding the interpretation of Article 17 of Government Ordinance No. 2/2001 on the legal regime of contraventions and of Law No. 455/2001 on the electronic signature, published in the Official Gazette of Romania, Part I, No. 199 of 25 March 2015, available at: https://www.iccj.ro/2015/02/16/decizia-nr-6-din-16-februarie-2015

only by the affixing, on that act, of the handwritten signature of the instrumenting officer (*finis solemnibus forma dat esse rei*)."

This decision provided necessary clarification and ensured uniform practice, making clear that the method of service of the document determines the applicable formal requirements: a paper document must comply with the formalities specific to paper-based acts, including handwritten signature, regardless of whether it was initially generated electronically.

Courts have also encountered practical difficulties when assessing the formal validity of procedural documents transmitted electronically. A recurring issue involved statements of claim, appeals, or other procedural acts that were submitted by e-mail or uploaded to court platforms, but which contained only a scanned handwritten signature, rather than an electronic signature created in accordance with the law. If such a scanned signature were considered insufficient, the procedural act would be deemed unsigned, with potential consequences for its admissibility. It is important to note that the Code of Civil Procedure does not contain specific provisions regulating the form of the signature on electronic submissions.

A relevant example is provided by a decision of the Bucharest Court of Appeal[12]. The court held that a notice of appeal bearing only a photocopied signature—resulting from printing a PDF document—did not satisfy the requirement of signature laid down in Article 148(1) CPC. For an electronic document to be treated as equivalent to a document under private signature, it must be signed using an electronic signature that meets the applicable legal standards, and this condition was not fulfilled in that case. The court therefore ordered the appellant either to file a version bearing the handwritten signature of the institution's legal representative or to submit an original signed copy. As the appellant failed to comply, the appeal was annulled for lack of signature (see *Croitoru, 2019*).

Another line of cases concerned the use of extended electronic signatures on supporting documents such as invoices, receipts, or evidence of attorney's fees. In one instance[13], the opposing party challenged the validity of an electronically signed receipt and argued that the absence of a date rendered the document defective. The documents had been submitted through the judicial portal (rejust.ro), each bearing an extended electronic signature applied by the lawyer. The court fee payment, made via Ghiseul.ro, was likewise transmitted in electronic format and signed electronically.

[12] *Bucharest Court of Appeal, 4th Civil Division, Civil Decision No. 953A of 18 September 2018*, summarized by M. S. Croitoru, "Nullity of the Appeal Due to the Absence of an Electronic Signature," Romanian Journal of Jurisprudence, No. 1, 2019, https://www.universuljuridic.ro/nulitatea-apelului-pentru-lipsa-semnaturii, consulted on 15 November 2025, 17:30.

[13] Neamț Tribunal, First Civil Division, Decision of 31 October 2025, No. RJ d947573g9/2025.

The first-instance court refused to award legal costs, reasoning that the receipt had not been filed in its original form and that the lawyer had not certified the conformity of the copy. On appeal, however, this reasoning was overturned. The appellate court found that the extended electronic signature ensured identification of the signatory, preserved the integrity of the content, and offered a sufficient guarantee of authenticity, making additional certification unnecessary.

The court also recalled the case law of the European Court of Human Rights, which consistently stresses that procedural rights must be interpreted in a manner that does not impose disproportionate formalism. Denying legal costs solely because of the absence of a manually certified copy would amount to an excessive restriction on a party's effective access to a court, contrary to Article 6 ECHR.

With regard to the missing date, the appellate court reasoned that the electronic signature itself certifies both the authenticity of the document and the exact moment at which it was issued. Consequently, the absence of a date on the electronically signed receipt did not undermine its evidentiary value. The appeal was therefore allowed, and legal costs were granted.

III. BRIEF CONSIDERATIONS ON THE CURRENT LEGAL REGULATIONS

III.1. The European legal framework

A major development at the level of the European Union was the adoption of Regulation (EU) No. 910/2014 [14], commonly referred to as the eIDAS Regulation, which established the foundational rules for electronic identification and trust services used in the internal market. By introducing uniform standards applicable across Member States, the Regulation sought to ensure that electronic transactions could be carried out securely, particularly in contexts that require reliable methods of identifying persons, preventing repudiation of actions, and preserving the integrity and accessibility of contractual documentation. Since eIDAS is a Regulation, it has been directly applicable in all Member States from 1 July 2016, without the need for national transposition measures.

Although the Regulation created a harmonized legal framework, it also left certain aspects to the discretion of Member States, including the legal effects attributed to simple and advanced electronic signatures. According to Articles 3(10)–(12), eIDAS defines an *electronic signature* as electronic data attached to or logically associated with other electronic data and used by the signatory to sign. An *advanced electronic signature* must satisfy several cumulative conditions: it must be uniquely connected to the signatory, capable of identifying them, created using data under their exclusive control, and linked to the signed material in a

[14] *Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC*, OJ L 257, 28.8.2014, pp. 73–114, available at: https://eur-lex.europa.eu/eli/reg/2014/910/oj.

manner that allows any subsequent alteration to be detected. A *qualified electronic signature* represents the highest level of assurance, combining the characteristics of an advanced signature with the additional requirements of being generated by a qualified device and supported by a qualified certificate.

The regulatory landscape was significantly revised in April 2024 through Regulation (EU) 2024/1183[15], which updated eIDAS in order to establish a coherent European framework for digital identity. One of the main objectives of the amending Regulation is to guarantee that all EU citizens and legally residing individuals have access to a digital identity under their personal control. This framework is designed to allow secure access to public and private sector services, both online and offline, throughout the Union. The reform also aims to reduce fragmentation between national identification systems, eliminate barriers arising from incompatible solutions, and enhance both transparency and the protection of fundamental rights in the digital environment.

A central innovation introduced by the 2024 amendment is the creation of the European Digital Identity Wallet, a standardized electronic identification tool. The Wallet enables users to securely store, manage, and present identification data and electronic attestations of attributes, and to provide them to entities that rely on such information. It is also intended to support the use of qualified electronic signatures and qualified electronic seals, thereby strengthening cross-border recognition and facilitating digital transactions within the internal market.

III.2. Internal regulatory framework

The current Romanian Code of Civil Procedure includes specific provisions regarding documents stored on electronic media, set out in Articles 282–284. When the information relating to a legal act is preserved in electronic format, the document that reproduces this information may serve as evidence, provided it is intelligible and offers sufficient guarantees of authenticity and reliability concerning both its content and its origin. In evaluating these elements, the court must consider the way in which the data were initially recorded, as well as the characteristics of the document used to reproduce them.

The Code establishes a presumption of credibility for data recorded electronically when the recording is carried out in a continuous, systematic manner, without omissions, and when the medium used ensures protection against alteration or falsification. If these conditions are met, the integrity of the data is presumed, and this presumption also benefits third parties when the recording is performed by a professional acting within their field of activity.

[15] *Regulation 1183 of 11 April 2024 amending Regulation (EU) No. 910/2014 on the establishment of a European framework for digital identity*, OJ L 2024/1183, 30 April 2024, available at: https://eur-lex.europa.eu/legal-content/RO/ALL/?uri=CELEX:32024R1183 .

Article 284 CPC states that a document reproducing data recorded on electronic media constitutes full proof between the parties, until evidence to the contrary is presented. This confers upon such documents a relative presumption of validity, which may be overturned by an interested party. However, the evidentiary force granted by this provision does not apply when the medium or technology used does not provide adequate guarantees of integrity. In these circumstances, the electronic document may still be used, depending on its content and the context, as a material means of proof or as the beginning of written evidence. The legislator thus adopts a form of conversion of evidentiary value: even when full probative force is lacking, the expression of will embedded in the document may still produce limited legal effects.

The notion of document integrity, as referenced in Article 284 CPC, must be distinguished from the requirement in Article 283 CPC concerning the preparation of the document "without gaps." While the latter refers to the content and formation of the act, the guarantee of integrity in Article 284 concerns the technical reliability of the electronic medium—specifically, the assurance that the data have not been partially altered or erased and that the content faithfully reflects the parties' genuine intentions.

Articles 282–284 CPC do not introduce separate rules for the administration or verification of documents stored on electronic media. As a result, the general procedural rules governing the taking of evidence, contained in Articles 260–263 CPC, apply correspondingly.

With respect to documents created directly in electronic form, their evidentiary regime is governed by special legislation, in accordance with Article 267 CPC. At present, this special framework is provided by Law No. 214/2024[16], which regulates the use of electronic signatures, electronic seals, electronic timestamps, and electronic documents incorporating such elements. As noted in the literature, the law was designed to offer a unified and technologically updated regulatory structure, aligned with European standards governing electronic identification and trust services (*Avram, 2024, p. 2*).

Under Article 3 of Law No. 214/2024, all categories of electronic signatures regulated either by Regulation (EU) No. 910/2014 or by national legislation are capable of producing legal effects and may serve as admissible evidence before judicial authorities. An electronic legal act that is signed using the form of electronic signature required by law—or using a qualified electronic signature regardless of context—enjoys the same legal validity as the corresponding document executed on paper.

The assessment of the validity of an electronic signature must be carried out with reference to the legal and technical requirements applicable at the

[16] *Law No. 214/2024 on the use of the electronic signature, the timestamp and the provision of trust services based thereon*, was published in the Official Gazette No. 647 of 8 July 2024.

moment the signature was created. Consequently, the subsequent expiry of the certificate used to generate the signature does not compromise the effects of the document. This approach also applies to advanced electronic signatures that are not linked to qualified certificates but are based on other technological solutions capable of meeting the functional requirements imposed by law. Article 4 of Law No. 214/2024 further clarifies that the legal consequences of a signed electronic document differ depending on whether the signature applied is simple, advanced, or qualified.

A simple electronic signature may produce legal effects equivalent to a handwritten signature only in a limited number of situations, expressly set out in Article 4(9) of the law:
a) when the legal act has a pecuniary value not exceeding half of the gross minimum wage on the date of signing; b) when the party against whom the act is invoked acknowledges the document; or c) when both parties qualify as "professionals" and have previously agreed—through a document signed by hand or with a qualified electronic signature—to grant simple electronic signatures the same effects as handwritten signatures. In such cases, the parties expressly declare that they understand the associated risks and the allocation of the burden of proof.

A qualified electronic signature retains the highest level of legal certainty. In accordance with Article 25(2) of Regulation (EU) No. 910/2014, a qualified electronic signature produces the same effects as a handwritten signature. Moreover, an electronic document issued by a public authority or by a person exercising public authority, when signed with a qualified signature or bearing a qualified electronic seal, is treated as an authentic act. When written form is required *ad validitatem,* the requirement is satisfied if the electronic document is signed with a qualified electronic signature or with an advanced signature that, under national law, produces effects equivalent to a handwritten signature. If written form is required only for evidentiary purposes, the requirement may be met by a qualified, advanced, or simple electronic signature, provided that the latter is used in the conditions defined in Article 4(9). When the law demands authentication of the act under the Civil Code, the specific rules on notarial authentication apply. Law No. 214/2024 does not modify these requirements.

As regards disputes over the authenticity of electronic signatures, Law No. 214/2024. challenged, the responsibility for proving that the legal and technical requirements have not been met rests with the party contesting the signature. By contrast, for advanced and simple electronic signatures, the burden shifts: the party relying on the signature must demonstrate that the applicable conditions have been fulfilled (*Dimitriu, 2024, p. 33*).

Law No. 214/2024 also introduced amendments to the Code of Civil Procedure in order to harmonize procedural rules with European requirements and the new national framework. Service of procedural documents by the court must now be accompanied by a qualified electronic signature or by an advanced

electronic signature based on a certificate issued by a Romanian public authority, replacing the traditional seal and the clerk's signature in the mandatory citation elements (Art. 154(6) CPC). Similarly, judicial decisions served by electronic means must be signed with a qualified or advanced signature based on a certificate issued by a public authority, which substitutes for the court's seal and the clerk's signature (Art. 154[1] CPC).

CONCLUSION

The development of legislation on electronic signatures illustrates the progressive integration of digital tools into civil procedure and private law relations. By updating the national framework to reflect the standards established at European Union level, particularly through Regulation (EU) No. 910/2014 and its 2024 amendment, Law No. 214/2024 creates a consistent and modern regulatory environment that treats electronic and paper-based documents as functionally equivalent whenever legal requirements are met. In practice, electronic signatures and electronic documents have become ordinary instruments used in daily legal and commercial activity, supporting the efficiency and accessibility of justice.

The fact that the law differentiates between the effects of simple, advanced, and qualified electronic signatures ensures an appropriate balance between legal certainty and technological flexibility, while maintaining the procedural safeguards necessary for protecting the parties' rights. Recent case law demonstrates that courts are increasingly willing to accept electronically signed documents as reliable evidence and to avoid procedural formalism that would unnecessarily limit a party's ability to assert their claims.

Taken together, these developments consolidate confidence in digital trust services and reaffirm the role of electronic documents as legitimate and effective means of proof within the Romanian legal system. The current framework therefore represents an important step toward building a legal environment capable of supporting long-term digital transformation.

BIBLIOGRAFIE

1. Avram, M., *Efectele juridice ale tipurilor de semnături electronice în lumina Legii nr. 214/2024*, JURIDICE.ro – Essentials, 2024. Available at: https://www.juridice.ro/essentials/8225/efectele-juridice-ale-tipurilor-de-semnaturi-electronice-in-lumina-legii-nr-214-2024;
2. Ciobanu, V. M., *Tratat teoretic și practic de procedură civilă*, Vol. II, Editura Național, București, 1997;
3. Cîrmaciu D., Romania: *The Relationship Between Tax Legislation, Tax Competition and Sovereignty, in Economic Governance. The impact of the European Union on the Regulation of Fiscal and Monetary Policy in Central European Countries*, CEA Publishing, Miskolc-Budapest, 2024, ISSN 2786-2518;

https://real.mtak.hu/146406/,
DOI·https://doi.org/10.54237/profnet.2024.znecogov_24
4. Dimitriu, R. A., „Semnează aici – ancorarea semnăturii electronice în realitatea mediului de afaceri", *Pandectele Române*, nr. 5/2024, pp. 28–55;
5. Mihes, C., "Digitalization of Criminal Trials and Criminal Procedures in Romania," in Wielec, M., Sobczyk, P. and Oreziak, B. (eds.), *In legibus fundamentum rei publicae: Collection of Scientific Papers of the Comparative Research Platform 2023*, Wydawnictwo Instytutu Wymiaru Sprawiedliwości, Warsaw, 2025, pp. 746–748;
6. Popa, C.-T., Morozan, F., "Digital Notarial Legal Acts," *Analele Universității din Oradea. Seria Științe Economice*, tom XXXIV, nr. 1, iulie 2025, pp. 104–109, DOI: 10.47535/1991auoes34(1)007;
7. Law No. 455/2001 on Electronic Signatures, published in the Official Gazette of Romania, Part I, No. 429/2001; republished in the Official Gazette, No. 316/2014;
8. Law No. 134/2010 on the Code of Civil Procedure, published in the Official Gazette of Romania, Part I, No. 485/2010; republished in the Official Gazette, No. 247/2015;
9. Law No. 214/2024 on the Use of Electronic Signatures, Electronic Time Stamps, and the Provision of Trust Services, published in the Official Gazette of Romania, Part I, No. 647/2024;
10. Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community Framework for Electronic Signatures, *OJ* L 13, 19 January 2000, pp. 12–20, https://eur-lex.europa.eu/eli/dir/1999/93/oj.
11. Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on Electronic Identification and Trust Services for Electronic Transactions in the Internal Market and repealing Directive 1999/93/EC, *OJ* L 257, 28 August 2014, pp. 73–114, https://eur-lex.europa.eu/eli/reg/2014/910/oj.
12. Regulation (EU) 2024/1183 of the European Parliament and of the Council of 11 April 2024 amending Regulation (EU) No. 910/2014 as regards the Establishment of the European Digital Identity Framework, *OJ* L 114, 30 April 2024, https://eur-lex.europa.eu/legal-content/RO/ALL/?uri=CELEX:32024R1183.
13. Law No. 2000-230 of 13 March 2000 adapting the law of evidence to information technologies and relating to electronic signatures, *Journal Officiel de la République Française*, No. 62 of 14 March 2000, https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000399095.
14. Consolidated text of Regulation (EU) No. 910/2014 (eIDAS), updated to 18 October 2024. Available at: https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:02014R0910-20241018
15. Bucharest Court of Appeal, Fourth Civil Division, Civil Decision No. 953A of 18 September 2018, summarized by Judge Mirela Steluța Croitoru, „Nulitatea

apelului pentru lipsa semnăturii electronice", *Revista Română de Jurisprudență*, nr. 1/2019.
16. High Court of Cassation and Justice, Decision No. 6 of 16 February 2015 on the appeal in the interest of the law, published in the Official Gazette of Romania, Part I, No. 199 of 25 March 2015.
17. Vaslui Tribunal, Civil Division, Decision No. 534 of 15 April 2013. Available at: www.rolii.ro.
18. Neamț Tribunal, First Civil Division, Decision No. RJ d947573g9/2025 of 31 October 2025.

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 310-324

MEANS OF PROTECTING VICTIMS OF CRIME AT EUROPEAN LEVEL

M. PALADE-ROPOTAN

Received 02.02.2025; accepted 26.02.2025
First online publication: 27.02.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.250

Mihaela PALADE-ROPOTAN
"Dunărea de Jos" University of Galati, Romania, Faculty of Law and Administrative Sciences,
Doctoral School of Social and Human Sciences, Romania.
E-mail: ropotan_mihaela@yahoo.com
ORCID ID: https://orcid.org/0009-0003-1466-9688

Abstract

In the last half-century, the crystallization of the European Union has also led to the gradual easing of border crossing conditions, so that, along with the possibility of more frequent travel for a large number of people, the phenomenon of crime has also increased, with extensions across the territory of two or even more states. Proportionally, the number of victims of these categories of crime has also increased, victims for whom it is still difficult to gain access to justice or obtain any other type of compensation as a result of the negative events they have experienced. Although considerable efforts are being made at legislative level to cover the rights that a victim should have and avail of, at operational level there are still shortcomings which reduce the chances that victims, especially vulnerable victims, will be able to benefit from specialized legal assistance, compensation for damages or a minimum level of protection.

Key words: *transnational crime, vulnerable victims, European legislation, secondary victimization.*

INTRODUCTION

As the phenomenon of crime has grown in scale, with its dimensions involving several European countries, the European Union has had to create a legal framework in which victims of crime can be properly supported. Specifically, judicial cooperation in criminal matters between Member States has also been stepped up, precisely so that this area can be covered, and victims are

aware of the benefits to which they are entitled, firstly, and then so that they can make proper use of them.

As there is nowadays a multitude of transnational crimes[1], victims of crime are of different categories. Whether we are talking about men, women, young people, children, the elderly, people of different nationalities, religious denominations, people with different disabilities, migrants, prisoners, etc., all need a strengthened protection system, tailored to the category to which they belong, so that the risk of secondary victimization can be avoided. Therefore, proceedings before a court or a criminal investigation body should be as non-traumatic as possible for the victim, providing a framework in which his or her rights are made known and then respected, and the degree of protection from the offender is increased, even after the criminal proceedings have been completed.

Given the technological realities we are living in, it is clear that the procedures by which victims can access justice should be facilitated and the possibility of information greatly improved, efforts which the European Union is making through its bodies. Moreover, "with regard to the Member States' domestic criminal law, it has been established at EU level that a pact is needed to find common definitions of offenses and the penalties that can be applied to them, mainly in relation to forms of financial fraud (money laundering, corruption), trafficking in human beings, drug trafficking, environmental crimes and cybercrime" (*Iacob, 2024, p. 92*). Thus, if we make a general analysis only of the above-mentioned crimes, we note "the diversification of the methods of action, organization and logistics, often perfect, of those involved in such events" (*Boroi, Rusu, Rusu, 2016, p. 7*).

Article 82(2) of the Treaty on the Functioning of the European Union regulates as a starting point rule on the procedural rights that victims can use, namely the possibility of establishing minimum rules that member countries can assimilate into their own legislation, being one of the main pillars from which other provisions on victim protection have derived. As far as Romania is concerned, it has been "considered both in terms of legislative and doctrinal concerns as being in the vanguard of those who have tackled the aspects of inter-state cooperation to combat crime" (*Rusu, 2015, p. 99*).

[1] According to Article 3(2) of the United Nations Convention against Transnational Organized Crime, "a crime is transnational in nature if:
(a) it is committed in more than one State;
b) it is committed in one State, but a substantial part of its preparation, planning, direction or control takes place in another State;
(c) is committed in a State, but involves an organized criminal group carrying out criminal activities in more than one State; or
(d) is committed in one State but has substantial effects in another State".

I. GENERAL FRAMEWORK OF EU MEANS FOR VICTIMS OF A CRIME

The first act in this direction was the adoption of Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings[2], the first EU regulation providing for "the protection of victims' interests in criminal proceedings"[3], as well as provisions on assistance to victims of crime, with the aim of reducing the impact of crime on victims (*Diaconu, 2022, pp. 106-108*).

Directive 2012/29/EU of the European Parliament and of the Council of October 25, 2012, establishing minimum standards on the rights, support and protection of victims of crime[4], which replaced Council Framework Decision 2001/220/JHA, updates the regulatory framework with a view to solidifying victims' rights by amplifying the provisions on the procedural, assistance and protection of victims. As the reality shows that this framework needs to be constantly aligned with the needs that victims actually face, a Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA was born in 2023.

In particular, the Report from the Commission to the European Parliament and the Council on the transposition of Directive 2012/29/EU in 2020 noted that there were numerous shortcomings in the transposition of the Directive's provisions into national law by Member States, with many Member States (26 in total) not fully transposing the Directive by the deadline of November 16, 2015, but only afterwards. The shortcomings concerned not only the incorrect implementation of the terminology of the Directive, but also procedural issues, i.e. the implementation of its Art.17(3) [5], insufficient information, as well as difficulties in collecting data or providing adequate protection to victims with special needs.

In order to improve the implementation of the Directive, the Commission of the European Union adopted on June 24, 2020, its first strategy in the area of victims' rights, covering the period 2020-2025. The strategy followed two broad strands, namely Empowering victims of crime and Cooperation to protect victims' rights, with five sub-points analyzed:

---

[2] Published in the Official Journal of the EU of March 22, 2001.

[3] Point 6 of the Preamble to the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings.

[4] Published in the Official Journal of the EU of 14 November 2012

[5] Article 17(3) of the Directive shall read as follows "(3) Member States shall ensure that the competent authority which registered the victim's complaint shall forward it without delay to the competent authority of the Member State in which the crime was committed, if the competence to initiate proceedings has not yet been exercised by the Member State in which the complaint was registered".

• Communicating effectively with victims and creating a safe environment for victims to report crimes;

• Improving assistance and protection for the most vulnerable victims;

• Facilitating victims' access to compensation;

• Strengthening cooperation and coordination between relevant stakeholders;

• Strengthening the international dimension of victims' rights.

In the first part of the Strategy, the Commission underlines the shortcomings faced by the EU area in terms of victims' rights, acknowledging that information is a key point in enabling victims to exploit their rights, as well as the need to fully transpose the provisions of the Directive into national legislation. Thus, "it is essential to empower victims of crime so that they can report the crimes of which they have been victims, participate in criminal proceedings, claim compensation and, last but not least, recover, as far as possible, from the consequences of the crime"[6].

Even the Commission recognizes that most people who have the status of victim are not aware of their rights and therefore unable to take advantage of them.

As a first condition for the implementation of the rules and the Directive, the Commission mentions the need for States to ensure the safety of the environment in which the victim lives and carries out his or her activities. This can be done by the police authorities, which should be very familiar with the procedures in these cases and be able to provide information and effective help.

The Commission Report on the evaluation of the Directive of June 28, 2022[7] also identifies, in addition to some notable improvements, a lack of homogeneity in the rules of the Directive and those transposed by some Member States, which makes it difficult or even impossible to provide the necessary support to the victim.

Among the problems reported are the lack of appropriate and adapted information provided by the competent authorities investigating offences, the lack of protective measures for vulnerable victims, the lack of cooperation between State institutions to provide support covering the full range of needs of vulnerable victims (psychological support, medical support, legal support), the difficulty of participating in legal proceedings, in particular due to the differences in the way proceedings are conducted between the State where the crime takes place and the State of origin of the victim and the lack of counseling to overcome these

[6] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - EU Strategy on Victims' Rights (2020-2025), p.5, available at https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:52020DC0258 , accessed on November 12, 2024.

[7] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022SC0179, accessed on November 12, 2024

differences, the low possibility of obtaining compensation, and the significant shortcomings in the procedures for enforcing such decisions.

The Union's horizontal legislation on victims includes (together with the Directive on victims' rights and the rules on the European Protection Order[8]) and Council Directive 2004/80/EC of April 29, 2004, relating to compensation to crime victims [9] which includes the procedure by which victims can obtain compensation. This legislative act calls for all EU Member States to cooperate in the same direction with a view to creating uniform procedures throughout the EU that are widely known to this category of persons and easy to apply. This directive was transposed in our country by Law No 211/2004 on some measures to ensure information, support and protection for victims of crime[10], but the procedure for implementing the directive is still deficient.

This aspect can also be identified in our country, which, despite the transposition of the European legislation into national law, is still failing to make a large part of victims' rights accessible.

Specifically, following the Ministry of Justice's reply to the letter no. 64130/2024/21.10.2024, the Ministry of Justice reveals that too few victims of transnational crimes are aware that they are entitled to compensation under Law no. 211/2004 and Council Directive 2004/80/EC of 29 April 2004 on compensation to crime victims.

At the same time, in the period 01.01.2019 - 31.08.2024 NO financial assistance in the form of free legal aid is registered under Article 18 of Act No. 211/2004.

Also, in the form of financial compensation, in the period 01.01.2019 - 31.08.2024, pursuant to art.21 of Law no.211/2004 have been granted:

Pitești Court of Appeal - 6 victims were granted financial compensation totaling LEI 71795, in cases related to the crime of rape and sexual assault;

- Craiova Court of Appeal - 1 victim received financial compensation totaling 7.806 LEI, in a single case concerning the crime of assault;
- Ploiesti Court of Appeal - 1 victim received financial compensation totaling 6.932 LEI, in a single case concerning the crime of murder.
- Then, in the period 01.01.2019 - 31.08.2024, the following amounts paid pursuant to Article 18 of Law no. 211/2004 are recorded:
- Bucharest Court of Appeal - 1 victim received financial compensation totaling 4.460 LEI, in a case related to human trafficking;

[8] Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European Protection Order (Published in the Official Journal of the EU of December 21, 2011) and Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters.

[9] Published in Official Journal of the EU of August 6, 2004

[10] Published in Official Gazette No 505 of June 4, 2004, with subsequent amendments and additions.

• Alba Iulia Court of Appeal - 20 victims received financial compensation totaling 9.579 LEI, in cases concerning offenses related to trafficking in human beings.

Further, in order to grant the amount necessary for the enforcement of the court judgment awarding civil compensation to the victim of the crime, pursuant to the provisions of Article 19 of Law no. 211/2004, the following amounts were registered in the period 01.01.2019 - 31.08.2024:

• Bucharest Court of Appeal - one victim received an amount of 6690 LEI as compensation.

Then, as a form of advance from the financial compensation granted to the victim, in accordance with the provisions of Article 30 of Law no.211/2004, the following amounts were registered in the period 01.01.2019 - 31.08.2024:

• Pitești Court of Appeal - two victims received this type of compensation in the amount of 30,000 LEI, in cases concerning crimes such as rape and sexual assault;

• Bacău Court of Appeal - two victims received this type of compensation in the amount of 44,600 LEI, in cases involving the crime of murder.

Regarding the granting of financial compensation in cross-border situations in the period 01.01.2019 - 31.08.2024, the Ministry of Justice has not registered any request in this direction.

The Commission's general and specific objectives reveal the need to improve all the issues raised above, as well as a strengthening of the main legislative framework, but also of the sectoral one, in order to cover specific problems with appropriate solutions, objectives that cannot materialize without effective cooperation between Member States and the establishment of common minimum standards on the justice system. Moreover, the establishment of common minimum standards ensures mutual trust between Member States in their national rules and domestic criminal justice systems, which is the basis for the correct interpretation and application of the provisions on international judicial cooperation in criminal matters (*Lorincz, Stancu, 2022, p. 122*).

II. CATEGORIES OF PROTECTED VICTIMS

II.1. The Situation of Female Victims

In many cases, women who have been physically or sexually abused do not turn to law enforcement because of fear of the perpetrator or fear that the situation will not be dealt with by state representatives and will be treated superficially. “The protection of sexual freedom and integrity, as essential components of a harmonious social life, is, in this context, one of the aspects of respect for the fundamental right to dignity; indeed, «dignity» is enshrined in Title I of the Charter of Fundamental Rights of the European Union” (Lorincz, 2023, p. 21).

As situations of gender-based violence have been very numerous in recent years, especially during the pandemic, with domestic violence against women amplifying to an alarming level, a Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence was born in March 2022 which, after two years of updates, gave birth to Directive (EU) 2024/1385 of the European Parliament and of the Council on combating violence against women and domestic violence[11].

This Directive criminalizes physical, psychological, economic and sexual violence and sexual assault, whether online or offline. The legislation touches on topics such as cyber-violence, genital mutilation, perfecting the framework in which this category of victims can seek help, with options to report their experiences, even online.

In its preamble, the directive points to another serious problem, perhaps less dealt with so far, namely the situation of children who have witnessed or have themselves been victims of domestic violence, who, in their development towards adulthood, suffer psychological or emotional trauma and are vulnerable not only to certain mental but also to physical disorders.

The directive also points to other categories of violence against women, which are particularly sensitive because of the religious connotations they have in many countries of the world, such as forced marriage or genital mutilation. The latter is defined in point 15 of the preamble to the directive as "an abusive and exploitative practice performed on the sexual organs of a woman or girl for the purpose of maintaining and asserting dominance over women and girls and exercising social control over the sexuality of women and girls". Following the same legal reasoning, the directive emphasizes the need for this type of violence to be expressly prohibited by the criminal legislation of each country, and for reasonable limitation periods to be laid down to enable perpetrators to be held criminally liable, especially since many of these types of aggression occur when women are still minors.

Another category of aggression whose legislation is to be welcomed is cyber-violence, the scope of which is much wider, updated to the current level of technological development, bringing to the forefront situations such as those in which artificial intelligence is used to produce "deepfake" material, cyber-stalking using the victim's devices, the use of keylogging or geolocation software, but also situations involving crimes in which incitement to hatred or violence is carried out through the use of information and communication technology.

Moreover, cyber-bullying is taking on a new dimension, emphasizing the psychological consequences of bullying for victims, even going as far as suicide, and "cyber-flashing" as a form of cyber-bullying is yet another type of violence

[11] Published in the Official Journal of the EU of May 14, 2024

that is being legislated to protect the increasing number of victims who suffer from such online activities.

In the regulations, the directive emphasizes the need for Member States to establish sufficiently severe penalties to stop and mitigate these types of violence against women and even lists aggravating circumstances that would call for a more severe penalty, for example, cases where the violent crime was repeated, the crime was committed against a child or a child was present at an act of violence, caused the death of the victim, etc.

And perhaps the most important chapter of the Directive is the chapter on victim protection and access to justice, which recognizes the right of victims to report crimes also through online means, including the right to communicate evidence through this procedure. Particularly significant is also the Directive's finding that, "prosecution of rape should not be dependent on the victim or the victim's representative reporting the rape or on the victim or the victim's representative making a complaint. Similarly, criminal proceedings should continue even when the victim withdraws her complaint".

Equally, it calls for the obligation to provide legal assistance to victims in the event of such crimes, and this imperative has already been fulfilled by the Romanian state, by enacting Law no.272/2024 for amending and supplementing Law no. 211/2004 on some measures to ensure information, support and protection of victims of crime[12]. At the same time, emphasis is placed on the individual assessment of the victim, speeding up investigation procedures and increasing the possibilities of victim support by directing victims to specialized institutions in this direction, but also on the adoption of preventive and intervention measures consisting, as provided for in Article 32 (2) of the Directive, "research and education programs aimed at raising awareness and understanding among the general public of the different manifestations and root causes of all forms of violence against women and domestic violence, the need to prevent and, where appropriate, the consequences of such violence, in particular on children".

It is clear that cooperation between the Member States is needed to reduce violence against women, i.e. to have a uniform practice in the process of penalizing violence and protecting victims.

Other forms of protection for victims include emergency injunctions, restraining and protection orders, and there is the possibility of transnational recognition of this type of protection under Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European Protection Order[13].

[12] Published in Official Monitor 1103 of November 5th, 2024.
[13] Published in the Official Journal of the EU of December 21, 2011.

Specifically, whenever a person's life, physical or psychological integrity, dignity, personal liberty or sexual integrity is "endangered by a criminal act"[14], measures could be taken by the issuing state against the offender to protect the victim, which may be maintained by the executing state. The order must take the form set out in Annex I to the Directive and must be transmitted between the competent authorities of the issuing and executing States.

Here again, at national level, Romania has adopted Law 26/2024 on the protection order[15], a legislative act which has been updated in this legal area and which increases the authorities' concern in relation to violent events in which women are victims. The updating of the legislation is welcome in the context of the fact that the definition of protection order given by the Directive "implies the need for a prior protection measure issued on the basis of the domestic law of the issuing State and, always, only at the request of the protected person" (*Vâlcu, 2023, p. 95).*

However, the European Court of Human Rights has recorded enough cases in which Member States' legislation failed to protect the victim - Case Y and Others v. Bulgaria (Application no. 9077/18) - in which the Court found in its judgment of March 22, 2022 the failure of the Bulgarian State to protect a woman killed by her husband, although she had previously made several complaints concerning domestic violence[16]; *Case Landi v. Italy* (Application no. 10929/19) - in which the Court found in its judgment of April 7, 2022 that the State had failed to take preventive measures in relation to acts of domestic violence which led to the attempted murder of the applicant by her cohabitant and the death of their children[17]; *Case C v. Romania* (Application no. 47358 /20) - in which the Court found in its judgment of August 30, 2022 the failure of the authorities to protect the applicant's personal integrity in relation to a crime of sexual harassment in the workplace[18]; *Case Vieru v. Republic of Moldova* (Application no. 17106/18) - in which the Court found in its judgment of November 19, 2024 the failure of the authorities to protect the applicant's sister from the domestic violence systematically perpetrated by her ex-husband, which led to her death[19].

[14] Article 2(2) of Directive 2011/99/EU of the European Parliament and of the Council of December 13, 2011 on the European Protection Order.
[15] Published in Official Gazette 172 of March 3th., 2024.
[16] The ECtHR Judgment of March 22, 2022, document available online at https://hudoc.echr.coe.int/?i=001-216360, accessed on October 27, 2024.
[17] The ECtHR Judgment of April 7, 2022, document available online at https://hudoc.echr.coe.int/?i=001-216854, accessed on October 27, 2024.
[18] The ECtHR Judgment of August 30, 2022, document available online at https://hudoc.echr.coe.int/?i=001-218933, accessed on October 27, 2024.
[19] The ECtHR Judgment of November 19, 2024, document available online at https://hudoc.echr.coe.int/?i=001-238017, accessed on January 2, 2025.

II.2. The Situation of Child Victims

The situation for child victims is also bleak, with a huge number of abused children in the EU. In this situation, in addition to state bodies, to which these categories of victims are unlikely to turn without the support of a guardian in the event of a crime, teachers or persons supervising them should also have a minimum amount of training or information in this area, in order to identify and offer real advice and support to children who are abused or mistreated.

Thus, Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse, sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA was adopted[20]. In this direction, due to the many cases recorded at European level in which child victims are children, a wide-ranging reform has been envisaged, already under consideration since 2020 in the EU Strategy to combat child sexual abuse more effectively by the European Commission and in the EU Strategy on the Rights of the Child (2021-2024), with a proposal for a new regulation on combating child sexual abuse being drafted, the sexual exploitation of children, but which finally materialized in early 2024 with the Proposal for a Directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child sexual abuse material and replacing Council Framework Decision 2004/68/JHA. The proposal is in the process of adoption, having received a favorable opinion of the European Economic and Social Committee on 23.10.2024[21].

The Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/29/EU[22] establishing minimum standards on the rights, support and protection of victims of crime also talks about the need to establish a strategy on children based on the Barnahus system. This is an Icelandic model of inter-institutional cooperation in which children benefit from the services of the authorities in the legal field, the support and supervision of child protection services and in the medical and mental health field, cooperating and jointly assessing the child's situation, and only then taking decisions on the next steps to be taken.

These new regulations take very much into account the fact that more and more children are online, prone to crimes in cyberspace, and the institutions responsible for their protection and supervision should take more drastic measures to prevent crimes against children. Terms such as "virtual child pornography"[23],

---

[20] Published in the Official Journal of the EU of December 2011, 2024..

[21] https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=OJ:C_202401592, accessed on October 25, 2024.

[22] https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:52023PC0424, accessed on October 25, 2024.

[23] According to Art.4 point 4.4 of the Opinion of the European Economic and Social Committee regarding the Proposal for a directive of the European Parliament and the Council on combating

"pseudo-photographs", "processed facial images", etc. are increasingly being used, as well as concerns about the vulnerability of children with various disabilities, who may fall victim to crime more easily because of their reduced understanding of the reality they experience.

Countries such as Belgium, Spain, Sweden, Sweden, Bulgaria and Denmark, as well as Romania, have revised a number of offenses in the criminal rules on child sexual abuse and sexual assault, toughening penalties, updating the provisions to the technological reality in which we live and redefining certain parameters in which such actions would take place. Criminal procedures have also been revised with the aim of minimizing the trauma to children and helping them get over the negative event.

At the same time, the form in which victims' rights are communicated is extremely relevant, with the need to adapt the language according to the age group being spoken to, but above all to communicate in a language that the victim knows, if we are talking about victims of other nationalities or those with disabilities.

II.3. Situation of victims of human trafficking

2011/36/EU of the European Parliament and of the Council of April 5, 2011 on preventing and combating trafficking in human beings and protecting victims [24], of such trafficking and replacing Council Framework Decision 2002/629/JHA is also part of the comprehensive, updated set of Union measures. Since trafficking in human beings is one of the most common crimes with transnational ramifications, with the number of victims exceeding 7000/year, according to the European Commission Reports, on December 19, 2022, the European Commission has made a proposal to revise Directive 2011/36/EU[25].

As the forms of exploitation of victims have evolved, with new technologies being tools for recruiting victims, it is necessary that the framework for combating it should also follow the same direction. It should be noted that the largest number of victims of sexual exploitation are women and young girls, with men being the most oppressed when we talk about labor exploitation[26], and in recent years, children as well. The Commission's proposals are aimed at tightening up the pre-existing legal framework and harmonizing the domestic legislation of all Member States in order to reduce the number of trafficked persons. The need to revise the legal framework also arose from the Commission's

sexual abuse of children, sexual exploitation of children and materials containing sexual abuse of children, "Virtual child pornography refers to computer generated images (CGI), drawings, paintings and cartoons that present a sexual representation of children".

[24] Published in the Official Journal of the EU of April 15, 2011.

[25] https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:52022PC0732, accessed on October 28, 2024.

[26] According to Eurostat data, which can be queried on the website https://ec.europa.eu/eurostat/web/main/data/database?etrans=ro

findings in the EU strategy to combat trafficking in human beings 2021-2025, which called for a multi-pronged approach, with an emphasis on procedures to prevent the commission of this category of crime, protect victims and hold offenders criminally liable.

On January 24, 2024, the European Parliament and the Council ordered the amendment of Directive 2011/36/EU by Directive (EU) 2024/1712 of the European Parliament and of the Council, published on June 24, 2024, in the Official Journal of the European Union.

The new Directive updates the way this form of organized crime is regulated, bringing to the forefront, as the other new regulations on victims, the increasing use of information and communication technologies by criminals in the process of recruiting victims, which requires updating the legislative framework of each country in this direction, but also amplifying it by adding aggravating circumstances and higher penalties to crimes already legislated.

The preamble to the amending directive refers to "the establishment of formal referral mechanisms and the designation of a national focal point for cross-border victim referrals are essential measures to strengthen cross-border cooperation"[27], which should be clear, easy to put into practice and quickly achievable in terms of early detection of this category of crime. Most importantly, these mechanisms need to have the victim at their center and need to be organized in the form of a set of procedures[28] or cooperation agreements established between the States involved in order to provide cross-border support to the victim, with, where appropriate, recommendations for specialized support and counselling centers.

At the same time, the amendments also concern the non-prosecution and non-application of penalties to victims who have committed certain acts while being subjected to trafficking, which can be subject to criminal, administrative or financial liability, with the aim of encouraging victims to report this type of crime and increasing confidence in public authorities.

As this is still a widespread phenomenon, it is recommended that Member States monitor and accurately count the development of trafficking in human beings, both by collecting statistical data, training government officials and implementing action plans by July 15, 2028, to combat trafficking in human beings.

[27] Point 15 of the Preamble to the Directive.

[28] The Procedure for identifying victims of human trafficking plays an informative role in the development of these activities, https://anitp.mai.gov.ro/ro/docs/Proiecte/ISF01/Brosura%20PIVTP.pdf, accessed on October 28, 2024.

CONCLUSION

Through the European Judicial Training Network and the European Union Agency for Law Enforcement Training, the Commission aims to be able to train judicial staff in contact with victims by improving the information spectrum.

In concrete terms, information is one of the key areas where Union legislation on victims of crime is trying to improve, not only through a thorough public consultation process, but also through direct consultation of those affected by crime. There is even a platform at the moment, implemented by the European Commission[29] which can be consulted in order to make victims and others aware of their rights and needs, and which has directly helped in the revision of Directive 2012/29/EU, by victims explaining the difficulties they face in the legal reality of the countries from which they come. At the same time, the constant updating of European rules to the changes that are currently taking place in society is also welcome. The information environment is developing at a level that no one could have anticipated, and criminals have understood the mechanisms in this virtual space that would help them to recruit victims and enhance the effects of the crimes they commit. They are also aware that the authorities have shortcomings in terms of cooperation with authorities in other countries in order to catch them, so the whole of the EU must participate in improving the means by which people who commit these types of crime are detected and punished.

BIBLIOGRAFIE

1. Boroi, Alexandru, Rusu Ion, Rusu Minodora-Ioana, *Tratat de Cooperare judiciară internațională în materie penală/ Treaty on International Judicial Cooperation in Criminal Matters*, Ed. C.H. Beck, Bucharest, 2016.
2. Diaconu, Nicoleta, *Legal Protection of Victims of Crime in the European Union*, SARA Law Research Center International Journal of Legal and Social Order, No. 1 (2022), pp. 106-108; doi: https://doi.org/10.55516/ijlso.v1i1.
3. Iacob, Oana-Elena, *România și implicațiile normelor de Drept penal European/ Romania and the implications of European Criminal Law norms*, in Evoluții și Perspective în Dreptul Contemporan/ Developments and Perspectives in Contemporary Law, Adriana Iuliana Stancu & Anca-Lelia Lorincz (co-eds), Ed. Pro Universitaria, Bucharest, 2024, p. 92, DOI: https://doi.org/10.52744/978-606-26-1958-9.
4. Lorincz, Anca-Lelia, *The Criminal Policy of the Romanian State regarding the guarantee of sexual freedom and integrity*, New Perspectives on Multiculturality: Literature and Dialogue. Social Sciences, Iulian Boldea, Cornel Sigmirean, Dumitru-Mircea Buda (coord.), Ed. Arhipelag XXI Press, Tîrgu-Mureș, 2023.

[29] Victims' rights in the EU, a platform that can be accessed at https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/victims-rights-eu_en?etransnolive=1&prefLang=fr

5. Lorincz, Anca-Lelia & Stancu, Adriana Iuliana, *Qualification of the request to take over criminal procedure in the context of international judicial cooperation*, Proceedings of 9th SWS International Scientific Conference on Social Sciences - ISCSS 2022 9, no. 1 (2022): 115-122; DOI: http://dx.doi.org/10.35603/sws.iscss.2022/s02.015. https://ssalibrary.at/sgem_jresearch_publication_view.php?page=view&editid1=4887.
6. Rusu, Minodora-Ioana, *Asistența judiciară în materie penală la nivel European/ Legal assistance in criminal matters at European level*, Ed. Universul Juridic, Bucharest, 2015.
7. Vâlcu, Elise, Nicoleta, *Dreptul Uniunii Europene. Instrumente legislative unionale și de transpunere privind cooperarea judiciară unională în materie penală. Comentarii/ European Union law. Union legislative and transposition instruments on Union judicial cooperation in criminal matters. Comments*, Ed. C.H. Beck, Bucharest, 2023.
8. United Nations Convention against Transnational; Organized Crime, adopted by the General Assembly of the United Nations on 15 November 2000.https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf (accessed on October 20, 2024).
9. Directive (UE) 2024/1712 of the European Parliament and of the Council of June 13, 2024, amending Directive 2011/36/UE on preventing and combating trafficking in human beings and protecting victims of such trafficking. https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=OJ:L_202401712 (accessed on October 23, 2024).
10. Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA. https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:52023PC0424 (accessed on October 23, 2024).
11. Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA. https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:52023PC0424 (accessed on October 23, 2024).
12. Opinion of the European Economic and Social Committee on "Revision of the Victims' Rights Directive". https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=OJ:C_202401592 (accessed on October 25, 2024).
13. Proposal from the Commission amending Directive (UE) 2011/36/UE https://eur-lex.europa.eu/legal-

content/RO/TXT/PDF/?uri=CELEX:52022PC0732, (accessed on October 28, 2024).
14. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - EU Strategy on Victims' Rights (2020-2025). https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:52020DC0258 (accessed on October 25, 2024).
15. Commission Report on the Evaluation of the Directive 2012/29/UE of June 28, 2022. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX :52022 C0179, (accessed on November 12, 2024).

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 325-341

THE OFFENCE - CONSTITUTIONAL CHALLENGES OR CONTROVERSIES

M.E. PĂTRĂUȘ

Received 31.03.2025; accepted 06.06.2025
First online publication: 10.06.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.256

Mihaela Elvira PĂTRĂUȘ
Faculty of Law, University of Oradea
E-mail: mihaelapatraus@yahoo.com
ORCID ID: https://orcid.org/0000-0003-1308-9107

Abstract

The legal assessment 11 years after the entry into force of the new Criminal Code allows us to argue that the current regulation has posed important challenges for legal theorists and practitioners, with some regulations being declared unconstitutional, others being modified and supplemented to meet the demands imposed by the new realities.

The outlined evolution of Romanian criminal law in the new Criminal Code from the initial moment of its adoption until this date creates the impression of a slightly cracked base for a lasting reform, even if the legislator's intention was to abandon the traditional influence and to follow a normal and natural path of assimilation of European criminal law, in order to actively contribute to the homogenization of the criminal justice system at the level of the European Union.

Within the framework of this theoretical approach that we have proposed, we intend to make a brief analysis of the concept of offence, as a fundamental institution of criminal law, which polarizes all the regulations in criminal law.

The current Criminal Code defines the concept of offence differently from the previous regulation, abandoning social danger as an essential feature of the offence. The new approach transposed into the provisions of art.15 of the Criminal Code, which we wish to develop, including from the perspective of comparative criminal law, is not immune to criticism, as in judicial practice situations have been identified in which the unconstitutionality of the legal text was invoked, since the content of the typical elements of a offence does not refer to the social danger of the committed act. In relation to these aspects, we propose to demonstrate that the current regulation complies with constitutional and European requirements, even if, from the perspective of the accuracy of the norm, we have objections.

Key words: *offence, general features of the offence, ultimo ratio, principle of legality of incrimination and punishment, constitutionality.*

INTRODUCTION

The offence represents a fundamental institution of criminal law and is regulated in the current Criminal Code [1], in Title II, Chapter I "General Provisions", the legislator intending to provide a formal definition of the offense, unlike the old regulation which had adopted a substantial definition.

The comparative analysis of the provisions of art.15 of the current Criminal Code and art.17 of the 1968 Criminal Code regarding the concept of offense allows us to highlight that both general criminal laws define the essential features of the offense.

A offence is nothing more than a concrete human act that endangers one or more social values protected by the criminal norm, for which the perpetrator will be subject to a criminal sanction. The concrete act committed in reality is a offence only to the extent that the perpetrator adopted a conduct prohibited by the criminal law or remained passive, although he had the obligation to act, an act that produces a certain consequence not permitted by the state legal order and which can be attributed to the natural or legal person who committed it, it being necessary for there to be a correspondence between the concrete act committed by the perpetrator and the objective and subjective elements established by the legislator in the abstract model provided for by the incrimination norm.

Within our theoretical approach, we will analyze the evolution of the regulation regarding the concept of offence, the legal definition and the essential features of the offence, trying to demonstrate that the elimination of social danger as an essential feature of the offence does not violate the provisions of art. 21 of the Constitution and the ultimo ratio rule, since for offences that present a low degree of social danger and that do not justify, in relation to the concrete elements of the case, the continuation of the criminal trial, the prosecutor may waive the exercise of criminal action, in relation to the provisions of art. 7 paragraph 2 of the Criminal Procedure Code combined with art. 318 of the Criminal Procedure Code, and the court may order the waiver of the application of the penalty, according to art. 80 of the Criminal Procedure Code.

[1] Law no. 286/2009 on the Criminal Code, publ. in the Official Gazette no. 510/24.07.2009, in force since 1.02.2014, successively amended, the last by Law no. 269/2024 amending and supplementing Law no. 286/2009 on the Criminal Code, publ. in the Official Gazette no. 1089/31.10.2024.

I. BRIEF INTRODUCTORY CONSIDERATIONS REGARDING LEGISLATIVE DEVELOPMENTS

The fundamental institutions of criminal law - the general part are: offence (art.15-52 Criminal Code.), criminal liability (art.113-171 Criminal Code and criminal sanctions (art.53-112/1 Criminal Code).

Offence with its definition, essential features, unity and plurality of offences and plurality of criminals polarize the whole of the regulations in the criminal law, and the coherence and accuracy of the norm are strictly required for the understanding and correct application of the provisions of the general and special parts of the Criminal Code.

Defining the notion of offence and its essential features, directly and completely, are requirements imposed by the principle of the legality of incrimination.

A general definition of the concept of offence is not found in the Criminal Codes adopted until the first half of the 20th century, motivated by the fact that the task of defining it falls to the doctrine.

In Romania, the Criminal Code of 1864, with a strong French influence (*C.Mitrache, Cr.Mitrache, 2023, p.31*), but also the one of 1936, of French and Italian inspiration (*J. Rinceanu, 2010, p.15*), approached a formal conception of the notion of offence, art. 1 referring to "an act incriminated by law and sanctioned by punishment", and through the amendment made by Decree no. 187/1948[2], the offence was defined indirectly, in relation to specifying the purpose of the criminal law, without however including all of its essential features in its content (*T.Vasiliu and al., 1972, p.84*).

Another vision of the legislator is found in the 1968 Criminal Code, in art. 17, giving a substantial definition of the notion of offence, which is "an act that poses a social danger, committed with guilt and provided for by the criminal law". Therefore, the aforementioned legal text provided that only an act incriminated by the criminal law that poses a danger to social values protected by law, a danger that cannot be removed by other means than by applying a criminal sanction, constitutes a offence.

It is necessary to mention that the offence was defined in the same manner in art. 7 of the Criminal Code of the USSR, art. 3 of the Bulgarian and Hungarian Criminal Codes, art. 4 of the Czechoslovak Criminal Code, art. 14 of the Greek Criminal Code.

[2] Decree no. 187/1948 on the repeal of Law no. 831 of 16.11.1942 for the suspension of the trial and execution of the sentence pronounced against some criminals who are part of the elements of the army and of Law no. 677 of 14.10.1943 for the application of the provisions of Law no. 831/1942 to some categories of criminals, publ. in the Official Gazette, Part I, no. 182/9.08.1948, in force from 9.08.1948 to 13.01.1974, repealed by Decree no. 691/1973.

The French Criminal Code of 1994 provides, in art. 111-1, that offences are classified, "depending on their seriousness, into offences, misdemeanors and contraventions."

The Romanian legislator, through the new regulation, has reconsidered the institution of the offence, in art.15 paragraph 1 of the Criminal Code, providing for a formal conception of the offence, by including its essential features and renouncing the inclusion of the feature of social danger in its content.

The institution of the offence, as developed in the Criminal Code in force, is based on definitions given to this notion in the European Criminal Codes and revives the traditional conception of the interwar Romanian criminal law in this segment.

I. 1. COMPARATIVE LAW ASPECTS

European criminal codes contain formal definitions of offence, as a fundamental institution of criminal law.

Although we do not propose an exhaustive analysis from the perspective of comparative law, we will give some references in the sense of what was stated previously.

The Italian criminal code, in Title IV regarding the perpetrator and the victim of the offence, does not expressly clarify the notion of criminal act, in legal doctrine emphasizing that "the action with criminal relevance must appear as an effective work of a determined subject, to belong to the subject" (*G.Fiandaca, E.Musco, 1995, p.187*). Art.85 of the Italian Criminal Code, provides that "no one can be punished if he did not commit an act with conscience and will", in the sphere of conscious and willful acts being included "both those that have their origin in a conscious impulse, and those that derive from an inertia of the will and which could have been prevented" (*G.Fiandaca, E.Musco, 1995, p.187*).

European criminal codes contain formal definitions of offence, as a fundamental institution of criminal law.

The German Criminal Code, in Title II, General Part, defines the offence of commission and omission (section 13) and regulates the liability of the person acting through another person (section 14), the guilt (sections 15, 18) etc., without containing an explicit provision regarding the meaning of the action or inaction with criminal relevance, which would define the action as an act of the subject's free will (*G.Antoniu, 2000, p. 17*). In German legal doctrine, it was stated that the offence requires that the act be willed, therefore it must belong to the subject and be oriented in a certain direction, based on a mental process that imprints a certain finality, and the intention was defined as the knowledge and will to achieve the objective features of the incriminating norms (*H.H.Jescheck, 1988, p.201-202, 264 , apud G.Antoniu, 2000, p.18*). At the same time, in German criminal law it is argued that the existence of social danger is the core of the offence.

The Spanish Criminal Code does not define the concept of offence, but regulates in the Title "Offence" the action and inaction committed intentionally and through negligence (art.10-12), classifies and defines offences into serious, less serious and minor ones (art.13), etc., using the concept of criminal responsibility regarding the invincible error of fact or law.

With an overwhelming pragmatism, American legislation and legal doctrine have focused on identifying the necessary solutions to resolve the problems that have arisen in judicial practice regarding offence, especially on identifying the realities that can constitute convincing defenses, capable of removing the accusation that a person has committed a specific offence, arguing that meeting the content of the offence in the concrete act is only an appearance[3]. Article 2.01 of Chapter II of the American Model Criminal Code provides that "a person cannot be held criminally liable unless he committed a voluntary act or a voluntary omission to perform an act that he was capable of performing."

We note that, in the legislation of the aforementioned states, the institution of the offense is inextricably linked to that of criminal liability, and the latter with the institution of criminal sanctions, which can only be applied if an offense has been committed and the perpetrator is criminally liable.

Moreover, from this perspective, the situation is similar in the national regulation, where the provisions of art.15 paragraph 2 of the Criminal Code provide that "the offense is the only basis for criminal liability", an aspect that derives directly from the principles of the legality of incrimination and punishment provided for in art.1 and 2 of the Criminal Code.

I. 2. ANALYSIS OF THE TEXT OF ART. 15 PARAGRAPH 1 OF THE CRIMINAL CODE

According to the provisions of art. 15 paragraph 1 of the Criminal Code, "A offence is an act provided for by criminal law, committed with guilt, unjustified and attributable to the person who committed it."

As we have previously highlighted, the old legislator, but also the current one, define the notion of offence in the Criminal Code - general part, specifying that the current definition allows the introduction of a clear demarcation line between offences and misdemeanors, in order to comply with the standards imposed by the principle of legality provided for in art. 1 and 2 of the Criminal Code. The Constitutional Court, by decision no. 405/2016[4], ruled that "the criminalization of an act as a offence must intervene as a last resort in the protection of social values", and the task of applying the *ultimo ratio* principle belongs not only to the legislator, but also to the judicial body called upon to

[3] Model Penal Code, The American Law Institute, Philadelphia, P.A1985, p.8 et sequens. *apud G.Antoniu, op.cit*., p.21.
[4] Publ. in the Official Gazette, no.517/8.07.2016.

apply the law[5], in order to comply with the principle of legality of criminalization and punishment, of the provisions of art. 23 paragraph 12 of the Constitution of Romania. At the same time, the constitutional court emphasized that the mere existence of an active criminal norm is not sufficient, its quality is also relevant, since the law must provide in an accessible, predictable, unitary and uniform manner the content of the offense and the conditions under which criminal liability[6] arises, and the doctrine has embraced this thesis (*S. Franguloiu, N.E. Hegheș, 2024, pp. 101-120*).

The concept of offence in the current general criminal law is the expression of the principle of legality of incrimination (*nullum offencen sine lege*) and the principle of legality of criminal sanctions (*nulla poena sine lege*). Regarding these principles, by decision no. 4/2015, the High Court of Cassation and Justice - Panel for resolving legal issues[7], emphasized that no act can be considered a offence if there is no law that provides for this and no criminal sanction can be applied if it is not provided for by the criminal law for the respective act.

Returning to the definition given in the Criminal Code to the notion of offence, it is necessary to emphasize that it highlights the essential and common features of all offences - typicality, illegality, imputability and guilt.

The act committed by the perpetrator through an action or inaction must be provided for by the criminal law, respectively, to be criminally illicit. This essential feature of the offense is the expression of the principle of legality of incrimination and presupposes the existence of the incrimination norm, the commission of the concrete act and the existence of a correspondence between the concrete act committed by the perpetrator with the form of guilt provided for by the law and the elements of an objective and subjective nature[8] established in the abstract model provided for by the incrimination norm[9]. The act by which a legal value protected by the criminal norm is affected is a typical act, between it and the

[5] Oradea Court of Appeal - Criminal and Minors Section, criminal decision no. 25/CP/2020 of 30.09.2020, pronounced in file no. 292/35/2020, unpublished, in the considerations of which, starting from the fact that the task of applying the *ultimo ratio* principle rests, on the one hand, with the legislator, and, on the other hand, with the judicial body called upon to apply the law, the preliminary chamber judge states that, correctly, by the contested dismissal order, it was found that in the case the act complained of by the complaint filed by the petitioner does not meet, from an objective and subjective point of view, the constitutive elements of the offence of abuse of office, provided for by art. 297 paragraph 1 of the Penal Code, since in order to be in the presence of the offence of abuse of office there must be a duty of service that has been violated, however, this duty of service cannot be confused with the result of its performance, which depends on the diligence of the official in exercising this duty.

[6] RCC, decision no. 650/2018, publ. in the Official Gazette, no.97/7.02.2019.

[7] Publ. in the Official Gazette, Part I, no. 244/9.04.2015.

[8] RCC, decision no. 631/2014, publ. in the Official Gazette, no. 77/21.01.2015.

[9] HCCJ- Panel for resolving certain legal issues, decision no. 10/2015, publ. in the Official Gazette, Part I, no. 458/25.06.2015.

injured legal value it is necessary to have an indissoluble link, *per a contrario* it would end up as typicality consecrating disobedience to the law and, implicitly, to recognize apparent typicality (*G.Fiandaca, E.Musco, 1995, p.155*). Even though the legislator does not use the notion of typicality in the content of the norm provided for by art.15 paragraph 1 of the Criminal Code, but the phrase "the act provided for by the criminal law", the legal doctrine unanimously accepts the expression of typicality, which reveals the objective concordance between the concrete act and the legal model provided for by the incrimination norm. Typicality highlights the high social danger of the act described in the criminal norm, but does not always lead to a punishment, since criminal liability is subjective, which is why it is necessary for the act to be committed with the form of guilt provided for by the law.

The ambiguities regarding this essential feature of the offence - the act must be provided for by the criminal law - have been clarified in legal doctrine, correctly opining that, when the law uses the notion of act generically, we must speak of a concrete act, since only this can relate to the incrimination norm and can constitute a offence (*V.Dongoroz, 2012, p. 124*). In this sense, we agree with the opinion (*G.Antoniu, 1997, p.18*) expressed that, in the content of the provisions of art.15 paragraph 1 of the Criminal Code, it should have been mentioned that the offence is the concrete act provided for by the criminal law or the typical concrete act, committed with guilt, unjustified and attributable to the person who committed it, in relation to the previously highlighted aspects and the need to ensure the rigor of the regulation.

The second autonomous feature of the offence, illegality, refers to the unjustified nature of the act provided for by the criminal law, namely that the act is in conflict or is not permitted by the legal order. In addition to typicality, criminal wrongdoing also implies the lack of a justifiable cause. Consequently, we are in the presence of a offence if “the act is in accordance with the legal typical and if it is assessed as affecting values protected by the criminal law, and only if there is no superior social value in the name of which the commission of the respective act is permitted” (*G.Antoniu, 1997, p.18*). In the hypothesis in which we are talking about a typical act, it must be verified whether it is not permitted by a legal norm, unjustified, since if it is justified, by the existence of a justifiable cause from those provided for in art.18-22 of the Criminal Code, it does not constitute criminal wrongdoing. The analysis of illegality involves proving that the specific act complies with the incriminating norm and that there is no justifiable cause that prevents the initiation and exercise of criminal action.

It is important to emphasize that in the 1968 Criminal Code, illegality was not an essential feature of the offence, yet, correctly, it was emphasized in the doctrine that the notion seemed to result from the very way in which the concept of social danger was used, "which only apparently replaced that of illegality, since

the notion of social danger completed and explained that of typicality"(*G.Antoniu, 1997, p.18*).

The third essential feature of the offence is imputability, which is presumed from the existence of typicality or illegality and assumes that the specific act provided for by the criminal law can be imputable to the person who committed it. The notion of imputability has been defined as the attribute of the act to be objectively and subjectively attributed to the author, so we are talking about two components - objective imputability and subjective imputability -, the first emphasizing the causal link between the acts and the author, and the second, the psychophysical capacity of the author of the act to understand and desire the criminal act. The doctrine has shown that "the notion of imputation of an act committed with guilt as an essential feature of the offence appears as a tautology, since guilt is an essential feature of the offence and, consequently, cannot appear twice as an essential feature of the offence"(*I. Ifrim, 2010, p.75*). In the opinion of other authors, guilt, despite the fact that it is inserted in the content of art.15 paragraph 1 of the Criminal Code as an essential feature of the offence, "does not in fact constitute a distinct essential feature, but an element of subjective nature within the scope of the incrimination norm (*M.Udroiu, 2014, p.38*). We cannot agree with these opinions, because it is necessary to establish a clear line of demarcation between subjective imputability and guilt: both are essential features of the offence, but guilt refers to the existence of the subjective element in the constitutive content of the offence and we find it in the form of intention, fault and premeditation (art.16 paragraphs 2-5 of the Criminal Code). Additionally, we argue that the provisions of art.15 paragraph 1 sentence II of the Criminal Code. must be corroborated with the provisions of art. 16 paragraph 5 of the Penal Code, according to which "the act consisting of an action or inaction constitutes a offence when committed intentionally. The act committed through negligence constitutes a offence only when the law expressly provides for it".

The fourth essential feature of the offence refers to guilt. This reaffirms the principle of subjective criminal liability (*nulla poena sine culpa*), since the foundation of criminal liability is guilt. Although we have proposed to analyze only the provisions relating to the concept of offence, provided for in art. 15 of the Criminal Code, in order to explain this feature of the offence we will also refer to the provisions of art. 16 paragraph 1 of the Criminal Code, according to which "the act constitutes a offence only if it was committed with the form of guilt required by the criminal law", which demonstrates that guilt is an autonomous feature of the offence. Since in the previous paragraph we have shown which are the forms of guilt with which the act must be committed in order to constitute a offence and which are the rules for determining the form of guilt from the content of the incrimination norm (art. 16 paragraphs 3-5 and 6), we will not return with developments on this segment.

II. OBSERVATIONS ON OFFENCE. CONSTITUTIONAL CHALLENGES OR CONTROVERSIES

In judicial practice, the unconstitutionality of the provisions of art.15 paragraph 1 of the Criminal Code[10] has been invoked, arguing that the removal by definition of social danger as the essential feature for an act to be considered a offence violates the right to a fair trial and the principle of proportionality, provided for in art.21 paragraph 3 and art.53 of the Romanian Constitution. It has been shown that according to the current definition of the offence, if in practice there has been a very small infringement of the social values protected by the criminal law, we are still talking about a offence, which implies important consequences for the defendant, which would not have happened in relation to the provisions of art.17 of the Criminal Code from 1968, according to which, the defining element of the offence was the existence of social danger, as an essential feature of the offence, and in the event that an act did not present the degree of social danger of a offence, the provisions of art. 18/1 of the 1968 Penal Code with the marginal name "act that does not present the degree of social danger of a offence", allowed the application of an administrative sanction.

To identify these aspects, first of all, we must refer to the fact that any legal definition that specifies the content of a notion is a legitimate means of legislative technique. The Constitutional Court, by decision no. 650/2018, emphasized that the norms of legislative technique impose mandatory criteria for the adoption of normative acts, in order to meet the requirements imposed by the principle of security of legal relations regarding clarity and accessibility, which is why, in our opinion, a balance must be found between the law and its interpretation, between the principle of legality and the need for clarity and accessibility of legal norms.

In the old regulation, a substantial definition of the notion of offence was introduced in order to more easily differentiate the field of criminal law from the sphere of contravention, civil law offenses and disciplinary law offenses.

According to art.17 of the 1968 Criminal Code, a offence was defined as an act that poses a social danger, committed with guilt provided for by the criminal law. In this definition, we distinguish three essential characteristic features of a offence - the act must pose a social danger, the act must be committed with guilt, the act must be provided for by the criminal law. In art. 18 of the 1968 Criminal Code, the act presenting a social danger was defined as the action or inaction by which a value mentioned in art. 1 of the Criminal Code is violated, and art. 18/1 of the 1968 Criminal Code stipulated that the act provided for by the criminal law did not constitute a offence if, by the minimal violation brought to one of the values protected by the law and by its concrete content,

[10] Cluj Court of Appeal, file no. 2259/117/2019/a3, decision of 22.02.2024 by which the Constitutional Court was notified with the exception of unconstitutionality, among others, of the provisions of art. 15 paragraph 1 of the Criminal Code.

being clearly lacking in importance, it did not present the degree of social danger of a offence.

Regarding the social danger of the act as an autonomous feature of the notion of offence, it is necessary to specify that this concept is characteristic of the former socialist criminal law systems, in Romania being sketched at the beginning of the 20th century and explained by V. Dongoroz. In the conception of the old legislator, the act had social danger when there was an action or inaction that presented a danger to social values, requiring the application of a punishment. Therefore, it was talking about the material aspect of the act, the social aspect and, not in the last resort, the legal aspect of the offence. In doctrine and jurisprudence, it had been emphasized that socially dangerous acts must be analyzed not only *in abstracto*, but also *in concreto (J.Rinceanu, 2010, p.23)*, the first category referring to special incriminations, generically defined by the Criminal Code, and the second, considering the concrete act, the danger of which had to be assessed by the court, in a broad process of judicial individualization of the punishment.
Art.18 of the 1968 Criminal Code referred to the social danger of the act without distinguishing between abstract and concrete social danger, explaining the content of social danger as an attribute of the act that harms not only the social values listed in art.1 (Romania, sovereignty, independence, unity and indivisibility of the state, the person, their rights and freedoms, property, as well as the entire legal order), but also the other protected social values not explicitly mentioned, for which a punishment was necessary. Therefore, it was correctly emphasized in the doctrine that, as a whole, the concept of social danger was related to the criterion of the values harmed and that of the punishment (*G.Antoniu and al., 2010, p.15*). V.Dongoroz emphasized that, in order to delimit the criminal illicit from the extra-criminal illicit, it is necessary to use an objective qualitative criterion, in the content of which two elements should be included: "the criminal act with a certain social resonance and the provoking of a state of anxiety and insecurity among the members of the social group". However, it was assessed that an appropriate conclusion could not be reached and that is why the Romanian legislator added the criterion of punishment, in order to delimit contraventions from offences. Social danger was considered to have the character of a concrete social danger, with a role in defining social danger as an essential feature of the offence. After the adoption of the incrimination norm, in which the act is described and the sanction corresponding to its gravity is established, in relation to the manner of assessing the concrete social danger by the judicial body, it was assessed that the concrete social danger has a function of individualizing the sanction within the minimum and maximum special limits established by the incrimination norm and corresponding to the value of the abstract danger of the act, but also a function equivalent to that of the abstract social danger of selecting acts susceptible to being incriminated or not.

The legislator, through the provisions of art.17 of the 1968 Criminal Code, regarding the concept of offence, indicating the social danger defined in art.18, as one of the essential features, took into account the function of the social danger of individualizing the concrete sanction, which was regulated in the chapter on punishment. For these reasons, taking into account the provisions of art.18/1 of the 1968 Criminal Code, it can be easily seen that in the legislator's vision, an act could not constitute a offence only when its danger was at the level of the abstract danger assessed by incriminating the act, which determined that when the degree of concrete social danger was reduced, the concrete act did not constitute a criminal offense.

At the same time, the assessment of the concrete social danger did not fulfill, according to the old Criminal Code, only a function equivalent to that of the abstract social danger, but also a complementary function, through which certain activities, permitted by law, were legitimized.

It has been judiciously emphasized in the doctrine that this concept of social danger contains multiple contradictions and represents an anachronism, the application of this theory only harming the certainty of the legal norms. Additionally, the concept contains an ambiguity, since the social danger of the act overlaps with the social danger of the offender and does not contribute to the clarity of the norm (*G.Antoniu and al., 2010, p.15; T. Avrigeanu, 2010, p.35-37*), a requirement imposed by the principle of the legality of incrimination and affirmed by decision no. 732/2014 by the Constitutional Court[11]. At the same time, social danger cannot replace illegality, as an essential feature of the offence.

The concept of social danger contains multiple contradictions, which have determined the current legislator to abandon a substantial definition of the offence and to adopt the formal definition of the offence.

Returning to the issue of constitutionality of the current regulation regarding the concept of offence, we emphasize that the normative provision, even in the absence of the accuracy we spoke about previously (*Infra.3*), is, in our opinion, able to pass the constitutionality test. We do not intend to enter into a controversy with the supporters of the exception of unconstitutionality, judiciously argued, and we will not expand the field of discussion by correlating the legal norm regarding the institution of the offence with criminal procedural norms, but we will try to demonstrate that the provisions of art.15 of the Criminal Code comply with constitutional and European requirements.

Criminal law defends the social values of the community, by prohibiting those actions that could harm them or by requiring a certain conduct to protect them and, for this purpose, establishes criminal sanctions.

[11] RCC, decision n0.732/2014, publ. in the Official Gazette, no. 69/2015.

Offence, as a fundamental institution of criminal law, is the most serious form of legal wrongdoing and must be interpreted restrictively, so as to comply with the requirements imposed by the principle of legality and subsidiarity.

The principle of legality of incrimination is a general principle of law and requires that the law clearly define offences and punishments so that any person can know, starting from the text of the norm and, if applicable, with the help of the interpretation given to this text, what are the actions and omissions that could entail his criminal liability.

As regards the requirements of the principle of legality, it is necessary to specify that the normative provision included in the content of art.1 paragraph 2 of the Criminal Code is enshrined in the provisions of art.1 paragraph 5 of the Romanian Constitution and is in full agreement with the provisions of art.49 paragraph 1 of the Charter of Fundamental Rights of the European Union and art.7 of the ECHR.

The Court of Justice of the European Union (CJEU) has established through its case law [12] that the legal norm in order to comply with the requirements imposed by the principle of legality, which is a specific expression of the general principle of legal certainty and implies that the law clearly defines offences and penalties, must be foreseeable and precise.

Regarding interpretation, the Strasbourg Court, in the *Plechkov/Romania* case, by its judgment of 16.09.2014, ruled that, no matter how clear a legal provision may be, in any legal system, including in the field of criminal law, there is inevitably an element of judicial interpretation, since, often, requirements arise for elucidating doubtful aspects and adapting to changes in the situation, which is why the provisions of art. 7 of the ECHR Convention need to be interpreted in the sense that they do not prohibit the progressive clarification of the norm relating to criminal liability, with judges proceeding to the judicial interpretation of each case, but which must be subject to the condition that the result is consistent with the substance of the offence and reasonably foreseeable.

Returning to the issue under discussion, we consider that the text of art. 15 paragraph 1 of the Criminal Code which defines the offence in terms of the essential features mentioned in section 3 of this paper, corresponds to the requirements imposed by the principle of legality, the regulation being fully in accordance with the requirements of European criminal law in this segment.

The traditionalist conception found in the provisions of the old Criminal Code, including the mention of social danger as an autonomous feature of the offence, was interrupted and replaced with one of European inspiration in order to ensure the homogenization of the criminal justice system at European level.

Regarding this last aspect, it is worth mentioning that the Union's criminal policy is based on the respect for subsidiarity, a basic principle, provided for in

[12] CJEU, C 42/17, judgment of 5 December 2017, M.A.S. and M.B., EU:C:2017:936.

Article 5 of the Treaty on European Union (TEU), given that at this level the Union only has shared competences, according to Article 2(2) combined with Article 67(3) and (4) of the Treaty on the Functioning of the European Union (TFEU), as well as the principle of necessity and proportionality (*ultimo ratio*), but also of some special principles, among which we mention the principle of the offence, proportionality, punishment worthiness principle, culpability principle, retroactive application of the milder criminal law (*mitior lex*), etc.

The principle of necessity and proportionality, which we referred to in a previous section, including through case law, is a basic principle at European level and lies in the fact that criminal law is used only as a last resort, namely when there is no other, less harmful way to protect fundamental interests, fundamental rights being necessary to be "indexed" in international standards (*M. Bitanga, S. Franguloiu, F. Sanchez-Hermosilla, 2018, p. 18*). The principle has its origin in the principle of the legality of incrimination and regarding this, the constitutional court ruled that incriminating an act as a offence must intervene as a last resort, when there is a criminal norm adopted by the competent legislator and the incriminated act harms protected social values, respectively presents a certain gravity. The Court noted that, in principle, the extraordinary remedy of cassation appeal, provided for by the provisions of art. 433 et seq. Criminal Procedure Code, since through this extraordinary remedy it is not possible to reassess the factual elements, but only to verify the existence of the result of the offence, as a requirement of the objective content, not of the extent or concrete seriousness of the result.

If we analyze the concept of offence through the prism of the *ultimo ratio* rule, it is necessary to mention that the criminal norm provided for by art.15 of the Criminal Code is active and clear, since it regulates the offence in an accessible, predictable, unitary and uniform manner. The fact that, through the provisions of art.15 of the Criminal Code, the traditionalist conception regarding social danger, as an essential feature of the offence, was abandoned does not equate to disregarding social danger, as it is valued, because in the complex structure of the offence we have, among other things, as an element, the existence of an act provided for by the criminal law, committed by a person, or it is not about any act committed by a person, but only the one sanctioned as a offence and considered by the legislator as presenting a high social danger. Additionally, it is necessary to mention that social danger is embedded in the concept of typicality, the high social danger of the act described in the incrimination norm being presumed by the legislator to exist in relation to any concrete act committed that fits the abstract model of the incrimination norm. Consequently, it cannot be argued that social danger was disregarded in the legislator's new vision of the concept of offence, even if it no longer constitutes an autonomous feature of the offence.

The principle of the offence (*nullum nullum iniuria sine*), which provides that, since criminal law aims to protect relevant social interests, a certain type of

behavior should be punished only if it results in a risk to the legally protected good, is inextricably linked to the principle of necessity and proportionality.

Only in the event that these requirements are missing can we speak of the ineffectiveness of the norm, which can be found by the constitutional court and sanctioned as such.

Regarding the principle of equality of citizens before the law, provided for in the provisions of art. 20 of the CFREU, art. 6 of the TEU and art. 16 of the Romanian Constitution, a general principle of criminal law, we must mention that it refers to equality before the law, in other words to the absence of discrimination for those in identical or similar situations, but does not exclude the different judicial individualization of the criminal sanction, in relation to the concrete social danger of the act and the perpetrator, taking into account the provisions of art. 74 of the Criminal Code.

Consequently, we consider that the legislator, through the manner in which it regulated the notion of offence in the content of art. 15 paragraph 1 of the Criminal Code, complied with the European provisions, all the principles analyzed above and which we also find in the domestic constitutional provisions - art. 1 paragraph 5, art. 11, 16 paragraphs 1-2, art. 23, art. 53 (in interdependence with the provisions of art. 52 of the CFREU).

CONCLUSION

The legal assessment 11 years after the entry into force of the new Criminal Code allows us to claim that the current regulation has come with important challenges for legal theorists and practitioners, some regulations being declared unconstitutional, others modified and supplemented to meet the demands imposed by the new realities.

The outlined evolution of Romanian criminal law in the new Criminal Code from the initial moment of its adoption, until this date, the legislative inconsistency in certain segments, creates the impression of a slightly cracked base for a lasting reform, even if the legislator's intention was to abandon the traditional influence and to follow a normal and natural path of assimilation of European criminal law, in order to actively contribute to the homogenization of the criminal justice system at the level of the European Union.

As previously mentioned, the current Criminal Code defines the concept of offence differently from the regulation in the 1968 Criminal Code, abandoning social danger as an essential feature of the offence.

The new approach transposed into the provisions of art.15 of the Criminal Code is not immune to criticism, as in judicial practice there have been situations identified, as we specified in the last section, in which the unconstitutionality of the legal text was invoked, since the content of the typical elements of a offence does not refer to the social danger of the act committed. In relation to these aspects, we have tried to demonstrate that the current regulation complies with

constitutional and European requirements, but from the perspective of the accuracy of the norm we have objections.

In this regard, the content of the provisions of art.15 paragraph 1 of the Criminal Code should have mentioned that the offence is the specific act provided for by the criminal law or the specific act typical, committed with guilt, unjustified and attributable to the person who committed it.

The notion of offence does not contain vague and imprecise provisions that would be incompatible with the requirements imposed by the principle of legality, since persons who disregard the criminal law may know the extent to which their acts engage criminal liability. The criminalization of acts as offences allows the legislator to adopt sanctions appropriate in nature and degree of severity, against perpetrators who, regardless of the nature of their motives, acted in full knowledge of the facts.

Criticisms aimed at the accuracy of these normative provisions, without depriving them of their predictable and accessible character, cannot lead to the unconstitutionality of the text in question, it being essential to take into account the nature of the text whose validity is questioned and the competence of the legislator to adopt a definition, even a formal one, as is the case with regard to the provisions of art.15 of the Criminal Code, regarding the notion of offence.

We propose de lege ferenda, the intervention of the legislator in the sense of modifying the content of art.15 paragraph 1 of the Criminal Code, by modifying the legal text in the sense that the offence is the concrete act provided for by the criminal law, committed with guilt, unjustified and attributable to the person who committed it.

BIBLIOGRAFIE

1. T.Vasiliu, G.Antoniu, Șt.Daneș, Ghe. Dărîngă, D.Lucinescu, V.Papadopol, D.Pavel, D.Popescu, V.Rămureanu,*Codul penal al Republicii Socialiste România. Comentat și adnotat. Partea generală,* Ed. Științifică, București,1972;
2. C.Mitrache, Cr.Mitrache, *Drept penal român.Partea generală,* 2nd edition, reviewed and ammended, București, 2003;
3. G.Antoniu, C.Bulai, C.Duvac, I.Griga, Gh.Ivan, C.Mitrache, I.Molnar, I.Pascu, V.Pașca, O.Predescu, *Explicație preliminare ale noului Cod penal, vol.I,* Universul Juridic, București, 2010;
4. V.Dongoroz, *Explicații teoretice ale Codului penal român,* vol.I, ed. II, Ed. C.H.Beck, București, 2012;
5. M.Udroiu, *Drept penal. Partea generală. Noul Cod penal,* C.H.Beck, București 2014;
6. H.H.Jescheck, *Lerhbuch des Strafrechts, Allgemeiner Teil,* Berlin, 1988;
7. G.Fiandaca, E.Musco, *Diritto penale, parte generale,* Zanichelli, Bologna, 1995;

8. M. Bitanga, S. Franguloiu, F. Sanchez-Hermosilla, *"Training the judges in the field of securing the rights of the EU citizens within the criminal proceedings*", Magic Print Onești, 2018;
9. J. Rinceanu, *Analiza trăsăturilor esențiale ale infracțiunii în legea penală română,* in Rev. Dreptul no.1/2010;
10. G. Antoniu, *Infracțiunea și pedeapsa între aparență și realitate,* in Rev. de Drept Penal, Year VII No.1/2000;
11. G. Antoniu, *Tipicitate și antijuridicitate,* in Rev. de Drept Penal, Anul IV, no.4/1997;
12. I. Ifrim, *Reflecții asupra definiției infracțiunii din noul Cod penal,* in Rev. de Drept Penal, Year XVII, no.1/2010;
13. T. Avrigeanu, *Pericol social generic. Evaluare,* in Rev. de Drept Penal, Year IV, no.4/1997;
14. S. Franguloiu, N.E. Hegheș, *Scurtă analiză a propunerii legislative ce incriminează o nouă formă de evadare*, journal Acta Universitatis George Bacovia, Juridica, Volume 13, Issue 1, January-June 2024;
15. Law no. 286/2009 on the Criminal Code, publ. in the Official Gazette no. 510/24.07.2009, in force since 1.02.2014;
16. Decree no. 187/1948 on the repeal of Law no. 831 of 16.11.1942 for the suspension of the trial and execution of the sentence pronounced against some criminals who are part of the elements of the army and of Law no. 677 of 14.10.1943 for the application of the provisions of Law no. 831/1942 to some categories of criminals, publ. in the Official Gazette, Part I, no. 182/9.08.1948, in force from 9.08.1948 to 13.01.1974, repealed by Decree no. 691/1973;
17. Model Penal Code, The American Law Institute, Philadelphia, P.A1985;
18. RCC, decision no.405/2016, publ. in the Official Gazette no.517/8.07.2016;
19. RCC, decision no. 650/2018, publ. in the Official Gazetteno.97/7.02.2019;
20. RCC, decision no.631/2014, publ. in the Official Gazette no. 77/21.01.2015;
21. RCC, decision no.732/2014, publ. in the Official Gazette no. 69/2015;
22. HCCJ-HP, decision nr. 10/2015, publ. in the Official Gazette, Part I, no. 458/25.06.2015;
23. HCCJ -HP, decision nr. 4/2015, publ. in the Official Gazette, Part I, no. 244/9.04.2015;
24. Oradea Court of Appeal - Criminal Section and for Cases with Minors, criminal decision no.25/CP/2020 of 30.09.2020, pronounced in file no.292/35/2020;
25. Cluj Court of Appeal - Criminal Section, file no. 2259/117/2019/a3, decision of 22.02.2024;
26. ECHR, Plechkov/Romania, decision of 16.09.2014;
27. CJEU, C 42/17, decision of 5 December 2017, M.A.S. and M.B., EU:C:2017:936.



This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 342-352

PRELIMINARY SESSION JUDGE IMPORTANT ACTOR AND GUARANTEE OF DUE JUDICIAL PROCESS AFTER COMPLETION OF PRELIMINARY INVESTIGATIONS PHASE

A. PRIFTI

Received 24.11.2024; accepted 14.02.2025
First online publication:15.02.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.240

Arben PRIFTI
Faculty of Law, and Humanities "The Mediterranean University of Albania
E-mail: arben.prifti@umsh.edu.al
ORCID ID: https://orcid.org/0009-0009-0473-7118

Abstract

Constitutional reform (A.Vorpsi, A.Anastasi, G.Ibrahimi, S.Berberi, 2016)and that in Justice (Code of Criminal Procedure, 2017) of 2016 in Albania, brought the need for intervention and changes in the Criminal Procedure Code. A new change in this Code is the figure of the Judge of the Preliminary Session, as a new subject in the criminal process, at the stage of completion of preliminary investigations. This new procedural institute, placed between the prosecutor and the judge of the foundation, serves as a filter to control the procedural actions of the prosecutor, carried out during the phase of the preliminary investigations, if they are complete and final, paving the way for the trial of the case. në foundation. In this work, research, analytical and comparative methods were used, with the aim of highlighting the problems that have to do with the procedural subject of the Judge of the Preliminary Session, as well as the hypotheses with the questions that are asked. The jurisprudence of the cases of judicial practice of the Courts of the General Jurisdiction of the Appeal and of the First Instance, the Supreme Court and the Constitutional Court deal with the competencies and functions of the Judge of the preliminary session as well as the problems that arise during at this stage of the criminal proceedings.

Key words: *The judge of the preliminary session, the judge of the preliminary investigations, the judge of the foundation, the prosecutor, the request for sending the case for trial, the judicial decision of the preliminary session***.**

INTRODUCTION

In the Code of Criminal Procedure of the Republic of Albania, before the changes of the justice reform in 2016, there was no figure of the Judge of the Preliminary Session. As subjects of the criminal procedure in the code of criminal procedure were the prosecutor, the judicial police, the judge of preliminary investigations, the judge of the foundation, the accuser in the criminal process, the plaintiff and the civil defendant. This fact showed a gap for the demands of the parties during the phase of preliminary investigations, which could not be handled by the judge who would judge the case on the merits.(*Criminal Procedure Code, 2015, p.225)* After the completion of the preliminary investigation phase, the prosecutor decides, as the case may be, whether to send the case to court, dismiss or suspend it.(*Criminal Procedure Code, 1995, amended, p.224)* When there is complete evidence for the defendant's guilt, the prosecutor submits to the court a request for the trial of the case.

At the preliminary investigation stage, the actions of the prosecutor,(*Criminal Procedure Code, 1995, amended, Article 24).* must be controlled by a judicial entity. For this purpose, in the Code of Criminal Procedure, a new figure was provided, which is the Judge of the Preliminary Session. The provision of this new procedural subject is related to the regular judicial process, the guarantee of basic human rights and freedoms and the new standard in the process of proving the criminal offense. The requests of the parties related to the personal security measures during the preliminary investigation phase are examined by the judge of the preliminary investigations, while the requests related to the invalidity of the acts or the decision, the insufficiency of the evidence, the request for a summary trial, or for the dismissal of the case is examined by the new procedural subject which is the Judge of the Preliminary Session.

For this reason, in the Code of Criminal Procedure, it is provided that the preliminary session will take place behind closed doors where only the prosecutor, the defendant and his defence, the victim and the private parties will be present.(*Criminal Procedure Code, 1995, amended, Article 332/a and 332/4*) This court session is presided over by a single judge, who is the judge of the preliminary session chosen by lot, who does the preliminary verification of the indictment before the criminal case goes to the trial court.

The prosecutor's procedural actions, which were related to the completion of preliminary investigations, were not controlled by any judicial procedural subject. During this phase, the prosecution, as a sui generis centralized body next to the judicial system, played an essential role and was not subject to real control.
With the new changes in Law 35/2017, the prosecution functions as a decentralized body where its functional duties are sanctioned and, at the end of the preliminary investigation phase, a new figure was foreseen in the Criminal Procedure Code, which would control all procedural actions of the prosecutor.

This figure was that of the Judge of the Preliminary Session, who examines the request of the prosecutor to send the case to trial.(*Criminal Procedure Code, 1995, Article 332, p.225).*

I. PRELIMINARY SESSION JUDGE NEW PROCEDURAL SUBJECT IN THE CODE OF CRIMINAL PROCEDURE

With the changes made to the "Criminal Procedure Code of the Republic of Albania" with law no. 35/2017 "On some additions and changes to law no. 7905, dated 21.3.1995 as amended", the figure of the Judge of the Preliminary Session was sanctioned. This new procedural figure was created to control the prosecutor's actions during the preliminary investigation phase.*(M. Hulaj, S. Beqiri, 2015, p.7*), The Judge of the Preliminary Session exercises this function through the specific powers given to him in the Code of Criminal Procedure.(*Criminal Procedure Code 1995, Articles 232 -332/e)* The figure of the Judge of the preliminary session is taken as a model from the Italian criminal procedural law. (*Italian Criminal Procedure Code, 2011, p.823.* The changes made in the Code of Criminal Procedure show that the prosecutor has no decision-making authority on the request to send the case to court, as now the Judge of the Preliminary Session has this competence. In this sense, a control filter was created against the prosecutor's actions carried out in the preliminary investigation phase. This procedural subject is given a number of important powers related to the dismissal of charges or criminal cases, the return of acts to the prosecutor and the continuation of investigations when it is deemed that the investigations are not complete, or when it is required to formulate a new charge. (*Albania Criminal Procedure Code, 1995, Articles 329/b, 332/ç, 332/de 332/dh).*

According to Article 328 of the Code of Criminal Procedure, (*Unifying Decision of the Supreme Court, 2002, page 429, and 2008, page 306).* At the end of the preliminary investigations, the prosecutor of the state has the power to decide the dismissal of the charge or the criminal case when proceeding for a criminal offense. An appeal can be made against the prosecutor's decision to dismiss the case,(*Albania Criminal Procedure, 1995, Articles 329. Unifying Decisions of the High Court 2013, page 532, 2002, page 429, and 2009, page 318)* which is examined in the counseling room by the Judge of the preliminary session, deciding, as the case may be, the dismissal of the case, the return of the acts to the prosecutor and the continuation of the investigations when they are not complete, or when a new charge must be formulated.

The judge of the preliminary session examines the request for trial of the prosecutor within 30 days from the date of its filing, *(Albania Criminal Procedure Code,1995, amended, Article 332/3),* and after notifying the defendant, the victim or his heirs, sets the day, time and place where the court session will take place. *(Albania Criminal Procedure Code, 1995, amended, Article 332/a).*

This session, due to its very nature, should take place quickly and without being too long, respecting the procedural deadline provided in the provision of Article 332 of the Code of Criminal Procedure.

The court session takes place behind closed doors, with the mandatory participation of the prosecutor(*L'udienza preliminare,2022, page 4. https://www.dirittoconsenso.it)*, and the defenders of the defendant. *(Albania Criminal Procedure Code,1995, amended, Article 332/b.)* The court verifies the presentation of the parties and declares the judicial review open, where at the beginning the prosecutor presents in a way to summarize the results of the preliminary investigations and the evidence supporting the request for sending the case to court. Then the defendant takes the floor, who can submit a request for the invalidity of the acts of preliminary investigations, the lack of evidence, the need to receive other evidence, a request for a summary trial. *(Albania Criminal Procedure Code, 1995, amended, Article 332/c.)*

The judge of the preliminary session, when he considers that the preliminary investigations are not complete, orders their completion. However, when the fact turns out to be different from what is described in the request for sending the case to court, the prosecutor changes the charge and communicates it to the defendant. When during the preliminary session it turns out that the legal classification of the fact is wrong, or when the charge is not formulated in a clear and precise way, the Court invites the prosecutor to make the necessary corrections or corrections.

In this type of trial, the issue that can be discussed is when the defendant is absent from the judicial process. *(Albania Criminal Procedure, 1995, Article 332/dh.* The rights of the defendant in a process are not the same as those of the defense counsel chosen or appointed by the proceeding body. There are some actions that are the sole prerogative of the defendant, such as a request for summary judgment or an appeal to the court of appeal and his signature on the decision of the court of first instance. However, the defendant can delegate these rights by authorization or power of attorney to his legal representative or lawyer.
Also, in this type of trial, the submission of the defendant's requests for special trials, such as a summary trial or a trial by agreement, is also important. The defendant is rightto request an abbreviated trial or one with an agreement in this phase of the trial of the preliminary session, in the opposite case, if he does not exercise it, he loses this procedural right, which he cannot exercise in other stages of the trial.

However, the Italian Code of Criminal Procedure has resolved differently the submission of requests for a summary trial or trial by agreement, providing for these requests of the defendant as an alternative that can also be requested in the preliminary hearing.

II. CASES OF ADJUSTMENT FROM PRELIMINARY SESSIONS

The criminal procedure takes place in several stages, which are the stage of preliminary investigations, the stage of the preliminary session and finally the stage of trial based on the criminal case. Above we dealt with the cases of trial in the preliminary session where the parties present their claims. However, in the criminal proceedings there are some cases which avoid the judgment of the judge of the preliminary session. These exceptional cases are as follows:

1. When the defendant is arrested in flagrante delicto and is investigated for the commission of a criminal offense judged by a judge, the prosecutor submits to the court the request for a direct trial.*(Albania Criminal Procedure Code, 1995, as amended, Article 400).* when the defendant is arrested in flagrante delicto and a request is made for his validation and concurrent trial.*(Albania Criminal Procedure Code, 1995, as amended, Article 400).*

2. When the prosecutor decides to dismiss the charge or the case when proceeding for a criminal misdemeanor.*(Albania Criminal Procedure Code, 1995, as amended, Article 328).*

3. When the prosecutor sends the court the request for the approval of the criminal order when the defendant is accused of committing a criminal misdemeanor.

If we compare the competences of the judge of preliminary investigations, the judge of the preliminary session and those of the judge of the foundation, we conclude that the judge of preliminary investigations decides only on requests related to security measures during preliminary investigations. However, the competences of the judge of the preliminary session and those of the judge of the foundation intersect with each other, but not that this overlaps with each other.Despite the fact that the judge of the preliminary session has the power to decide the dismissal, this should not be equated with the role of the judge of the foundation, who decides the dismissal if the commission of the criminal offense is not proven. In the preliminary session, the dismissal is decided only when there are evidently "prima facie" elements of the criminal responsibility of the defendant and not when this can result only after the judicial examination and debate of the evidence. The legislator has given the judge of the preliminary session the right to dismiss the criminal case, only when elements of criminal responsibility are blatantly missing, which justify the need to dismiss the criminal case. In this type of trial, the moment and the procedural deadline for submitting the requests of the parties in the process must be distinguished. This is due to the fact that their failure to appear before the competent judge at the time and deadline causes the loss of the rights of the parties in the trial.The Code of Criminal Procedure, in the third paragraph of its article 332/dh, has provided that:
"The review procedure in the preliminary session does not replace the judgment

of the case on the merits, nor does it prejudge its final decision."

The judge of the preliminary hearing has the task of verifying whether the case is ready for trial, whether the investigations are complete and the charges are properly filed. Thus, we can mention the requests related to the change of the charge, when a new fact emerges, or when the change of the legal definition of the criminal fact is requested. In these cases, the court decides to change the charge, allows the communication of the charge for the new fact for which it must be processed mainly on the request of the prosecutor and the consent of the defendant, or changes the charge when during the preliminary hearing it appears that the legal definition of the fact is wrong or the accusation is not clear. In these cases, the court invites the prosecutor to make the necessary corrections or to return the acts when the prosecutor does not act.*(Albania Criminal Procedure Code,1995, Article 332/d).*

III. DECISION OF THE PRELIMINARY HEARING JUDGE

(Albania Criminal Procedure Code, 1995, Article 332/dh).

Article 332/dh of the Code of Criminal Procedure defines the decision of the judge of the preliminary session after hearing the claims and discussions of the parties in the process. From the content of this provision, the decision of the judge of the preliminary session is related to:

a) accepting the request of the prosecutor and sending the case to court, when it is deemed that there is sufficient evidence to support the accusation;

b) the continuation of the trial by the same court, when the parties present an agreement on the conditions of the admission of guilt and the determination of the punishment;

c) to invite the parties to present the final discussions when the defendant has requested a summary trial, sending the case to the competent court when the defendant has requested a summary trial, after verifying the state of the acts, according to the provisions of Article 332/c of this Code;

ç) dismissing the accusation or the case when there are cases of paragraph 1, article 328, of this Code.

d) declaring incompetence and sending the case to the competent court.

The provision related to Article 332/dh has changed in 2021 in relation to special trials such as summary trial and trial by agreement. If before the changes to this provision the judge of the preliminary session accepted the requests of the parties for the abbreviated trial and the trial by agreement by taking the case for trial before the judge of the foundation, after the changes in the Code, these types of trials are judged by the judge of the preliminary session without sent the matter to the judge of the foundation. In this case, the judge of the preliminary session continues the trial with the abbreviated trial procedure *(Albania Criminal Procedure Code, 1995, Article 405)* and that of judgment by agreement, *(Albania Criminal Procedure Code, 1995, amended, Article 406/dh)*, respecting the requirements and the trial procedure underlying the case. The implementation of

this procedure is also related to the economicization of the judicial process for a quick and fair trial.

Regarding the dismissal of the charge or the case, the judge of the preliminary session is competent and decides only on criminal charges that are punishable by a maximum of two years of imprisonment.

IV. THE JURISPRUDENCE OF THE HIGH COURT

The Supreme Court has a diverse practice in the trial of criminal cases, maintaining a position both in the uniformity of the judicial practice and in its change. The Criminal College of the Supreme Court has judged various cases in relation to the judge of the preliminary session, (*Supreme Court, Periodical Bulletin, 2022-2024.* https://www.gjykataelarte.gov.al, Bulletin no. 6, 2024) whose decisions are briefly as follows:

1. In decision no.115(53), dated 18.02.2022, the Criminal Panel of the Supreme Court reasons that the criminal procedural law does not provide in any legal provision the right of the court of foundation to control the performance of investigative actions by the prosecution, much less the return of the case for further investigations. Such a competence, with the amendments of the Code of Criminal Procedure, belongs to the judge of the preliminary session, who has the right to order the prosecutor to complete the investigations by determining their direction, referring to article 332, letter "ç", of the CPC. The basic court does not verify the investigative actions, but if it assesses that there is not enough evidence to support the accusation, it takes a verdict of not guilty.

2. In decision no.1151(183), dated 24.06.2022, Criminal College of the High Court stated that the use of erroneous evidentiary standards in judging the request for sending the case for trial or for dismissing the case, according to articles 332/dh/a and 328/1 of the CPC, positions the judge of the preliminary hearing in the capacity of the judge of foundation, when it is expressed regarding the verifiability of the accusation, considering the decision-making in conditions of illegality.

3. In decision no. 1235 (261), dated 13.10.2022, *Criminal College of the High Court* reiterates that the period of detention spent during the phase of dealing with the case before the judge of the preliminary session, when the latter has decided to send the case to trial, is considered part of the detention period of the trial phase (basically, in degree first) of the case.

4. In decision no.469(8), dated 16.01.2023, *Criminal College of the High Court* decides that the defendants are not entitled to file an appeal/recourse against the decision-making of the appellate court, which partially changed the decision-making of the judge of the preliminary session of the first instance to send the case to trial, since this means of appeal is not provided for in the provisions of special provisions of the criminal procedural law.

5. In decision no.40, dated 17.01.2023,*Criminal College of the High Court* points out that when the judge of the preliminary session orders the sending of documents to the prosecutor for "completion of investigations", according to Article 332/c of the Criminal Code, he also disposes of the requests of the parties for the extension of the detention periods, spent on account of the investigation phase preliminary, according to article 263/1/b of the CPC.

6. In decision no. 94 (23), dated 19.01.2023, *Criminal College of the High Court* decides that the judge of the preliminary session can dismiss the charge, when the circumstances provided by the law exist, but cannot enter into the assessment and appreciation of the evidence, as this is characteristic of the trial of the case on the merits.

7. In decision no.00-2023-1333, dated 28.07.2023 *Criminal College of the High Court* assesses that the judge of the preliminary session cannot dismiss the case and assign medical measures to the person under investigation, since such a thing must be requested from the judge of the foundation by the prosecutor. In order to resolve the conflict of competence, the College considers that the judge of the preliminary session should return the case to the prosecutor to make possible the exercise of criminal prosecution through the submission of the request for the trial of the case and for the appointment of the medical measure.

CONCLUSION

The main purpose of the provision in the Code of Criminal Procedure of the figure of the Judge of the Preliminary Session for the control of the actions of the prosecutor during the preliminary investigation phase and the strengthening of the investigation phase, as the weakest phase of the criminal process, is realized through the concrete powers that they are left to this judge.(Report on additions and changes to the criminal procedure code, 2017).

- The judge of the preliminary session has the obligation to express himself in the case of judging the Prosecutor's request for sending the case to trial. He does not comment on the basis of the charge, the verification of the defendant's guilt regarding this charge disputed by the Prosecutor. However, the judge of the preliminary session can express the sufficiency and suitability of the evidentiary material, the sources of evidence gathered by the Prosecutor during the preliminary investigations, or if there is a need for conducting other investigations.

- The judge of the preliminary session cannot enter into the evaluation of the evidence, their value, in relation to the fact and the analysis of the elements of the criminal offense, since this can only be done in the court session of the trial of the merits of the case, under the conditions of judicial debate and contradiction.

- Dismissal of the charge or the case in the preliminary session is decided only when elements of the defendant's criminal responsibility are obviously

missing and not when this can only result after the judicial examination and debate of the evidence.

- Review procedure in preliminary sessionit does not replace the judgment of the case on the merits and nor does it prejudge the final decisionher.

- The judge of the preliminary session cannot make a deeper assessment than that required for the judgment of the case on the merits, as well as cannot go into the matter of evaluating the evidence and valuing it in the sense of being proven, an assessment that is carried out in a later stage of the proceedings, that of judging the case on the merits.

- In case of a change in the charge, the prosecutor communicates it to the defendant at the hearing or to his defense, while in the case of a new charge, it is allowed to be communicated to the defendant or the defense at the preliminary hearing only if he gives his consent. In contrast, the prosecutor orders the registration of a new proceeding.

- In the case of submitting a request for securing evidence in the preliminary session, the judge does not examine it, but passes it on to the judge who examines requests of an urgent nature during the preliminary investigation phase.

- The right of the judge of the preliminary session to control the legal qualification of the fact, as well as the clear and precise formulation of the accusation, is a prerogative of this new procedural subject.

- When it considers that the preliminary investigations are not complete, the court does not declare that the discussion is closed and orders their completion, determining the directions of additional investigations and, when appropriate, the acts that must be performed. The court also determines the deadline within which the investigations must be completed and the date of the new session.

- The preliminary session is avoided in the cases where the proceedings are for a criminal misdemeanor, in the cases of the direct trial and the request for the approval of the criminal order.

- The judge of the preliminary session has the obligation not only to justify the decision related to the continuation of the investigations when he considers that there is room for further investigations, but it is imperative that in the ruling he also states about the return of the documents.

- At the stage of the preliminary hearing, conviction of the defendant's guilt is not required, but the sufficiency of the evidence in support of the charge.

BIBLIOGRAFIE

1. The Albania Constitution, approved by Law no.8417 dated 21.10.1998, amended by law no.76/2016, dated 22.07.2016;
2. Albania Criminal Procedure Code, Article 15/2, before the changes with Law 37/2015. The Supreme Court, decision no.7/2011;
3. Albania Criminal Procedure Code, approved by Law no.7905 dated 21.03.1995;
4. Albania Criminal Procedure Code, 1995, amended, Article 323 "Term of preliminary investigations";
5. Albania Criminal Procedure Code, 1995, amended, Article 24.
6. Albania Criminal Procedure Code, 1995, amended, Article 332/a "Preparatory actions" and 332/4 "Verification of the appearance of parties".
7. Albania Criminal Procedure Code, 1995, amended, Article 332 "Scheduling the preliminary hearing".
8. M. Hulaj, S. Beqiri, The legal position of the preliminary procedure judge in relation to other subjects during preliminary investigations, 2015.http://jus.igjk.rks-gov.net › Justicia_ALB_2015;
9. Albania Criminal Procedure Code, 1995, amended, Chapter IX, Preliminary Session, Articles 232 -332/e.
10. Albania Criminal Procedure Code, 1995, amended, Articles 329/b, 332/ç, 332/d, 332/dh.
11. Albania Criminal Procedure Code, 1995, amended, Articles 329.
12. Albania Criminal Procedure Code,1995, amended, Article 332/3.
13. Albania Criminal Procedure Code, 1995, amended, Article 332/a.
14. Albania Criminal Procedure Code, 1995, amended, Article 332/b.
15. Albania Criminal Procedure Code, 1995, amended, Article 332/c.
16. Albania Criminal Procedure Code, 1995, amended, Article 332/dh.
17. Albania Criminal Procedure Code, 1995, as amended, Article 400.
18. Albania Criminal Procedure Code, 1995, as amended, Article 328.
19. Albania Criminal Procedure Code, 1995, amended, Article 332/d.
20. Albania Criminal Procedure Code, 1995, amended, Article 332/dh.
21. Albania Criminal Procedure Code, 1995, amended, Article 405, "Abbreviated trial session".
22. Albania Criminal Procedure Code, amended by Law no.35 dated 30.03.2017 "On some additions and changes to law no.7905 dated 21.03.1995";
23. Law No.41/2021 “For some additions and changes to Law no.7905, dated 21.3.1995, Criminal Procedure Code, amended.
24. Italian Criminal Procedure Code, 2011;
25. A. Vorpsi, A. Anastasi, G. Ibrahimi, S. Berberi, S. Sadushi, On the constitutional reform in the justice system (2016), Commentary, Institute for Public and Legal Studies. https://ipls.org › 2020/07/10
26. K. Zylufi, L. Čuka,The role of the preliminary hearing judge in the criminal process, 2019. https://www.academia.edu

27. M. Hulaj, S. Beqiri, The legal position of the preliminary procedure judge in relation to other subjects during preliminary investigations, http://jus.igjk.rks-gov.net › Justicia_ALB_2015
28. Report on additions and changes to the Code of Criminal Procedure, 2017.
29. L'udienza preliminare, page 4, 2022.https://www.dirittoconsenso.it
30. Supreme Court, Periodic Bulletin, year 2022-2024. https://www.gjykataelarte.gov.al, Periodical bulletin.
31. Unifying Decision of the Supreme Court, 4/2002 and 3/2008;
32. Unifying Decision of the High Court 20/2005;
33. Unifying Decisions of the High Court 2/2013, 4/2002, and 5/2009.
34. Decision no.7, 2011, dated 14.10. 2011, Criminal College of the High Court;
35. Decision no. 115 (53), dated 18.02.2022, Criminal College of the High Court;
36. Decision no. 1151(183), dated 24.06.2022, Criminal College of the High Court;
37. Decision no.1235 (261), dated 13.10.2022, Criminal College of the High Court;
38. Decision no.469 (8), dated 16.01.2023, Criminal College of the High Court;
39. Decision no.40, dated 17.01.2023, Criminal College of the High Court;
40. Decision no. 94(23), dated 19.01.2023, Criminal College of the High Court;
41. Decision no.00-2023-1333, dated 28.07.2023 Criminal College of the High Court.



This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 353-365

COMMITTEE OF REGIONS OF THE EUROPEAN UNION IMPACTING LOCAL GOVERNANCE PERFORMANCE THROUGH REGIONAL INITIATIVES

O. QEJVANI, L. LIRËZA

Received 02.12.2024; accepted 12.02.2025
First online publication:15.02.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.242

PhD Olta QEJVANI
Department of Law, Faculty of Political and Legal Sciences
University 'Aleksandër Moisiu' Durrës, Albania
E-mail: oltaqejvani@uamd.edu.al
ORCID ID: https://orcid.org/0000-0002-4849-376X

PhD Linert LIRËZA
Dean of Faculty of Political and Legal Sciences
University „Aleksandër Moisiu" Durrës, Albania
E-mail: linertlireza@uamd.edu.al
ORCID ID: https://orcid.org/0009-0000-6182-1265

Abstract

A key organization in the European Union that represents municipal and regional governments is the Committee of Regions (CoR). It uses a number of regional efforts to significantly influence how local governance functions. In the EU policymaking process, the CoR represents the interests of cities and regions. It guarantees that local and regional leaders' opinions are heard regarding laws that impact local governance.

The Committee plans training sessions, seminars, and workshops to enhance local governments' capabilities. Through these programs, local authorities are able to acquire the knowledge and abilities necessary for efficient implementation of regional development context. The organization itself influences EU financing programs like the European Regional Development Fund (ERDF). The CoR ensures that financial resources are allocated to projects that enhance local infrastructure and governance by exerting influence over the allocation process. Additionally, it encourages municipal authorities to involve individuals in decision-making processes by promoting participatory governance models. Through these initiatives, the Committee of Regions significantly enhances the performance of local governance in the EU. By advocating for local

interests, facilitating knowledge exchange and promoting capacity building, the CoR aims ensuring that regional authorities have the proper capacities to meet the challenges they face and improve the quality of life for their citizens.

This paper aims to investigate the role of the CoR in local governance through the instrument of regional initiatives. It begins with an overview of the institution's structure, analyzes the regional initiatives that have been successfully implemented thus far and delves deeper into the ways in which the CoR works with other EU institutions to enhance regional initiatives. After conducting a qualitative investigation on the Lisbon Treaty and Committee of Regions web data, our final goal is to pinpoint the creative advancements that this organization has made that have strengthened local governance while also outlining potential further initiatives.

Key words: *Committee of Regions, European Union, regional initiatives, local governance, local authorities, regional development.*

INTRODUCTION

'As the voice of over one million locally and regionally elected representatives, the Committee is key to increasing the democratic life of the European Union and bringing it closer to its people and regions'.[1] CoR celebrates this year the 30th anniversary. Understanding that this dimension cannot be fully completed only from one institution such as CoR, still this structure plays a significant role on putting regional development and local governance into the attention of mapping and shaping EU policy.

CoR, even though being an advisory body of the EU, has a lot of powers to influence local authorities and policymakers at the same time. Researchers put this structure into the role of a bridge of communication between EU institutions and cities and regions. On the other hand, the way how CoR can and must function implies the principle of subsidiarity by bringing closer EU reality to citizens. Overall, citizens' initiatives are one of the most powerful instruments that CoR can empower more in order to strengthen local governance more.

I. COMMITTEE OF REGIONS ESTABLISHED TO STRENGTHEN LOCAL GOVERNANCE IN EUROPE

The Committee of the Regions (CoR) is an advisory body of the European Union (EU) that represents local and regional authorities. It was established in 1994, playing a crucial role in ensuring that the voices of local and regional governments are visualized in EU policymaking. It was created under the Maastricht Treaty with the aim of involving local and regional authorities more

[1] Vasco Alves Cordeiro, President of the European Committee of the Regions, https://cor.europa.eu/en/about/30th-anniversary-celebration-committee-regions , last seen in November 2024

effectively in the European legislative process.[2] The CoR's primary function is to issue opinions on proposed EU laws, particularly those that affect local and regional governments directly *(Hrbek, R., 2014, p.31)* .These opinions ensure that the perspectives of regions and municipalities are considered in the legislative process and EU decision making overview.[3]

The CoR represents various regions across the EU, promoting the interests of local and regional authorities. One of its most important functions is to facilitate dialogue between EU institutions and local and regional representatives, ensuring that local governance issues are adequately addressed within the EU agenda. Elected representatives from regional and local authorities in EU member states ensure that local governance concerns are included in European policymaking (*Bache, I., & Flinders, M., 2004, p. 467-488*). The CoR works through various committees that focus on specific policy areas such as the environment, economic development, and social issues, among others.[4]By serving as a platform through which regional and local representatives can influence EU legislation and policies, the CoR helps ensure that decisions at the European level are more closely aligned with the needs and realities of local communities. [5] Unlike the European Parliament or the European Commission, which represent national interests, the CoR is composed of local and regional elected officials who bring their expertise and knowledge of their respective territories to the EU policy debate. These representatives are chosen from member states based on their electoral processes and are appointed for renewable five-year terms (*Kohler-Koch, B., 2009, p. 487-510*)[6]. Although the opinions issued by the CoR are not legally binding, they carry significant weight, particularly as they represent the views of those directly involved in local governance. In some cases, the European Parliament or the Council of the EU may request that the CoR issue an opinion before proceeding with legislative action. The establishment of the CoR was a response to growing demands for greater decentralization and stronger local representation within the European Union. Local and regional authorities are often key players in implementing EU policies. From the management of funds under the EU's Cohesion Policy to the implementation of regulations in areas such as

[2] European Union Committee of the Regions (CoR). (2023). *The Committee of the Regions: A Guide to Its Role and Activities*. European Union Committee of the Regions, pg.3

[3] European Union Committee of the Regions (CoR). (2021). *The Committee of the Regions: A Vital Voice for Local and Regional Authorities in Europe*. European Union Committee of the Regions, pg.21

[4] European Union Committee of the Regions (CoR). (2020). *The Role of the Committee of the Regions in the EU Decision-Making Process*. European Commission, Brussels, pg.23

[5] European Parliament. (1997). *Treaty on European Union (Maastricht Treaty), Title VI: Committee of the Regions*. European Parliament, pg.27

[6] Of the Regions (CoR). (2023). *Annual Report on the Work of the Committee of the Regions: 2022-2023*. European Union Committee of the Regions.

health, education, and public services, these authorities are responsible for translating broad EU initiatives into practical solutions for citizens. Through the CoR, local authorities can ensure that their voices are heard in Brussels and that European policies reflect the diverse needs and challenges of different regions.

II. MANAGEMENT OF REGIONAL INITIATIVES STRENGTHENING LOCAL GOVERNANCE

The institution has a specific function in the decision-making process, which as the Lisbon Treaty provides:

1. Compulsory consultation of Commission and Council:

'The European Commission and the Council of the European Union *must* consult CoR whenever new proposals are made in areas that have repercussions at regional or local level: economic, social and territorial cohesion, Structural Funds, European Regional Development Fund, European Social Fund, employment and social affairs, education, youth, vocational training, culture and sport, environment, energy and climate change, transport, trans-European networks, and public health'[7]. The need that the CoR's viewpoint on regional development is taken into account while making decisions in a process is a very constructive approach. In this regard, even the elements made available by the legislation present a very solid starting point. Despite of all the efforts of Lisbon Treaty, this provision is still insufficient to strengthen the function of the CoR and regional development in a larger framework. It will be more helpful in this regard that EU Commission and the Council consult CoR for each of the issues related to regional development.

Article 80 covers sensitive development sectors that have a significant impact on citizens' lifestyle and are in some ways existential. In this context, including regional development in this area will specifically enable the continuity of the consultation process as needed.

2. *Optional consultation of Commission and Council:* [8]

Outside these areas, the Commission, the Council, and the European Parliament have the option to consult the CoR. The Committee adopts recommendations on drafting EU laws and also proposes new policies on the basis of local and regional experience and expertise. It can also propose new laws and introduce new issues on the EU agenda. Lisbon Treaty has recognized and strengthened more the role of CoR in this regard. During all the phases of the EU legislative process the Commission and the Council can and must be consulted with the CoR when it comes to regional issues.

---

[7] Article 80, pg2, Lisbon Treaty, https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:306:FULL:EN:PDF,

[8] See Article 9, Lisbon Treaty, https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:306:FULL:EN:PDF,

COMMITTEE OF REGIONS OF THE EUROPEAN UNION IMPACTING LOCAL GOVERNANCE PERFORMANCE THROUGH REGIONAL INITIATIVES

Although it is a nebulous tool inside the Lisbon Treaty's framework, it is closely linked to the CoR's use of its authority to enhance local referendums and incorporate them into the EU's decision-making process for local and regional initiatives. CoR has to act as a link between EU institutions and regions on the opposite side in this regard. Starting with the Lisbon Treaty, the (CoR) ought to be viewed as the primary institution for enhancing the legal aspect and practical implementation of local and regional endeavors within the European arena. The Treaty provides a "limited space of action," but the Council of Representatives (CoR) needs to speak up to put regional and local ideas in the correct frame of mind for discussion.

This institution can still provide a thorough study of the state of ECI – European Citizens' Initiative use in the EU by pressing the Commission to create specific legislative proposals related to this topic. This institution should not *"sit and wait"* when the Commission requests guidance in this regard. In light of the Treaty's provisions and the CoR's activity, it is clear that the CoR needs to act on this matter, place it on its political agenda for execution, and employ the appropriate legal options. This reform can only be implemented if the Commission and the CoR take a more active role in this framework.

There are some recent positive developments in regard to ECI and regional initiatives. For the first time, the European Commission has developed a specific programme called *ISA*, which promotes interoperability solutions for European public administrations.[9] In this context, a specific EU survey has been launched on 14 July 2022 [10] to measure civil society support towards ECI implementation. Considering this as a very good start on producing qualitative and quantitative feedback, it is still not enough only to be developed in civil society arena.

If the role of Commission is to work on this system and *'keeping this practice alive'*, the Ombudsman must be the voice of advocacy and information. On the annual report for 2024, the CoR advocates for stronger local and regional involvement in EU policymaking, particularly in the context of the European Green Deal and the digital transition. It underscores the role of regions in driving long-term transformation and calls for more inclusive, bottom-up decision-making processes. The report also highlights the role of cohesion policy, particularly in addressing the unique needs of rural areas and supporting EU enlargement. Additionally, the report touches on the European Health Union initiative, the post-war recovery efforts for Ukraine, and recommendations for reforms in EU economic governance, which aim to enhance regional cohesion and strengthen democratic processes. Overall, it stresses the vital role of local and regional

[9] See the specific webpage of EU on ECI, facts and figures: https://citizens-initiative.europa.eu/news/survey-civil-society-support-european-citizens-initiative_en
[10] Ibid

governments in building a more cohesive, sustainable and resilient European future. [11]

III. IMPLEMENTED INITIATIVES IN EU AND LATEST UPDATES OF COR ACTIVITY

The first data collection of ECI implementation being visible and transparent for the public is in May 2022. [12] This collection provided a well-detailed panorama of ECI in the EU. For the period 2012 – 2020 six successful initiatives have been conducted:

1. Right2Water
2. One of Us
3. Stop glyphosate
4. Stop vivisection
5. Minority Safe Pack
6.End the Cage Age.

What is quite interesting is the fact that from 2020 – 2022 a high number of initiatives is being conducted through online system of collecting signatures:

1. Stop Finning – Stop the trade
2. Voters without borders
3. Full Political Rights for EU Citizens
4. Start Unconditional Basic Incomes (UBI) throughout the EU
5. Right to Cure
6. Green Garden Rooftops
7. European Eco Score
8. Save cruelty free cosmetics
9. Civil Servant Exchange Program (CSEP)
10. Return the Plastics
11. Call to Action
12. Environmental Protection in all Policies
13. Green VAT
14. Stop (((5G)))
15. Win It On The Pitch.

In keeping with the previous reasoning, this data ought to be included in the CoR website and vision by explicitly outlining the efforts that have an impact on local and regional outputs. The EU surveys include public calls to participate in online polls as well as other activities designed to inform the public about ways to improve the initiatives.

[11] See the Annual Report 2023 of CoR https://cor.europa.eu/sites/default/files/2024-09/Report-state-regions-and-cities-EN.pdf

[12] Check data provided in EU barometer https://europa.eu/citizens-initiative-forum/sites/default/files/2022-05/ECI_Infographic_2022.pdf

COMMITTEE OF REGIONS OF THE EUROPEAN UNION IMPACTING LOCAL GOVERNANCE PERFORMANCE THROUGH REGIONAL INITIATIVES

In the recent decision-making of CoR 'Reinforcing democracy and integrity of elections'[13] there are some changes proposed from the Committee that truly support the local and regional context:

a. *Text proposed by the European Commission*: The funding of European political parties and European political foundations from the general budget of the European Union or from any other source may be used to finance referendum campaigns when those campaigns concern the implementation of the Treaties of the Union.

b. *CoR opinion:* Referendum campaigns concerning the application of Union Treaties may be funded by European political parties and European political foundations using funds from the EU general budget or any other source, provided that the subsidiarity principle is duly taken into consideration.

Reason: Referenda are held at the local, regional, or state levels in a few Member States. This suggests that referenda on various administrative levels would address matters pertaining to their particular area of competence from a legal standpoint. To guarantee that European political parties and foundations only fund referendum campaigns in referenda with a definite EU-wide component, more controls must be put in place.[14] It is a good thing that the Council of Representatives (CoR) has oriented the change proposal at the level of local and regional initiatives (referendum), even though this text treats referenda under the general canopy of elections. Even in other CoR opinion documents, the referendum is included as part of the general viewpoint rather than as a separate topic of discussion. It is strongly advised that documents of this type highlight and narrowly focus on the components of direct democracy and the requirements for additional evaluation.

What must be taken into consideration in this regard, is the fact that the opinions of the institution contain multidisciplinary arguments and relevant recommendations based on the connection of EU acquis and national legislation.

IV. OTHER STRUCTURES THAT COR CAN COLLABORATE WITH

The Committee of the Regions (EU) and the Congress of Local and Regional Authorities (Council of Europe) are two parallel organizations that function in the heart of the European arena with regard to local and regional democracy. In addition to a shared strategy, a cooperative agreement between the

[13] See the Opinion of CoR COR-2022-01120-00-00-AMRC-TRA (EN) 1/18 EN, Interactio - hybrid -12th CIVEX Commission meeting 'Reinforcing democracy and integrity of elections' https://polit-x.de/en/documents/7126561/europa/english/committee-of-the-regions/cor/rapporteur-commission-amendment-2022-03-24-9-amrc-reinforcing-democracy-and-integrity-of-elections,

[14] See CoR opinion on Reinforcing democracy and integrity of elections https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/reinforcing-democracy-and-integrity-elections-package

Both institutions are now partners in the framework and are working to draft and update a cooperative agreement. [15] It has come the time that these energies will turn on a synergy when dealing with local and regional initiative. Exploring into this agreement, no space for citizens initiatives is considered. Of course, there is a lot to be done on paying attention to direct democracy magnitude.

Even though, being positioned as 'not direct competent' institutions who deal specifically with local and regional initiatives, their activity has helped regional initiatives to be better legally positioned and on the other hand working with the social dimension of citizens' approach. European Commission, European Parliament, Regional Cooperation Council, EU Ombudsman are listed some of the other institutions that have supported the CoR activity in this regard. These institutions even being a second handed level of local and regional initiatives implementation, they do have many to say and act in this regard. What is more important is the way how these institutions can shrink their work together with CoR activity, mission and vision ahead. Even though not being created and functioning specifically for local and regional development, initiatives, these institutions can play a crucial role on empowering this task among citizens and other institutions. The impact of the decision making is highly important to push and move forward this process as a unique practice of European values. In this context, it is worthy to analyze also the activity of the following institutions for local and regional initiatives improvements:

- The European Parliament;
- The Ombudsmanl;
- The European Court of Justice (ECJ);
- The European Commission;
- The Regional Cooperation Council (RCC).

In our opinion, the proper implementation of local and regional initiatives does not only depend only from Committee of Regions as the responsible institution, but it is a matter of each of the EU institutional mechanisms. This agenda involves all the EU system and must dive from inner spaces to the proper spotlight. This conclusion is based also on the recent initiative of the Commission, which has created a specific website on how EU supports local and regional integration. [16] Some of the highlights related to each of the institutions, in our evaluation, are as following:

1**.** *European Commission*: The CoR provides input on legislative proposals and policy initiatives that affect local and regional authorities. The Commission consults the CoR for opinions on draft laws and strategies, especially in areas like

[15] See some examples on the Cooperation Agreement between Council of Europe and CoR format and relevant issues at https://rm.coe.int/20180327-cooperationagreement-revised-co-operation-agreemnt-between-th/168079b433,

[16] See facts and figures and the way how the composition of the https://migrant-integration.ec.europa.eu/eu-grid/local-and-regional-integration_en, last seen in January 2024

regional development, cohesion, and the EU's multiannual financial framework. The Commission often incorporates CoR feedback in its proposals.[17]

2. Council of the European Union: The CoR works with the Council, particularly in areas of regional development, urban policy, and the EU's internal and external cohesion policies. The CoR issues opinions on policies under discussion in the Council, advocating for the interests of subnational governments.

3. European Parliament: The CoR collaborates with the Parliament through regular consultations and the delivery of opinions on EU legislation that impacts local and regional governance. CoR members often present these opinions directly to Parliament committees to influence policy debates, especially in areas such as employment, the environment, and public health.[18] European Parliament seems to be active for ECI implementation, being the only EU institution, which members are elected directly from EU citizens. Having direct communication with EU citizen, have imposed that local and regional development will be a daily agenda of the activity, in specific during elections and beyond. In September 2017, based on the Parliament's requests and a public consultation, the Commission eventually issued its proposal for a new regulation for ECI. The Committee on Constitutional Affairs adopted its report on the Commission's proposal on 20 July 2018, which was then followed by a plenary vote on 5 July 2018 to start inter-institutional negotiations on the new ECI Regulation. On 12 December 2018, Parliament and the Council reached a political agreement. Following Parliament's resolution of 12 March and Council's approval on 9 April, the final act was signed on 17 April 2019 and published in the Official Journal on 17 May 2019. '*The new ECI rules (Regulation (EU) No 2019/788) repeal Regulation (EU) No 211/2011 and apply as of 1 January 2020. The new ECI Regulation makes the ECI more accessible, less bureaucratic and easier to use for organizers and supporters, while also strengthening the follow up'*. [19]

In order to empower and keep establishing the implementation of this instrument, the Parliament can organize consultations with citizens on how to use this instrument. The open days or even online consultations can really help that the structures and citizens can properly understand and implement this instrument.

---

[17] European Commission Communication on the Role of the Committee of the Regions (COM(2017) 328): This document outlines how the Commission consults the CoR on legislative and policy matters impacting regions.

[18] European Parliament, *The Role of the Committee of the Regions in EU Governance* (Briefing Paper, 2019)**:** A detailed document describing the CoR's interactions with the European Parliament.

[19] See Fact Sheets on the European Union European Parliament 11-2020, https://www.europarl.europa.eu/factsheets/en/sheet/149/european-citizens-initiative, last seen in July 2022

There are of course updated fact sheets of the initiatives that EU Parliament is managing through, but a calendar of open days, being visible in the website of Parliament. In addition to the Parliament's attempts to implement ECI, there is a particular body within called the "Committee of Regional Development" (REGI). The existence of a committee devoted to regional development is still a good thing. Two options can yield the greatest outcomes in terms of genuinely enhancing the ECI component within EU institutions:

- REGI's more overtly proactive involvement in citizen projects.
- It would be appropriate for the EU Parliament to create a dedicated committee on ECI. In terms of the Parliament's authority and function, this would be the best location to direct efforts toward citizen ideas. In this sense, the role of a particular committee for their "own voice" is also applicable to other institutions and to the population of Europe.

Researching the best way to integrate direct democratic culture with civic activity, or even offering certain "measures" or "elements," is one way the EU Parliament might support local and regional projects. For this reason, research and capacity-building initiatives can be employed to link project development and research priorities.

4. European Ombudsman**:** While the CoR does not work directly with the Ombudsman, it can engage with the Ombudsman when there are complaints about maladministration that affect local and regional authorities within the EU. The Ombudsman's role in ensuring transparency and accountability in EU institutions can also align with the CoR's objectives in promoting good governance at all levels. *The EU citizen are shielded by this institution from the "bad administration" of EU organizations. In spite of this, even in cases where the complaints pertain to issues involving the European Union, the Ombudsman does not handle complaints against municipal, regional, or federal authorities.* [20] This strategy needs to alter, in our opinion, for the following reasons:

1. There is a greater chance in the local community for citizens to suffer from "bad administration" in the EU. Local communities can feel disconnected from the EU at times. The amendment to this clause needs to be beneficial in order to actually bring the EU and its inhabitants closer together.

2. The "trust" that local and regional communities' residents have in the EU institutions is lacking. This reality will be altered if the Ombudsman handles their complaints regarding EU matters to local and regional authorities.

Nevertheless, the Ombudsman makes every effort to maintain local and regional development within the parameters of its mission and vision by creating,

[20] See details at Fact Sheets on the European Union, European Parliament, https://www.europarl.europa.eu/factsheets/en/sheet/18/the-european-ombudsman, last seen in July 2022

if feasible, alternative proposals for improving the sense of protection that EU citizens have against "bad administration" of EU institutional mechanisms. There isn't currently a specific guideline aimed at regional and local administrations. Furthermore, since the European Ombudsman reports annually to the Parliament, it would be possible to draw their attention to the issue of local and regional initiatives by making specific recommendations.

The Ombudsman's vision and mandate cannot be fully realized with just the 11 recommendations for enhancing ECI in the European context. These recommendations must be accompanied with concrete action strategies on how Ombudsman can be the voice of citizens and a ‘connector bridge’ between them and EU institutions.

5. Regional Cooperation Council (RCC)**:** The CoR cooperates with the RCC on matters related to regional integration, stability, and development, particularly in the Western Balkans. The RCC's focus on fostering cross-border cooperation and strengthening regional governance aligns with the CoR's aim to represent the interests of regions and cities in EU and international frameworks. The purpose of the Regional Cooperation Council (RCC) is to support regional development in Southeast Europe. This framework can thus be viewed as a link between EU and non-EU nations. A visit to the official website, www.rcc.int , reveals that local and regional projects are not given any particular emphasis. It is advised that the RCC agenda take into account citizen initiatives. Ignoring this crucial aspect will likely result in some barriers to achieving the goal of regional development in South East Europe. This concept is essential not just for the link between South East European countries and regional development, but it is even more important considering the urgent need to promote civic culture in local and regional initiatives. It could be helpful to have an extensive list of other members of civil society who promote networking and information empowerment, such as institutions, non-governmental organizations, the general public, and other stakeholders. maintaining the current procedure for filing petitions, but creating a second, parallel process whereby petitions supported strongly by regional or local organizations are posted on the EP website sooner or, alternatively, are guaranteed a hearing and a formal response from the EP's Committee on Petitions. The Committee of the Regions may need to establish a schedule for determining whether local groups are eligible for this upgraded track in order to avoid wasting its time on pointless petitions. Each Member State's delegation to the EU Committee of the Regions may provide a schedule accordingly. Unless the relevant CoR delegation determines differently, we suggest making school groups' eligibility a default assumption in order to specifically encourage youth engagement.

CONCLUSION

1. EU law must change the practice of 'EU Commission evaluating an ECI'. A European Citizen Initiative must be delivered to the Council and the Parliament by being part of first and second reading, just as the other legal proposals coming from EU Commission. This will encourage EU citizens to feel and be part of the decision making in the Union and will also help making ECI part of European civic culture. This is a change that can be easy to be reflected in the specific regulation for ECI and of course can be a more adequate reflection on the opinions of CoR.

2. There is not a direct democracy approach and theory based included or explicitly mentioned and treated into EU policy making and decisions. In order to put the right attention to it, some direct democracy elements and principles must be emphasized as main insights of secondary legislation and more in specific to the activity of CoR.

3. Being established as a specific and dedicated space for local and regional development, CoR must enforce and encourage the local and regional initiatives into its everyday agenda. A joint agreement with specific detailed approach for local and regional initiatives between the Committee and the Congress will minimize the double actions that European countries must take and behave related to this issue. On the other side of the medal, this will raise the level of visibility for public opinion and encourage the implementation of citizens' initiative into the local and regional communities. The first step into this regard has begun with the approval of Resolution of the Congress for holding referendums in local community. An urgent recommendation would be the harmonization of the acts of CoR and Congress as the adequate impact of joint agreement.

4. The European Parliament has already established a specific committee for regions (REGI), but which does not express an active operation of ECI application. Due to the fact that the European Parliament is elected directly from the EU citizens, it is the time that a special committee on ECI facilitates the communication and consultation with citizens on how they can make the term of initiatives part of civic culture.

5. The EU OMBUDSMAN must be competent of treating initiatives that have not succeeded into the Union and this must be sanctioned through secondary legislation in the Union. The European Ombudsman does not have the right to treat the requests from citizens towards their municipal councils even though when the issue is related to EU matters. It would be highly recommended that the Ombudsman treats these requests, because many violations happen in the local and regional communities when it comes to EU principles.

REGIONAL COOPERATION COUNCIL RCC: launching local and regional initiative into the Western Balkans, strengthening and developing

programmes dedicated to citizens' initiative/referenda in the context of regional development of WB using citizens' initiatives.

BIBLIOGRAFIE

1. Cooperation Agreement between Council of Europe and CoR
2. CoR opinion on Reinforcing democracy and integrity of elections
3. European Commission Communication on the Role of the Committee of the Regions (COM(2017) 328)
4. European Parliament, *The Role of the Committee of the Regions in EU Governance* (Briefing Paper, 2019)
5. European Parliament. (1997). Treaty on European Union (Maastricht Treaty), Title VI: Committee of the Regions. European Parliament
6. Lisbon Treaty of the European Union
7. Opinion of CoR COR-2022-01120-00-00-AMRC-TRA (EN) 1/18 EN, Interactio - hybrid -12th CIVEX Commission meeting 'Reinforcing democracy and integrity of elections';
18.
9. Bache, I., & Flinders, M. (2004). The Committee of the Regions and European Integration: A Political and Institutional Analysis. Journal of Common Market Studies, 42(3), 467-488;
10. Kohler-Koch, B. (2009). The Role of Regional and Local Governments in EU Policy-Making: The Case of the Committee of the Regions. European Political Science Review, 1(3), 487-510;
11. European Union Committee of the Regions (CoR). (2023). Annual Report on the Work of the Committee of the Regions: 2022-2023;
12. European Union Committee of the Regions (CoR). (2021). The Committee of the Regions: A Vital Voice for Local and Regional Authorities in Europe. European Union Committee of the Regions;
13. European Union Committee of the Regions (CoR). (2023). The Committee of the Regions: A Guide to Its Role and Activities. European Union Committee of the Regions;
14. Hrbek, R. (2014). The European Union and the Committee of the Regions: An Analysis of Local Governance and Regional Development. Springer;
15. www.cor.europa.eu
16. www.eur-lex.europa.eu
17. www.europa.eu
18. www.rm.coe.int
19.www.europarl.europa.eu.

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 366-376

THE EFFECTS OF AI ON CHILDREN'S RIGHTS

A.-C. RATH-BOȘCA

Received 11.11.2025; accepted 10.12.2025
First online publication: 20.12.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.298

Albert-Camil RATH-BOȘCA
Faculty of Law, West University of Timișoara,
Faculty of History, Univeristy of Oradea Romania
E-mail: camilend@yahoo.com
ORCID ID: https://orcid.org/0009-0004-6815-9509

Abstract

In today's world, AI seems to have invaded the day to day lives of us humans. At such a break-neck pace we must ask ourselves how will this new advancement in human history influence the most sensible of groups, the children. In this article, we will make an effort to understand how AI is molding and infringing on the most basic of rights and what is currently happening in Machine Learning (LM) development.

Key words: *AI, UNCRC, Children's rights, United Nations, AI regulation*.

INTRODUCTION

In the last few years, a strange event changed the capricious trajectory of history in a manner no one could have predicted. The advent of artificial intelligence has shaken the day-to-day life of many people. Once an absurd idea that comes from science fiction, AI became a reality that equally must intrigue us and terrify us.

On October 28th 2025, Amazon has announced it will fire about 14.000 people[1] in a very short amount of time. This is becoming more and more a usual occurrence as many companies are choosing to replace their employees that have rights, needs and sometimes even dare unionize with cold machines that do the same job.

Many people are bound to lose their jobs to these new generative AI models. This is a horrible perspective that has been covered by plenty of scholars and journalists, however, one aspect that has escaped many people who broached

[1] https://www.reuters.com/sustainability/amazon-lay-off-about-14000-roles-2025-10-28/. Link accesat la data de 29.10.2025

or delved in the subject is how do these AI programs interact with the rights of children.

How does a soulless genie that provides information and simulated feelings interact with the rights that a state guarantees to the youth of today and the citizen of tomorrow? In this article we will try and see what rights are granted to the child by United Nations Convention on the Rights of the Child (UNCRC) how AI directly affects these rights and what change should be implemented by legislators, both in an international and national context in order to protect the normal and healthy development of kids.

I. THE RIGHTS OF CHILDREN AND THE ISSUE OF APPLYING THE CONVENTION

According to the UNCRC, a child is considered a person under 18 years of age except for cases where the national legislation defines such persons differently[2]. Some notable exceptions of signatories are New Zealand which considers people to be fully grown after the age of 20[3] and some regions of Canada considering the age of majority to be 19. Of course, the vast majority of legislations grant different rights and obligations as a child is growing up but they do not get full rights and obligations until hitting the age of majority.

The first specific right that is given to children according to the convention is the right to not be discriminated[4]. It is specified that no child should be discriminated on the basis of: race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

All of these impediments are great on paper, however, when it comes to apply such norms there are massive issues to the way and limits of implement them. Obviously, no person should suffer from discrimination but the reality of the situation is that the vast majority of the countries that have signed the UNCRC have some level of discrimination embedded in their social and cultural fabric.

Many studies can be cited in this regard. A recent study conducted by the UN shows that an estimate of 40% of people have self-reported incidents of discrimination mostly coming from North-America and Oceania (OECD, 2025, pp. 2-4). This is solid proof that even if the law stipulates the right to not be discriminated against, the application remains faulty. There is always some form of discrimination to be expected in a global and multicultural world, as such, the treaty cannot be fully respected unless individual states take up serios initiatives to shift their societies at their core.

Article 3 of the convention states that all authorities, be them private or statal, shall always act in the best interest of the child based on all social, economic and cultural factors specific to the signatory country. In this instance,

[2] Art.1 of the UNCRC
[3] Art. 5 of the Age of Majority Act 1970 of New Zealand
[4] Art. of the UNCRC

this is a more preferable approach since there is a wide spectrum of signatory countries. Each country will approach the idea of a child's best interest.

Another article that has idyllic implications but proves dishearteningly hard to implement is art. 6 which grants the child the right to life, survival and development. This notion is mired in a malevolent irony. We only have to look at UN membership to see that realistically, there are a huge number of children that have to endure severe starvation, poverty and in some cases even become child soldiers in the case of Sudan or Congo.

Article 8 specifies that the child has the right to identity. Again, here we have another impasse regarding interpretations. How do we allow all children to preserve their identities when many signatories don't recognize their identities? Kids belonging to ethnic minorities, the LGBTQ+ community, racial backgrounds, religious beliefs are attacked both nationally and internationally by the people that are meant to protect them.

We could spend pages, volumes and tomes to critique both the UN and the UNCRC, however, it would prove useless. Many more qualified people have done just that either from a place of honesty or due to monetary interest. We should however retain 2 main ideas from this brief analysis.

Firstly, due to the nature of the UN there is a fundamental flaw in the manner that all international treaties are implemented. Technically, the UN can even intervene with peace forces, it can implement a variety of economic sanctions, but all of these are ultimately dysfunctional. Even if a peace force would intervene to stop a war, we would just witness another Yugoslav style disaster, if they implement economic sanctions they will unavoidably worsen the situation of both citizens and broadly of children. Any and all solutions allowed by the UN charter, chapter VII are fundamentally inefficient.

Secondly, the fact that individual countries get to define what it means to protect the rights of a child is a double-edged sword. On one hand it allows different countries to maintain cultural aspects that have history behind them and make the country unique, on the other hand, this also allows for faulty definitions and for the living standards of children across the many signatories be wildly different.

Let us take the example of education. While most signatory countries offer free primary, secondary and high school education for the children, the economic and social conditions of individual countries shape how this is applied. While Qatar offers free school supplies, countries like Romania cannot offer free transport and basic necessities regarding the simplest of needs like heating or indoor bathrooms for rural schools. In some countries that experience severe poverty that even Romanian conditions would be wonderful.

The UNCRC is the groundwork and the blueprint for all national legislation that protect the rights of children. This relatively basic set of rules has

severe issues of application, and as such, we must be careful in how we approach any and every issue regarding to the rights of children.

II. How does AI really work?

Artificial intelligence as it is known, is not a as advanced as we may initially think, and it's not an innovation in itself. The earliest form of artificial intelligence is referred to as expert systems.

The initial push for AI starts in the 1950`s and until recent developments it was capable of offering a fact-simile of an expert. The first models used symbolic logic which used expert knowledge in order to make binary decisions. It is either 0 or 1, hot or cold. This type of logic required an expert in the given field to grant his knowledge to be programmed in the code. The machine itself could give positive or negative answers, nothing more, nothing less.

In 1965, mathematician Lotfi A. Zadeh developed the idea of fuzzy logic, by which a system can identify more variables (Kultaran Kumari, pp. 155). Values can exist between 0 and 1 in the binary of truth and false. If we are to use the example of an engineer, early symbolic logic could not process the structural integrity of a building but fuzzy logic could estimate the possibility of an accident happening.

These initial breakthroughs were important but where nowhere near what we commonly refer to as AI. These early research attempts and the evolution of symbolic logic towards fuzzy logic were essential steps in the progress but they were of niche use and unreliable for broader use. Nowadays fuzzy logic is still used but in a more advanced state (Kultaran Kumari, pp. 156-158)

In its current state, AI has become defined by Machine Learning systems. Also called ML (Daphna Idan and Sharon Einav, 2025, pp. 02-04), these systems process data in order to slowly develop a notion of what the user wants to gain from interacting with it. Such a process was unfeasible due to the lack of data but with the advent of the internet a huge swath of information just ripe for the taking.

There is both controversy and legal issues for Open Ai, the company that created ChatGPT, the first Large Language Model (LLM) available to the public. There is public knowledge that the company has pirated an immense number of books, articles, scripts, and any other form of written media and research[5]. This has led to lawsuits in the ballgame of millions of dollars.

One could write a whole book about the shady practices of AI research companies, but that is not the purpose of this specific paper. The point we are making is that yes, LLMs are a huge breakthrough, however, the foundation upon which these new machines were built is rickety at best if not downright law infringing. This aspect will be essential in the latter pages.

[5] https://futurism.com/artificial-intelligence/openai-danger-authors-internal-slack-messages accessed on the 28th of October.

What does an LLM actually do? In practice, an LLM will take input information and using a vast network of neural networks in order to process an answer. The machine does not comprehend what it is writing, it has no notion of what the words in the answer mean. By estimating what the input demands the machine will give a fact simile of a human answer. It is an estimated word salad that mimics an expert answer.

Depending on the complexity of the question, the machine will give a more or less intricate and accurate answer. ChatGPT was launched in the year 2022 and since it had some major and minor improvements towards the process and results of input data, but it still has some issues regarding it's functioning.

In day-to-day use LLMs prove useful for general queries, not quite human yet, but close enough to replace menial tasks like email writing or basic descriptions of items, elementary concepts and historical or mundane events. It stands to reason that LLMs function as jack of all trades utilities with the potential to make hyper specific tools such as Juro for contract drafting or SciSpace for academic research.

Another type of AI which is particularly important for our discussion is Text to Video (T2V). This form of AI fundamentally does the same thing but it differs by very little. Instead of estimating what a person wishes to read, the machine will grant the user an estimation of what they wish to see based on previous data. It's a game of estimating based on given data.

In both cases, AI has been prone to what experts call hallucinations. On some occasions, the LLM will give off an overconfident answer that is factually wrong. These instances of wrong information being spread by machines is a price that must be paid in order to progress their learning.

Between a model that is programmed to never give a false information and one that is allowed to produce results that may be factually wrong, the latter will have a better success rate due to the hardship of programing what an error is (Dang Anh-Hoang*, Vu Tran and Le-Minh Nguyen, 2025, pp. 03-06). The one that never spells misinformation will simply state that it doesn't know, the other one can learn from mistakes if the users or new data given may prove its mistaken.

III. FIRST AS A TRAGEDY….

We have analyzed the concepts of child's rights and what AI is, does and how it works. With these two notions mastered we can finally reach the purpose of this article, how does AI impact the rights of children?

We have to tread lightly since there is not sufficient long-term studies that can prove in an uncontestable manner that AI is good or bad for children's development. We are going to engage in a level of cautious speculation based on what little research we have, previous research that is similar enough like the effects of social media on children and current trends in AI uses and research.

A first obvious right that the machines infringe is the right to education. As mentioned above, AI models will unavoidably give erroneous answers. This factual statement will lead to children learning falsities as truth and propagating it amongst its peers. It is very much similar to a virus, if one kid in a class will be sick, all of them will be sick.

During a podcast hosted by Harvard University[6], researcher Ying Xu explained that still AI can be used for good purposes. If the AI tool is made for educational purposes, it can offer a child some help with developing academic skills. Most AI tools are not used as such, they pose challenges regarding the true nature of the given information even for adults. We can only imagine how hard it would be for a child to sieve through fact or hallucinations.

As previously stated, AI does not understand what it gives back from the input task and as such it cannot correct itself unless the user points out the error it made. The other issue is the piracy that was committed by Open AI in order to train their model. Those sources may be out of date or even false in their nature.

A spark of the creator is seen in every art piece, and so is the spark of the maker in every tool. If the creators of these sites had no issue in stealing millions of written, filmed, or recorded pieces of art or non-fiction, how is a parent certain that this specific behavior may not be imbued in the user?

Fundamentally, a child using AI to do homework is stealing a non-tangible item. It's information devoid of source or review that would result in the ending of any academic career. As such, why are teachers made to fight with

From a teacher's standpoint, the use of AI for making essays and homework is an atrocity. The whole point of giving out homework is to train the student in the specific curricular area, not to just be made. Beyond the shady quality of the work, the cognitive skills are not developed.

Education serves to create the mental stamina and patterns necessary for work and ultimately for the better enjoyment of life. Literature and art are essential to enriching one's life, so is mathematics and physics for developing logic. History is essential to develop critical thinking skills as it is based on understanding data in order to reach a competent conclusion.

If all these skills get outsourced to a machine, then the still developing child will unavoidably grow without having some essential skills for his work life or even for his day-to-day life. There is no joy in art if one can't comprehend themes that were here with the birth of humanity, one cannot write proper documents without understanding grammar, humans cannot be human without the connection of a species.

Another way AI is slowly unraveling the purpose of education is the social aspects, what social media started by dissolving what reality and digitality is, AI

[6] https://www.gse.harvard.edu/ideas/edcast/24/10/impact-ai-childrens-development

is fully finishing by stripping the student of the option to acquire basic skills necessary for personal and work purposes.

To refer back to the podcast with researcher Ying Xu, she did say that there is a pattern of rude or inappropriate language used by children in relation to AI. The lack of interference in such instances may lead to poor developmental outcomes for the young child.

In a school, a kid doesn't just gain the technical skills to understand what they want to do when they grow up, but they also learn to socialize and work as small teams or larger units. Since AI can do the essays and the homework, group projects become a boring sequence of kids exchanging their share done by an AI.

In its essence, the educational act is becoming inefficient or even futile in its two main purposes, to form critical and technical thinking and socializing a child. If these two functions cannot be met then the teacher becomes obsolete in a world of machines and children with no interest in learning anything.

The exact same issues that are caused by the lack of socialization and lack of learning in a long-term manner also infringe on the right to development and identity. Since the child can't develop normally due to a lack of education there is no requirement to expand on this point.

The one concept that we should however further explain is the right to an identity. Since education is an essential part of development and is the first aspect that is denigrated by LLMs, normal development is impeded. Part of that development is identity formation.

Forming an identity is not a science, it's a living process that involves trial and error especially for children. The lack of normal developmental steps leads to a youth that is fundamentally stripped of usual experiences.

The science does tell us that children form an identity by differentiating from the mother or generally the primary caregiver (Jennifer H. Pfeifer, Elliot T. Berkman, 2019, pp.2-3) and from others in their adolescence. If AI becomes a factor in how children self-identify we have strange predicament of a child relating to an object, not a complex human that can influence the child in a proper manner.

IV. ……THEN AS FARSE

Here we must ask ourselves if AI can be a force for good in regards to children, again, due to the lack of long-term studies we can only estimate how the mind of the youth will be molded by these new material conditions. But beyond the issue of cognition in children, we must also understand the purely material conditions that AI is forging from its digital fires.

So far, the studies we do have do not give us much hope for the future. Generally speaking, the use of AI can grant a personalized study experience but

most times create a dependency on the machine. Students[7] cannot operate at the same level in the absence of a LLM (Vieriu, A. M., & Petrea, G., 2025, p.363). What is the price of having such a companion?

The first clearly observable cost of AI use is the job market. Before AI all menial tasks were done by actual humans with the help of computers. Before ChatGPT there were rudimentary forms of AI which enhanced human writing by assisting with grammar and sentence structure. Now that AI can fully replace some specific human tasks the job market has and will continue to tighten up and leave some former employees in the dust, but how deep does this rabbit hole go?

Of course, since LLMs are designed to give texts primarily they will replace the jobs of people that are hired to write texts. As such, copywriters, legal aids, secretaries, customer support and all jobs that primarily involve writing texts that answer elementary queries will slowly be cut from the market. What was the job of maybe 10 people, becomes the job of one person with a premium account for a LLM.

This is of course horrible as it is, so far about 50.000 jobs were cut down only in the US due to the implementation of AI. This can be considered as only the beginning of this trend as AI is constantly being improved upon. As a matter of fact, specialists argue that there is a chance that we may reach General Artificial Intelligence by 2060[8]. This still theoretical type of AI will be able to fully replace at least half of the entry level jobs in most white-collar sectors like programing or law.

This new artificial revolution will unavoidably affect children in 2 ways. Firstly, it will affect the earning capabilities of their parents or tutors. Since finding a profitable job will become harder and harder as machines work the entry level jobs, this will affect natality rates in all the affected countries.

The use of AI will fundamentally boost company profitability but at the cost of jobs and intrinsically affect the economic wellbeing of families. With the slow unraveling of jobs that can ensure financial security there will be a decrease of children that live in reasonably good conditions.

The other effect of the job market being modified to this degree is that children will eventually lose hope when it comes to choosing a career. If they don't have role models, they will grow up hopeless, devoid of identity and without any interest in finding a job.

Most kids nowadays desire to work in the digital industry, primarily as influencers (Agnieszka Iwanicka, 2022, pp. 64-65). There is another issue with this perspective in employment. AI is slowly progressing to even create short

[7] Even if the cited study is not dedicated to the experience of children using AI, it still paints a fairly accurate picture of how children use LLMs.

[8] https://research.aimultiple.com/artificial-general-intelligence-singularity-timing/

videos, images and even music. The possibility of independent artistic work is slowly eroding as well[9].

Why would a child wish or hope to join an industry that is slowly being eroded by machines that can't even produce copyrighted material? Again, we see a way that AI is spoiling the possibility of identity development and wellbeing by making learning instruments or any artistic skills useless. One can prompt AI in such a manner that it could technically give a number of musical albums per day while an average human may need days, weeks, even months in order to make a song.

It's unfortunate that even art became an issue of economics in the age of AI. Yes, measures were taken by the EU and from 2026 all AI content has to be labeled as such, but will it matter? Will the audiences be compelled to boycott AI content or will it simply embrace the new context of being able to make the exact music or videos you want just by writing text? This is a question only the future can answer, but we can assume that the truth will not be pleasant since social media platforms are starting to be infested with AI content, some obvious, some that is excessively realistic.

One last way that AI infringes on the rights of children is the way that companies have started using both AI commercials and certain toys. By using machines to make commercials, companies have created false advertising and there have been reports of children's toys that are not well regulated in such a manner that it can't encourage dangerous behaviors[10].

The question remaining is where are legislators across the globe? Legislation regulating the use and development of AI is yet to be fully implemented or even drafted. Due to the speed at which AI is being developed and the economic war between centers of power AI laws are not as restrictive as they should be in order to safeguard the rights of children across the world.

The People's Republic of China has adopted an interim law which tries to balance development and security, the US Copyright Office has decided to not grant patents or rights over works of art made by AI unless significant human input was involved, giving artists and writers a way to combat the previously explained copyright abuse, and the EU is preparing to implement legislation to limit both development and the effects of AI. All of these laws are important and essential for the average human to combat the negative effects of AI but it is nowhere near sufficient, not individually, not collectively for humanity.

CONCLUSION

In a perverse twist of faith, AI is not making life easier by taking up manual labor, but it's steadily capturing work from educated people and from the

[9] https://www.cisac.org/Newsroom/news-releases/global-economic-study-shows-human-creators-future-risk-generative-ai

[10] https://futurism.com/experts-horrified-ai-toys

arts which were beginning to gain the status of safe jobs since the last technological revolutions of social media and largely from the development of computers.

There is a cold war in which AI companies and governments are making moves both together and in antagonism of each other. The sad truth of this state of affairs is that globally, children are being affected at a higher rate than adults.

An adult is supposed to be able to differentiate from what is real and what is fabricated by a machine, what art and information which were crafted by his fellow men and how it stirs in the spirit of humans. Children do not benefit from these presupposed cognitive abilities.

A child's development, safety, education and formation of identity are essential steps in the formation of healthy, productive and fulfilled adults that will build the future in the image of their development.

There are already major issues in how UN initiatives are implemented in member countries. AI in its current state is slowly but steadily eroding the world that is supposed to protect the youth. Both economic and cultural erosion will result in a worsening of conditions for the children to grow and develop healthily.

Our only true hope is that legislators will find both the strength and the purpose to impose legislation that will limit and stop the development of AI in its rapacious state. Machines can make human life utopic and aid in ways not even science fiction could predict, but if we walk this path of greed and deregulation, we will experience a slowly creeping dystopia.

BIBLIOGRAFIE

1. Kultaran Kumari, Fuzzy sets and fuzzy logic: *A review of concepts, trends, and applications*, International Journal of Physics and Mathematics 2025; 7(2): 155-161;
2. Anh-Hoang D, Tran V, Nguyen LM. Survey and analysis of hallucinations in large language models: attribution to prompting strategies or model behavior. Front Artif Intell. 2025 Sep 30;8:1622292. doi: 10.3389/frai.2025.1622292;
3. Idan D, Einav S. Primer on large language models: an educational overview for intensivists. Crit Care. 2025 Jun 12;29(1):238. doi: 10.1186/s13054-025-05479-4;
4. Agnieszka Iwanicka, Social media and influencers in the lives of teenagers, January 2022, Edukacyjna Analiza Transakcyjna, https://doi.org/10.16926/eat.2022.11.03 ;
5. Jan, M.T., Al-Jassani, M.G., Nadar, M. *et al.* Text-to-video generators: a comprehensive survey, *J Big Data* **12**, 253 (2025). https://doi.org/10.1186/s40537-025-01314-3 ;
6. Interim Measures for the Administration of Generative Artificial Intelligence Services- PRC;

7. US Copyright Office-Copyright and Artificial Intelligence, Report of Register of Copyrights, January 2025;
8. https://futurism.com/experts-horrified-ai-toys
9. https://www.cisac.org/Newsroom/news-releases/global-economic-study-shows-human-creators-future-risk-generative-ai
10. https://research.aimultiple.com/artificial-general-intelligence-singularity-timing/
11. https://www.gse.harvard.edu/ideas/edcast/24/10/impact-ai-childrens-development
12. https://futurism.com/artificial-intelligence/openai-danger-authors-internal-slack-messages
13. https://www.reuters.com/sustainability/amazon-lay-off-about-14000-roles-2025-10-28/
14. United Nations Charter of Children's Rights.

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 377-390

THE EFFECTS OF BRITISH COLONIALISM ON THE IRISH LAW OF SUCCESSION

L.-D. RATH-BOȘCA

Received 10.11.2025; accepted 18.12.2025
First online publication: 20.12.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.299

Laura Dumitrana RATH-BOȘCA
"Agora" University of Oradea
E-mail:dumitra1970@yahoo.com
ORCID ID:https://orcid.org/0009-0008-5735-528X

Abstract

Considering the excesses that had been committed over eight centuries, the Anglo-Irish rivalry had reached grotesque proportions over time. The English sought to exercise total control over the British Isles, but the Irish consistently opposed it, which gave rise to a mutual antipathy in the collective psyche.

Ireland had, before it came under English rule, its own system of law, dating back to Celtic times and existing until the 17th century, when English common law replaced it. This was Brehon Law, consisting of customs passed down orally from one generation to another and administered by the Brehons, the successors of the Celtic Druids. Although similar to judges, the Brehons were more of an arbiter (Katharine Simms, 2000, p. 79) whose task was to preserve and interpret the law rather than to extend it.

In the early 17th century, the military victory against Hugh O'Neill, Earl of Tyrone was decisive, decisive and represented a first stage in the English domination of Ireland. Political consolidation was achieved by legal means and represented the second stage in the process of English domination. These events led to the legislative reform of the early 17th century.[1]Sir John Davies argued that the eradication of Irish Brehon law was justified by the right of conquest and that Brehon law resembled "a barbarous and indecent custom".

[1]Sir John Davies, who studied briefly with Paul Merula at Leyden in the Netherlands, was one of the most important Crown lawyers who worked to reform the Irish administration in the early 17th century. He served as Solicitor General and Attorney General and had a significant influence on Irish law, administration and jurisprudence. His legacy is highlighted in his Irish Law Reports.

Key words: *Ireland, law, Brehon laws, English legislation, politics, sovereign state***.**

INTRODUCTION

In the year the first Universal Exhibition in the world opened, 1851, England was at its peak, being considered the greatest imperial power, enjoying the attention and admiration of the whole world. At the beginning of the 20th century, the British Empire encompassed over 20% of the Earth's land surface, with more than 400 million inhabitants.

From 1169 until 1922, England controlled all or part of Ireland. This brutal process of colonization led not only to the loss of Irish culture, but also to the loss of traditional Irish law, Brehon Law. British colonialism affected Irish law, including inheritance law, over the centuries, with colonial violence leading to a loss of legal identity.

Today, the Republic of Ireland is a sovereign state and occupies five-sixths of the island of Ireland. Ireland gained independence from the United Kingdom in 1922 following the Irish War of Independence.[2], but official recognition of full legislative independence was only achieved in 1931 when the British Government adopted the Statute of Westminster, the law of the Parliament of the United Kingdom that established the basis of the relationship between the dominions and the Crown.

With the adoption of the Constitution of 1937, the name of the country became Ireland. In 1949, all the duties of the king were removed, duties defined in the Executive Authority Act of 1936, also known as the Foreign Relations Act, this act being one of two acts that were passed in great haste, given the crisis that arose on the occasion of the abdication of King Edward VIII.

Northern Ireland chose to remain, through Ulster Month[3], part of the United Kingdom. There were only limited formal relations between the two states, Northern Ireland and the Republic of Ireland in the 20th century. It was not until 1999 that the two states began to cooperate in several areas through the North-South Ministerial Council, which had been established by the Good Friday Agreement, this agreement, signed in Belfast on 10 April 1998, representing a landmark moment in the peace process in Northern Ireland.

I. BREHON LAWS

The Brehon Laws, developed from customs passed down orally over many centuries, were written down in the 7th century AD. The Irish legal system dates

[2]The War of Independence, the Anglo-Irish War (1919–1921) was a guerrilla war between British forces and the Irish Republican Army.

[3]The division of Ireland into two distinct jurisdictions, northern and southern. The division took place on 3 May 1921 under the Government of Ireland Act 1920.

back to Celtic times and survived until the 17th century when English common law replaced it (Geoffrey Joseph Hand, 1967, p.1).

The Brehons, successors of the Celtic Druids, were the ones who administered Brehon law and although they were similar to judges, they had more of the powers of an arbitrator. Their role was to preserve and interpret the law, not to expand it.

We can say that the Brehon Laws were progressive in nature because, in addition to recognizing divorce, equality between the sexes, there were concerns for the environment. In terms of criminal law, crimes and their penalties were defined in detail. Restitution was provided for unlawful acts and cases of bodily harm and homicide were punishable by a fine of eric, with a scale determining the fine. There was no capital punishment. Historians say that people had a strong respect for the law given the fact that there was no judicial system or police force.

The Mac Egan family was one of seven prominent Irish families of their time who practiced Brehon law (Conor Mac Hale, 1990, p. 6). Of the seven families, five served a ruling family, one family served five high lords, and members of the Mac Egan clan were chief advisors to all thirteen high lords. The position of brehon was extremely important, as a prime minister to the lord, and they functioned as chief advisors in legal matters and beyond. Furthermore, they also served as ambassadors and negotiators, brokering treaties and agreements between feudal lords in medieval Ireland, and were highly respected. They were treated as neutrals in any conflict[4].

The Brehon courts, in which the Brehons judged, came into conflict with the English common law system which, theoretically, was the only legal system.

Brehon courts were usually held in the open air so that large numbers of people could attend to see the proceedings, the vast majority of cases, regardless of the charges, being resolved by the imposition of fines (C. Mac Hale, 1990, pp. 13–14). Only in exceptional cases, when the victim's family was not satisfied with a fine, considering it insufficient, and demanded revenge, were the punishments harsher.

The Brehons were paid for their services. Their fees created a lot of disputes with English officials.

The great Brehon families only became prominent after 1200, and the general opinion of experts is that the need to mediate between the native inhabitants of Ireland and the Anglo-Norman invaders was the basis of this importance (C. Mac Hale, 1990, p. 8). Another reason for the demand for Brehons was that many Anglo-Norman families disappeared and vast areas of land were returned to their Gaelic tenants.

[4]There is only one record of a Brehon being killed by an Irish chieftain but it was a case of mistaken identity.

Brehon families, such as the Mac Egans, had a duty, in addition to practicing the Brehon Laws, to teach them to the next generation. The Mac Egans established a school of history and law at Redwood Castle, with the aim of maintaining and transmitting the native legal traditions that had gone back centuries. They believed that history and law were inseparable. In many ways, the Brehon Laws were based on precedent, as was the English legislation that replaced them.

II. THE GAVELKIND CUSTOM, A UNIQUE FEATURE OF THE BREHON LAWS

Concubines had legal status under this law, which allowed all illegitimate children to inherit from their father. This was not unprecedented in Europe. Bastard feudalism, as this legal practice was called, was known in many countries. The uniqueness of the Gavelkind custom was that all male descendants received an equal share of the inheritance left by their father. The Gavelkind custom stood in stark contrast to English and continental tradition. In English common law, the custom called primogeniture[5], benefited the eldest male heir, who automatically received the bulk of his father's inheritance. Furthermore, the English system granted the widow one-third of the deceased husband's estate.

Under the Brehon Laws, there was an exception in the case where the deceased had been a chieftain, because certain goods and estates were associated with the position of chieftain and upon his death, the goods and estates in question passed undivided to the next chieftain. Only the inheritance remaining after this operation was divided, according to custom, among his heirs. In 1606, the English judiciary condemned this procedure. Two years later, in 1608, the English judiciary also condemned the process of choosing heirs, known as Tanistry (Ibidem p. 15).

In the event that the father died and had no male heirs, women could not inherit, being completely excluded from their father's inheritance.

Although they met with hostility from the English, the Brehon Laws defined Irish society, playing a decisive role in the administration of Ireland. The English common law system relies on precedent in decision-making, as it did then. It is understandable what a difficult task it was for the English colonists to govern Ireland without reference to the previous system of native law.[6] The Brehons were valued for their detailed knowledge of ancient Irish laws and customs and, as we have already shown, were in demand for their legal knowledge to help resolve disputes over property and land.

[5]Primogeniture, also called the Right of the Firstborn, is the principle of inheritance from father to son born first in marriage, which excluded younger sons, daughters, or other relatives.

[6]In 1606, the Lord Chancellor was forced to call in a senior Brehon lawyer to resolve a legal dispute, and in 1612, the Constable of Dublin Castle consulted Brehon manuscripts to determine land boundaries.

The first violation of the Brehon laws dates back to 1155. At that time, King Henry II cited the Bull Laudabiliter, a papal bull, considered a forgery, as the basis for plans to conquer Ireland.

In 1171, King Henry II held a Council (Curia Regis/King's Council) in Waterford where he declared that "the laws of England were freely received and confirmed by all". This declaration was in fact an aspiration of his and not a reality. Initially, English law was applied almost throughout the province of Leinster, where the king had granted Strongbow feudal land rights.

The following year, 1172, the king appointed the first Justiciar of Ireland, that is, the king's representative, in the person of Hugh de Lacy, Lord of Meath.[7].

At the beginning of the 13th century, in 1204, King John ordered the Irish courts to apply the common law, authorizing the issuance of warrants, and in 1226, King Henry III imposed on the judiciary the observance of the laws and customs of England. In 1227, a Register of Warrants was sent to Dublin containing copies of all warrants issued by the English courts. In 1221, the first recorded appointment of an Anglo-Norman judge took place. To secure their lands and rights, Anglo-Norman settlers could appeal to Magna Carta.

In the 14th and 15th centuries, the influence of English law declined because, through intermarriage with the native Irish, the Normans became more Irish than the Irish themselves.

In 1366, the Statutes of Kilkenny are testimony to the fact that England did everything possible to reaffirm the supremacy of its Parliament and its own law over any Irish Parliament or legislation.

Following the Statutes, two more Statutes were passed in 1494, known as Poyning's Act, which provided that all laws passed in England would apply to Ireland. The Act also stipulated that an Irish Parliament required the prior consent of the King's Privy Council.

However, English law had a limitation until 1500, in the area known as the Pale.[8], the Brehon laws continuing to apply beyond this area, the Pale. During the reign of King Henry VIII, English law expanded its applicability. King Henry VIII implemented a scheme of cession and re-grant of the territories held by the original noble families, thus bringing them into the feudal system of land ownership. Furthermore, the monasteries were dissolved and church lands were redistributed, following the rupture that occurred between the king and the Roman Catholic Church.

III. APPLICATION OF ENGLISH LAW IN IRELAND

The English common law legal system first extended outside England, to Ireland (John Baker, 2003, p. 108).

[7]It is generally accepted that Hugh de Lacy was, de facto, the first Viceroy of Ireland.
[8]Area consisting of Dublin and the east coast.

Common law was introduced to Ireland with the Anglo-Norman invasion of the 1160s – 1170s (Curtin M, Murphy C, Woods U, Cross C., 2025).

The statutes of Kilkenny condemned for life, as traitors to the king, any person and his family who made any alliance by marriage, concubinage, love or in any other way, persons who, in time of war or peace, gave or sold horses, armor or food to an Irishman.

In the early 17th century, in 1607, following the Flight of the Earls of Ulster, English law gained ground. The further significance of the Flight of the Earls was that it removed the patronage of the Brehon family. The Proclamation of King James I of 1603 announced the end of the authority of the Brehon Laws, a proclamation which brought the entire Irish people under the protection of the king. The country was subsequently divided into counties, and English law was administered throughout the country.

Two decisions dealt a decisive blow to the Brehon Laws when, during the reign of James I, the courts of Ireland rejected the Brehon Laws of succession in the Gavelkind cases in 1605 and the Tanistry case in 1607. In the Tanistry case, the court ruled that the native law did not meet the required requirements, namely, that it was not reasonable, certain, of immemorial use and compatible with the sovereignty of the crown.

This was followed by the military campaign led by Oliver Cromwell from 1649 to 1652, a campaign that consolidated the dominance of English law and forced many Irish landowners to settle in Connaught.

In 1691, following the Battle of the Boyne, when William of Orange won against the Catholic King James II, Catholics were brutally repressed under the Penal Laws, the most infamous laws ever enacted (Fitzpatrick R, 2020, pp. 224 – 226). The purpose of the Penal Laws was to exclude Catholics from political and economic life, while also denying them access to education. Their property rights were also restricted.

In 1703, the Act for the Prevention of the Spread of Catholicism was passed, a law that imposed major prohibitions on the rights of Catholics, as follows: marriages between Protestants and Catholics, seducing, attracting or persuading a person to convert to the Catholic religion, called the Papist religion, sending children under 21 to Catholic countries, which was conditional on obtaining a permit granted by the king, the governor or their advisors, with the exception of sailors, their apprentices and apprentices of merchants who carried out commercial activities. Regarding the relations between Catholic parents and children who chose the Protestant religion, the law obliged them to provide maintenance for their children according to the rank and capacity of the child and his age. In the case of inheritance, children of Catholic parents who had chosen the Protestant religion had increased rights during the life of their parents. If the first-born Protestant, called the primogenitor, registered with the High Court of Chancery a certificate obtained from the bishop of the diocese in which he

resided, which attested to his Protestant status and the fact that he complied with the law of Ireland, the Catholic father became a tenant for life of his real estate, being sequestered in his property rights and subject to paying maintenance and portions for the other children, Protestant or Catholic, as ordered by the said Court of Chancery, to the eldest son, being assigned the reversion in rights, being Protestant. The certificates were publicly displayed or in certain offices or public places belonging to the court, so that they could be consulted and so that other persons could also have recourse to such legal operations.

Furthermore, it was forbidden for Catholics to be guardians or to have custody of orphans under the age of 21. In such cases where Catholics already had guardianship rights over orphans, the High Court of Chancery would entrust them to the orphans' close relatives who were of the Protestant religion and respected the laws of the Church of Ireland. If there was no close relative of the Protestant religion, the children were raised by other Protestants who were required to educate the orphaned children with great care in the Protestant religion until the age of 21. The Court of Chancery was obliged and empowered to issue orders for the education of the children of any Catholic in the Protestant religion, if the mother or father of the children was or was to become Protestant by the age of 18 of each such child. The parent of the child/children was obliged to pay the expenses of the education, as determined by the court. According to this order, the child/children could be taken from Catholic parents to be educated in the spirit of Protestantism. If Catholics did not comply with the orders, they were sanctioned with the sum of 500 pounds sterling, an amount that was recovered by any means (by action for debt recovery, seizure of goods worth 500 pounds sterling, complaint or criminal complaint brought by a prosecutor). The benefit of the confiscations was granted to a school (boarding school) called Blue-Coat in Dublin[9].

From March 24, 1703, Catholics could not purchase for themselves or for another person, estates, lands, properties or inheritances, could not rent or benefit from the profits of rents, except for any term of years not exceeding 31 years, and if it happened that such prohibited operations had ended, they were completely null, produced no effect and were without purpose, according to the legislation in force at that time (Walsh, R., & Fox O'Mahony, L., 2018, p. 8).

The legislation prohibited Catholics, starting with 01.02.1703, from the benefits of the right of descent, donation or by virtue of a covenant, the benefits of any trust of land, property or inheritance, if they did not convert to the Protestant religion within a period of six months. If the Catholic did not convert to Protestantism, they lost the right to inherit the goods or profits for their entire life

[9]This school is one of the oldest educational institutions in Ireland, having been founded in 1669, called the Free School of King Charles II. Between the 18th and 20th centuries, it was the headquarters of the Law Society of Ireland and today it operates as a pre-university educational institution.

or until the time of conversion. In such cases, the closest relatives of the Protestant religion or any other Protestant with a succession vocation benefited from the respective benefits as if all the Catholic heirs had died at that time. In the situation where an heir had not reached the age of 18, he was considered Catholic until the confirmation of the Protestant religion. He was placed under the protection of a Protestant guardian, who was appointed by the High Court of Chancery, who had the obligation to educate the child in the spirit of Protestantism. In return, in order to inherit, the minor was required to convert to the Protestant religion, six months before reaching the age of 18.

The Catholic Prevention of the Growth of Catholicism Act of 1704 prohibited Catholics from using the English model of primogeniture inheritance. The law reintroduced the Gavelkind model, which required Catholic fathers to divide their inheritance equally among all their male children. The reason why the English legal rules governing inheritance were no longer applicable was the desire of the English authorities to prevent the development of large Irish fortunes or businesses.[10].

In the event that there were no male heirs, the patrimony went to the daughter or daughters, equally, and if there were none, the collaterals came to the inheritance depending on the line they came from. Patrilineal collaterals had priority, and in their absence, matrilineal collaterals. If the deceased left a will in which the division of the patrimony did not comply with the conditions imposed by law, it had no legal effects. The deceased could, however, dispose by will that his daughters receive maintenance pensions.

Art. 12 of the law shows that, in the situation where the eldest son of the deceased was of Protestant religion, he would skip all these legal inconveniences, inheriting the entire estate of the deceased Catholic father. In order to benefit from this right, the Protestant son had to, as we have shown above, present the certificate proving his membership in Protestantism, issued by the priest of the church he attended, within 3 months from the date of the father's death. In the case of assets encumbered by any type of obligations, these were transmitted together with the transfer of the inheritance.

In the situation where the son of the deceased was of the Catholic religion at the time of his father's death, but converted to Protestantism, he could still claim the rights of primogeniture, as follows: if the primogeniture was over 21 years old, he had a period of one year from the father's death to convert, and if the primogeniture had not reached the age of 21, he had to convert by the time he reached the age of 22, following the same procedure for registering the certificate at the Court of Chancery.

---

[10]By permanently and continuously dividing the original patrimony, regardless of its nature, the creation of Irish economic power was avoided. Instead of businesses or large estates managed by primogeniture with the help of the family, each descendant had the full share that was due to him, thus preventing the Irish heir from increasing the inherited capital.

In the situation where the inheritance had already been divided among all the sons of the deceased Catholic, and the eldest son claimed the privilege of primogeniture, by converting to Protestantism, all the assets of the inheritance were restored to their original form, in order to grant primogeniture the benefit of the entire inheritance. In favor of younger sisters and brothers, the Court of Chancery established a maintenance pension that came from the deceased's estate but could not exceed one third of the estate.

The coup de grace given to Catholic believers consisted in prohibiting them from holding important public positions that, by their nature, would have increased their capital and social status. Catholics were also prohibited from gathering, meeting or organizing pilgrimages or celebrations of St. Patrick, the gathering of several believers in places they considered holy, being assimilated to riots, because the authorities considered that they disturbed the public peace and seriously endangered the security of the government.

In the 19th century, following the great industrial revolution and the writings of Bentham and Mill, the reform of legal institutions became evident.[11].

The Supreme Court of Justice Act 1873 introduced the new Reforms and Ireland in 1877. The Acts merged the administration of common law and equity with the aim of creating a unified judicial system. During this period the Supreme Court of Justice was established, consisting of the High Court of Justice and the Court of Appeal. The Supreme Court of Appeal for Ireland remained the Judicial Committee of the House of Lords. The various courts that had developed over the centuries, such as the Court of Probate and the Court of Exchequer, were divided into separate divisions of the High Court.

Irish politics focused heavily on the campaign for land reform following the Irish Famine of 1845–1850, a painful period in Irish history. During the famine of 1845–1850, 30% of the island's population of 8 million disappeared. One million people died of starvation and disease, and another 1.5 million

[11]Utilitarianism, the conventionalist theory, is the ethical theory of Jeremy Bentham (1748 – 1832), "An Introduction to the Principles of Morals and Legislation) and John Stuart Mill (1806 – 1873), On Liberty. Utilitarianism. The two thinkers considered that an action is good or right if happiness (pleasure) is maximized and suffering (pain) is minimized, for the greatest number of individuals. For utilitarians, the individual's goal becomes the supreme moral duty to himself to seek his own happiness and to facilitate happiness for other individuals. Unlike Aristotle, utilitarians stated that happiness means avoiding suffering and acquiring pleasure, based on the principle of the greatest happiness, namely that actions are right only when they produce happiness. An action is considered moral, according to them, even if the individual pursues his personal interests, if the general good also increases. An act worthy of condemnation is moral, if brings good to the majority. For example, with regard to business ethics, Kant showed that, in a situation where the businessman acts only in his own interests, the action is immoral. Utilitarians, on the other hand, show that in a situation where the businessman seeks to maximize his own income, and benefits are also produced for the employees of society as a whole, his actions are moral.

emigrated to the United States. The emigration trend lasted a century and resulted in a steady decline in the population until 1960 (Holohan C, O'Connell S, Savage RJ, 2021, p. 287). In 1881, the Land Act was passed, which led to the establishment of the Irish Land Commission, granting Irish tenant farmers three important principles: fair rent, freedom to sell, and strengthening the right to property. Further, the laws adopted favored tenants in the purchase of land through advantageous long-term loans for those who wanted to become owners of the land they leased.

Although important laws were adopted, the so-called legislative reform long desired by the Irish was achieved, their objective was the repeal of the Act of Union, local autonomy.

From January 1, 1801 to December 6, 1922, the island of Ireland was part of the United Kingdom of Great Britain. It was a period of great turmoil and attempts to break free from English rule and gain independence.

IV. EXIT FROM THE UNITED KINGDOM

Irish home rule was only possible through the passage of the Government of Ireland Act of 1914. The Act was postponed for the duration of World War I, but was overtaken by subsequent events, with the British responding harshly to the 1916 rebellion and the 1918 elections resulting in a landslide victory for Sinn Fein.

Sinn Fein MPs held the first sitting of the Dail Eireann in January 1919, approving the Declaration of Independence, adopting the Provisional Constitution and establishing a new judicial system. The British, of course, tried to suppress all these movements but were met with armed nationalist resistance in the War of Independence. Westminster, in an attempt to resolve the Irish question, passed the Government of Ireland Act 1920, which divided Ireland into Northern Ireland and Southern Ireland, each with its own parliament and both parliaments subject to the English Parliament. Both parliaments were also required to send members to Westminster. The Act reorganised the judicial system in each jurisdiction to include a High Court, a Court of Appeal and a High Court of Appeal for Ireland, which would hear appeals from the respective Courts of Appeal.

In 1921, an armistice was agreed with Great Britain. Peace negotiations followed, which culminated in the signing of the Irish Free State, with the clause renouncing Northern Ireland. Northern Ireland opted to remain part of the United Kingdom.

In 1922, the Constitution of the Republic of Ireland was adopted. It underwent numerous amendments until 1936. The oath of allegiance was eliminated, the right of appeal to the Privy Council was abolished, all references that included the Crown were removed, etc.

In 1937, a new constitution was drafted, subject to a referendum, and approved by the electorate. In broad terms, this constitution retained the 1922

constitution, but upheld the republican character of its chief architect, Eamon de Valera, by claiming sovereignty over Northern Ireland, establishing a president as head of state, and renaming the state Ireland. The Republic of Ireland Act 1948 completed the final break with Great Britain. This Act provided that the state would be the Republic of Ireland and withdrew it from the Commonwealth.

Today, Ireland's justice system is based on common law, with a constitution that makes the country function as a parliamentary democracy.

As for inheritance law today, it is governed by Irish law, mainly with influences from common law but also from statutory law. As in our law, the distribution of a deceased person's estate can be done by legal succession or testamentary succession.

Irish law provides protection for surviving spouses and children in inheritance cases, to ensure that they are not left without support.

Regarding testamentary succession in Ireland, citizens are free to draw up a will to determine how their assets will be distributed after death. As in Romanian law, the legislator imposes certain limitations, restrictions to ensure that certain family members will be supported even if the deceased intended to disinherit them.

For a will to be legally valid in Ireland, the testator must be of legal age, at least 18 years of age, and of sound mind. A will must be in writing, signed by the testator and two witnesses. Witnesses cannot be beneficiaries of the will as they may be disqualified from receiving donations. The will may include the manner of distribution of the estate, may appoint an executor who is responsible for administering the estate, and any other wishes of the testator. Irish succession law provides for compulsory inheritance rights for spouses and children, the institution of the reserve in Romanian law. According to the Succession Act 1965, even if a person wants to disinherit their spouse or children, they benefit from a share of the deceased's estate. Even if they are not included in the will, children, including adopted children, are entitled to a share of the deceased's estate.

In the event that a person dies without leaving a will, the estate will be distributed according to the rules set out in the Succession Act of 1965. The distribution of the deceased's estate depends on the deceased's relationship with the potential heirs.

In terms of the order of inheritance under current Irish law, the surviving spouse/partner will receive one-third of the estate if there are children. What remains is divided equally between the children. If there are no children, the surviving spouse/partner will receive two-thirds of the estate, and the remaining third is distributed among the parents if they are alive. If the parents of the deceased spouse are no longer alive, the remaining estate is distributed to other relatives, such as brothers and sisters.

If the deceased has no surviving spouse or children, the estate will be divided equally between the deceased's parents, and if one of the parents is

deceased, the other parent will inherit the entire estate. If both parents are deceased, the estate will be divided between the deceased's brothers and sisters, and if they are also absent, other heirs from the extended family, such as grandchildren and other relatives, come. If the deceased has no living relatives, the estate can be claimed by the state.

Even if the deceased left a will, the surviving spouse/partner is entitled to the deceased's inheritance. Likewise, children, including adopted children, will inherit a portion of the deceased parent's estate, even if the parent has tried to disinherit them. Children can seek compensation if the will does not adequately address their needs.

Like other countries, Ireland imposes an inheritance tax called Capital Acquisitions Tax, or CAT. This is paid by the beneficiaries of the estate, not by the estate itself.

In Ireland, the amount of inheritance tax is related to both the relationship between the deceased and the beneficiaries and the value of the inheritance.

Children, including adopted children, do not pay tax if their inheritance does not exceed 335,000 euros. Grandchildren, brothers and sisters will not pay tax if their inheritance does not exceed 32,000 euros, and friends and more distant relatives do not pay tax if they inherit up to 16,250 euros.

All inheritances exceeding these thresholds are taxed, starting in 2025, at 33% applied to the value exceeding the threshold.

The surviving spouse/partner is exempt from paying inheritance tax regardless of the amount.

We note that Irish succession laws allow the testator to distribute his or her estate during his or her lifetime, subject to any limitations imposed by the state to provide for the surviving spouse/partner and children. Clear laws have been enacted through the Succession Act 1965 and related laws setting out the rules by which an intestate estate will be divided. Inheritance taxes are also set out, with exemptions and thresholds depending on the relationship between the deceased and the heirs.

CONCLUSION

Although Ireland had been invaded and colonized for centuries, the Irish could not accept the idea of foreign domination. The Irish were not only fierce patriots but also bearers of sacred traditions. Patriotism and sacred traditions have strengthened over time the spirit of this determined and courageous people.

Colonization radically changed the history of the Irish.

As early as the 5th century AD, the Celts conquered Ireland, and the Celtic language, culture, and way of life survived for centuries. This was followed by the Vikings, who founded important cities in Ireland, such as Dublin, Waterford, and Limerick, and later by the Normans from England, who helped an Irish king and eventually settled and took control.

They were converted to Christianity in the 5th century, mainly thanks to St. Patrick.

The story of how English law spread to Ireland and how it replaced the ancient Celtic traditions, which were still found in the Brehon Laws, is a truly fascinating historical journey.

The Brehon Laws, the early legal system of Ireland, was a sophisticated system that dealt with what we today consider crimes, in a manner similar to tort law. It was a civil legal system, with no criminal law (John Biggins, 2024, pp. 24–27).

After Henry VIII's decision to break with the Catholic Church and establish the Church of England, the religious division between Ireland and England deepened. The division fueled centuries of conflict between Irish Catholics and the English government, with the monarchy's encouragement of Protestant rule becoming a major issue in Irish politics.

Ethnic and religious conflicts between displaced Catholics and settlers deeply and continuously divided Protestants and Catholics in Ireland.

After James II, a staunch Catholic, ascended to the throne in 1685, the Irish began to hope because the king strengthened the positions of the great landowners and aristocrats. Hopes were dashed very early, in 1688, when William of Orange, a Dutch monarch and a staunch supporter of Protestantism, ascended to the throne. The times that followed were harsh, with the indigenous population constantly harassed and humiliated.

All these events and many others that followed, could not defeat the resistance of the Irish people who were moving from one phase of resistance to another. They founded secret societies and several revolutionary organizations, such as the Defenders, the Threshers, the United Irishmen, the Little St. Patrick's or the Hearts of Steel. The Little St. Patrick's was one of the most powerful secret societies.

The culmination of the tragedy of this stubborn people was the Great Famine of 1847, when the potato, the staple food of the population, was contaminated. This led to the death of a million people and the expulsion of others from the country.

The result of colonization from the 12th to 18th centuries was the adoption of repressive anti-Catholic laws, the indigenous population being completely deprived of their own lands (, the Protestants being the ones who represented the new ruling class. As a rule, they were originally from Scotland and England. Irish peasants received as rent the estates in Ireland that belonged to the landowners who lived in Britain, having long-term prohibitions on buying or selling them. Their rents were so high that they lived in conditions of extreme poverty, and the disappearance of food hit hard on simple people, workers and peasants.

At the beginning of the 19th century, Ireland became the source of enrichment for the English commercial aristocracy because it had become the raw material for the development of English industry.

Many and difficult are the events that the Irish have had to face over the centuries. They have had to submit to laws that did not belong to them, the Brehon laws being constantly removed until their abolition, they have been subject to repressive laws that imposed numerous prohibitions on them, but they have fought, they have suffered, they have been stubborn in their continuous struggle for independence and, in the end, they have ended relations with the British monarchy, they have regained their identity and independence.

BIBLIOGRAFIE

1. John Baker, Oxford History of the Laws of England, vol. VI: 1483 – 1558, Oxford: Oxford University Press, 2003;
2. Geoffrey Joseph Hand, English Law in Ireland, 1290 – 1324, Dublin: Cambridge University Press, 1967;
3. John Biggins, AFTERLIVES OF THE BREHON LAWS, History Ireland, vol. 32, no. 4 JULY/AUGUST, Wordwell Ltd, 2024, https://www.jstor.org/stable/27390332;
4. Connor Mac Hale, Annals of the Clan Egan, Westprint Ltd, Enniscrone, 1990;
5. Holohan C, O'Connell S, Savage RJ., Rediscovering poverty: moneylending in the Republic of Ireland in the 1960s. Irish Historical Studies. 2021;45(168):282-302. doi:10.1017/ihs.2021.56;
6. Fitzpatrick R. Catholic inheritance under the penal laws in Ireland. Irish Historical Studies. 2020;44(166):224-247. doi:10.1017/ihs.2020.41;
7. Curtin M, Murphy C, Woods U, Cross C. The legacy of history: women and the ownership of land in Ireland. Rural History. 2025;36(2):337-350. doi:10.1017/S0956793325000032;
8. Walsh, R., & Fox O'Mahony, L. (2018). Land law, property ideologies and the British–Irish relationship. Common Law World Review, 47(1), 7-34. https://doi.org/10.1177/1473779518773641.

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 391-406

TICKET SCALPING – AI GONE TOO FAR? IN SEARCH OF AN OPTIMAL LEGAL SOLUTION

D. STOYANOV

Received 22.03.2025; accepted 21.05.2025
First online publication: 28.05.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.255

Dimitar STOYANOV
Ph.D., Senior Assistant Professor in Civil Law
Faculty of Law, Sofia University "St. Kliment Ohridski", Bulgaria
E-mail: dimitarstoyanov2011@gmail.com; dimituris@uni-sofia.bg
ORCID ID: https://orcid.org/0000-0001-9080-8641

Abstract

The rise of artificial intelligence (AI) has significantly transformed the ticketing industry, with the proliferation of ticket scalping bots posing a major challenge to fair consumer access. This paper explores the historical context of ticket scalping, its evolution in the digital age, and the legal and technological measures implemented to counteract its adverse effects. The discussion highlights key legislative responses, including the BOTS Act in the United States, the Digital Economy Act in the United Kingdom, and the EU's Omnibus Directive, assessing their effectiveness in regulating AI-driven scalping practices. Additionally, the paper examines industry-led solutions such as blockchain-based ticketing and personalized tickets, alongside contractual restrictions imposed by event organizers. Through a comparative legal analysis, this study argues for a balanced approach that integrates legislative, technological, and contractual measures to mitigate AI-driven ticket scalping while ensuring fair access for consumers.

Key words: *Artificial Intelligence, Ticket Scalping, AI Bots, Secondary Ticket Market, Consumer Protection, BOTS Act, Digital Economy Act, Omnibus Directive, Contractual Restrictions on Transferability.*

INTRODUCTION

Hardly anyone will claim that the rise of artificial intelligence (AI) and its rapid implementation in everyday affairs did not bring about a significant change. One of the areas dramatically affected by the introduction of AI is the ticket business. Nowadays, we are witness to an ever-growing application of software bots that facilitate the process of online ticket purchase, but also create new issues

that need to be resolved. This article has the humble aim to focus briefly on the impact of artificial intelligence upon ticket scalping in search of an optimal legal solution to the conflict between the legal interests of all parties involved.

I. A BRIEF OVERVIEW OF TICKET SCALPING AS A SOCIAL PHENOMENON UNTIL PRESENT TIMES

1. Origin of ticket scalping

Despite the fact that the notion of "*ticket scalping*" cannot be found in legislative acts, there is hardly any doubt that it is used to denote the speculative practice of buying tickets for an event with the sole purpose of reselling them later, often at a much higher price than their face value *(Black's Law Dictionary p. 1162)*. Ticket scalping has been part of human history since Antiquity. One of the very first instances of ticket scalping was to be observed in ancient Rome, at gladiator fights, held at the Colosseum. Specific people, called *locarii*[1], bought tickets for specific places at the arena, where one could see and be seen by the Emperor, and resold them to those eager spectators for a profit. The *locarii* have even been immortalized by Roman poets *(Rawson, 1987, p. 96)*, albeit in an ironic fashion *(Martial 5.24.9)*[2] Overall, despite the lack of specific rules on the matter in Roman legal sources, it can be assumed that ticket scalping was a practice frowned upon by the Roman public from the outset.

Nevertheless, the practice of obtaining tickets and reselling them later for a price substantially higher than their face value outlived ancient times, as modern scholars assume that ticket scalping could have occurred at Shakespeare's plays at the Globe theatre in the 17th century *(Cross, A., 2023)*. The true scale of the problem became evident during the 19th century, as the industrial revolution brought about an unprecedented intensity of human interaction. Modern scholars point out that this practice was not limited to specific areas or types of social interaction. Throughout the 19th century ticket scalping became a global phenomenon, as it was observed on both sides of the Atlantic Ocean - in the USA and in France, affecting entertainment as well as railway tickets *(Segrave, K., 2007, p. 4)*.

---

[1] One who first took possession of a seat in the theatre and let it out to one who came later - https://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.04.0059%3Aentry%3Dlocarius (last accessed on 20.01.2025)

[2] The epigram of Martial "*Hermes, divitiae locariorum*" is literally translated as "*Hermes, wealth of the scalpers*" - https://en.wikisource.org/wiki/Translation:Martial_V.24 (last accessed on 20.01.2025). However, some modern scholars use a descriptive method in the translation of this epigram and bring a much needed context to it – "*Hermes, divitiae locariorum, - a famous gladiator, who filled the theatre, and thus brought much gain to those who parted with their seats for hire"* - https://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.04.0059%3Aentry%3Dlocarius .

2. The adverse consequences of ticket scalping

There might be many reasons to consider ticket scalping as immoral and detrimental to the interests of all parties, except scalpers themselves. Above all, organizers are interested in many ways to eliminate ticket scalpers. Usually, artists, football clubs and other persons hosting an event deliberately provide underpriced tickets in order to increase performance and to achieve a full venue *(Stein, 2014, p. 6.)* Setting the price of the particular ticket below its true economic value is part of a global marketing strategy by providing consumers an incentive to buy merchandise, as well as foods and drinks during the event. It can easily be assumed that people might not be willing to incur these additional expenses, if they regard the price they had to pay to gain access as too high. Moreover, by setting a low price for tickets and allowing many to enjoy the show, organizers and performers avoid being criticized for elitism and at the same time receive further profits from attenders.

Another reason why organizers would also prefer to sell tickets to identifiable natural persons, is public security. Should the tickets be bought by ticket scalpers using AI, this would allow ill-mannered fans of the rivaling team to obtain tickets and to cause mayhem on the stands. Moreover, someone who has been banned from entering the premises for whatever reason, such as racist misconduct, acts of violence, hooliganism and the like might contact a ticket scalper and try to circumvent this prohibition, thus gaining access to the venue *(Bach, Fl., 2007, p. 138).*

Consumers, who are compelled to pay a much higher price for the desired ticket than its face value, of course, experience the most intensive consequences of ticket scalping. Should they decide to deny dealing with ticket scalpers, consumers are faced with an uneasy decision either to settle for the remaining available tickets, usually the least attractive ones, or simply to abstain from attending this particular performance. Moreover, the excessive price they are forced to pay does not support the creator or the artist. It constitutes pure financial gain for someone who speculates with tickets. These issues have become even more pressing in contemporary times, where humans cannot compete with sophisticated AI that can obtain the best possible tickets in just mere seconds after they are released at the primary market *(Siwicki, 2024, p. 238 - 239).*

3. Ticket scalping in the digital age. The case of Kenneth Lawson and Wiseguys.

It is safe to say that speculative ticket resale actually became an international problem, when an USA-based company, *Wiseguys*, first implemented artificial intelligence in order to obtain batches of tickets online. Founded in the late 1990s, *Wiseguys* placed itself entirely within the ticket scalping business. Initially their employees were conducting an intensive bargaining process over telephone talks to obtain tickets from authorised vendors

in order to resell them later to desperate consumers at a higher price. The company's owner, Kenneth Lowson, decided to change this rather obsolete business model. He hired a Bulgarian programmer, commissioned him to develop a bot that is able to auto-complete drop-down menus, and to refresh pages automatically, thereby capable of buying an enormous quantity of tickets for seconds *(Waldstreicher, 2019, p. 2)*. Thus, the first known AI ticket scalper emerged, enabling Wiseguys to achieve a dominant position in speculative ticket resale transactions *(Purtill, 2017)*. Lawson's indictment by the FBI and the subsequent trial from 2010[3], during which he and his accomplices pleaded guilty to charges of computer hacking and fraud, did not put an end to this practice, but ironically led to the popularity of software bots and the extensive use of AI for ticket scalping. It became evident that this practice is capable of affecting millions of users worldwide. Therefore, a more resolute legislative answer on both national and supranational level was a logical consequence.

II. Contemporary methods to overcome ticket scalping

From a bird's eye, one can distinguish between three main methods, used to restrict negative consequences of ticket scalping. More specifically, they include legislative, technological and contractual restrictions. It is worth mentioning that these three methods do not necessarily coincide and some of them can be implemented simultaneously.

1. Regarding **legislative** restrictions, one can establish an abundance of types of legislative approach from a comparative perspective. A preferred method in the pre-digital era was to provide penal law restrictions by pronouncing ticket scalping a criminal offence. For instance, such an approach was adopted in France, where art. 1 of *The Law of 27 June 1919*[4] expressly prohibited ticket resale for a profit and imposed a fine upon perpetrators. A similar provision was adopted by the French legislator once again in 2012. The explicit rule of art. 313-6-2 of the *French Criminal Code*[5] provides that the sale, offering for sale of access to a sporting, cultural or commercial event or a live performance, usually without the authorization of the producer, organizer or owner of the rights to operate the event or show, shall be punishable by a fine of EUR 15,000. Quite recently, a French court requested a preliminary ruling from the Court of Justice of the European Union whether the aforementioned provisions contravene the

[3] Cf. https://archives.fbi.gov/archives/newark/press-releases/2010/nk111810.htm (last visited on 24.01.2025)

[4] Loi du 27 juin 1919 portant répression du trafic des billets de théâtre; - available at https://www.legifrance.gouv.fr/loda/id/LEGITEXT000006070724/ (last visited on 24.01.2025)

[5] Article 313-6-2 Code Penal; - available at - https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000025492294 (last visited on 24.01.2025)

mandatory rule of art. 56 of the *Treaty on the Functioning of the European Union*, providing that "*restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended*.". By an Order of 17. May 2024 regarding Case C-190/23, the Court of Justice considered the request as manifestly inadmissible. However, this ruling does not give a straight answer to the substantive subject whether there is potential conflict between both sets of rules.

In my opinion, such an approach can hardly be considered effective. It allows criminal law to "invade" a typical private law relationship between contractual partners. Whether an agreed upon price is adequate is a matter of contract law and cannot be resolved using criminal law methods.

Another legislative approach, aimed at keeping balance in mind, might be to not ban ticket resale outright, but to provide rules on the actual transfer of tickets, such as setting a price cap for resale. This approach has been previously adopted in the State of New York[6] (*Gold v DiCarlo* 235 F. Supp. 817 S.D.N.Y. 1964), as well as in the US State of Georgia (*State v Major* 243 Ga. 255 1979)[7], where the legislator had introduced a cap on ticket resale, thus limiting the maximum possible profit one can get from reselling the ticket. Such an approach might seem more balanced, since it does not impose an absolute prohibition on ticket resales. It rather attempts to reconcile profit-aimed entrepreneurs and consumers in need of protection.

Despite these good intentions, however, the aforementioned provisions of the States of New York and Georgia have long since been repealed. To my view, the legislative approach to provide a resale cap, consisting of a fixed sum of money that resellers can charge consumers with, is inadequate to the dynamics of contemporary economic affairs. It is evident that in order to try and keep up with the ever-changing value of money and inflation rates, the legislator should constantly amend these acts and adjust the maximum resale cap to the respective circumstances. To my view, this is far from being a sensible legislative approach, since it presupposes a constant "tracking" of prices and trends in ticket industry. This resource-heavy approach should constantly be applied, because the lack of an amendment will turn this fixed sum of money into an inadequate number very quickly (Sturman, Z., 2020, p. 965 - 966). Given the vast area of much more pressing issues in need of legislative attention, it might be wiser not to adopt such a rigid solution.

There is also another aspect to take into consideration regarding this, seemingly balanced, legislative approach. As early as 1927, the US Supreme

[6] Section 169-c (repealed) of the New York General Business Law provided that it is unlawful to resell a ticket at a price exceeding its face value with more than $ 1.50 USD plus taxes.

[7] The provision of § 96-602 (repealed) of Georgia Code, in its version from 1979, provided a prohibition on resale of tickets for a price in excess of face value plus $ 1 USD.

Court considered restrictions on the price of resold tickets as unconstitutional, cf. ***Tyson & Brother v. Banton***, 273 U.S. 418 (1927). The provision in question, Sections 167 and 172 of the New York Laws 1922, declared prices for admission tickets a matter "*affected with public interest*" and forbade the resale of tickets "*or any other evidence of the right to entry at a price in excess of fifty cents in advance of the price printed on the face of such ticket*". The court considered the right of the owner to set a price at which his property shall be sold or used as an inherent attribute of property itself. At the same time, Section 2 of the Fourteenth Amendment to the US Constitution[8] provides that "...; *nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws*". The court declared Sections 167 and 172 of the New York Laws 1922 unconstitutional on grounds of Section 2 of the Fourteenth Amendment, thus denying the possibility to set a price cap on resale of tickets. This understanding has been subsequently reversed in *Gold v. DiCarlo (1964)*[9], where the judge found no grounds for discrimination of ticket brokers solely because of the introduction of a price resale cap in a New York Statute.

Many scholars have expressed their doubts about the sensibility of providing a cap on resale tickets by a legislative act. Some are even inclined to consider such measures as an intrusion into private law relationship in a manner that they claim resembles Soviet-era central planning economy (Sturman, Z., 2020, p. 962). While such a perspective may be considered a bit overstated, it is common knowledge that every legislative intervention into private law relationships needs to be adequate and to provide a stable and balanced solution to the conflict of legal interests. In the case with ticket scalping, none of this is achieved by provisions deemed to become inevitably obsolete and inadequate due to ever-changing prices, inflation and business relations.

However, it is fair to say that the circumstances around *Wiseguys* and the implementation of AI into the process of ticket scalping did not remain unanswered by national legislators. The main aim was to prevent the abuse of this unprecedented technological development in detriment to the interests of consumers and the public. Given the circumstances around *Wiseguys*, it is of no surprise that one of the first national legislators to adopt an act, specifically aimed at prohibiting the usage of software in order to tamper with the process of obtaining tickets online, is the ***USA***. The purpose of the *Better Online Sales Act*, adopted on 14. December 2016, is to "*prohibit the circumvention of control measures used by Internet ticket sellers to ensure equitable consumer access to tickets*". The drafters' main concern is that scalpers use designated software to

[8] The Fourteenth Amendment (Amendment XIV) to the United States Constitution was adopted on July 9, 1868.
[9] Cf. Gold v. DiCarlo, 235 F. Supp. 817 (S.D.N.Y. 1964)

prevent consumer access to tickets - a conduct deemed contrary to good commercial practice. The application of automated algorithms allows scalpers to gain an unfair advantage over regular ticket buyers. In their Official Report[10] members of the Senate Committee on Commerce, Science, and Transportation identify a number of methods, implemented in the process of ticket scalping. They include the automated checking of the ticket seller website for ticket releases; the automated reservation and display of available tickets; the automated obtaining of tickets by bots, thus allowing to fill out relevant customer information for multiple tickets at once; as well as circumventing anti-bot security measures.

It is noted that the use of ticket bots frustrates the intentions of performers and other ticket sellers to make tickets available equitably and at a reasonable price. A primary concern is that ticket bots obtain the majority of the most desirable tickets for certain events, leaving customers with no other choice than to pay a significantly higher sum of money in order to be able to gain access to the venue. The application of this specific software allows scalpers to purchase and subsequently to sell multiple tickets on the secondary market at exorbitant prices, in violation of primary ticket sellers' terms and technical controls (Official Report, p. 2)

With the intention to overcome this practice, Section (2), (a), (1) of the BOTS Act prohibits the usage of artificial intelligence (bots). Pursuant to Section (2), (b), (1) a violation of this prohibition is considered as an unfair or a deceptive act or practice. Thus, the drafters enable the Federal Trade Commission to intervene into ticket scalping affairs.

The BOTS Act has been subject to intensive discussions in relevant literature. Some authors (McFadden, R., 2016, p. 445) emphasize on the circumstance that the act is ineffective in its application, since predatory practices, such as ticket scalping, occur mainly on an international level, just like the Wiesguys case clearly demonstrated. These perpetrators are usually based in another jurisdiction and thus remain outside the reach of American law enforcement and the provisions of the BOTS Act.

Others tend to attribute the lack of legislative effectiveness to political reasons. They claim that the Congress has deliberately "weakened" the legislative effect of the BOTS Act by refusing to incorporate a right of action for injured parties, as well as by refusing to impose federal criminal penalty for any violation of the BOTS Act (Elvove, Z., 2023 p. 348).

However, despite scholars' criticism one cannot deny that the BOTS Act of 2016 is among the first legislative examples where it is perceived that AI can also have negative implications on consumers' experience.

[10] Cf. https://www.congress.gov/congressional-report/114th-congress/senate-report/391/1 (last visited on 20.01.2025)

Just months following the BOTS Act, in 2017 the United Kingdom legislature enacted the ***Digital Economy Act***[11]. Its Section 106 enables the State Secretary to "*make regulation providing that it is an offence for a person to obtain tickets in excess of a limit imposed by conditions*". Carrying out this competence, the State Secretary adopted ***The Breaching Limits on Ticket Sales Regulation 2018*** (SI 2018/735)[12], which came into force on 5 July 2018. Its Section 3 provides that it is an offence to use automated computer programs to purchase tickets and where the intent is financial gain.

It is worth pointing out that legislative initiatives restricting the use of AI with malicious intent in the process of ticket scalping are present on EU level as well. The provision of art. ***Directive (EU) 2019/2161 of 27 November 2019*** (subsequently popular as the '*Omnibus Directive*') amends *Annex I* to ***Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market*** by including a provision specifically aimed at ticket scalping. Annex I *(Commercial Practices Which Are In All Circumstances Considered Unfair)* is amended by introducing a new point 23a. - *Reselling event tickets to consumers if the trader acquired them by using automated means to circumvent any limit imposed on the number of tickets that a person can buy or any other rules applicable to the purchase of tickets*.

Recital (50) of the Preamble to the *Omnibus Directive* reveals that the Brussels legislator adopted an approach, similar to all aforementioned acts. The drafters consider ticket scalping to be detrimental to consumers' interests and call for a general prohibition for traders to resell tickets to cultural and sports events that they have acquired by using software such as 'bots' enabling them to buy tickets in excess of the technical limits imposed by the primary ticket seller or to bypass any other technical means put in place by the primary seller to ensure accessibility of tickets for all individuals. Moreover, "*that prohibition is without prejudice to any other national measures that Member States can take to protect the legitimate interests of consumers and to secure cultural policy and broad access of all individuals to cultural and sports events, such as regulating the resale price of the tickets*". Thus, it can be claimed that the *Omnibus Directive* is not aimed at providing an exclusive set of rules, intended to replace any pre-existing national provisions on the matter. It rather strives to dismiss the unfair advantage scalpers gain over consumers by the use of bots and other automated software that facilitates obtaining tickets in bulk. The *Omnibus Directive* was adopted on 27 November 2019 and Member States were expected to implement it within their national legislations as late as 2022 (Siwicki, 2024, p. 243).

[11] Cf. https://www.legislation.gov.uk/ukpga/2017/30/section/106/enacted (last visited on 20.01.2025)

[12] Cf. https://www.legislation.gov.uk/uksi/2018/735/contents/made (last visited on 20.01.2025)

There are currently more legislative initiatives specifically aimed at improving consumers' vulnerability vis-a-vis the usage of bots. In December 2023, a legislative bill, called "*Stopping Grinch Bots Act of 2023*" was introduced as an attempt to overcome "*grinch bots*". In recent times, "grinch bots" refers to a type of AI used by merchants to buy large batches of toys, children's books and other products commonly exchanged as Christmas presents in order to create a superficial shortage prior to a big holiday and to allow their resale for a substantially higher price (Herrmann, L., 2022, p. 357). In order to broaden consumer protection and taking into consideration that AI is being used for speculative resale of other movables than tickets, this legislative bill introduces a prohibition of the circumvention of control measures used by internet retailers to ensure equitable consumer access to products, and for other purposes. As of February 2025, the "*Stopping Grinch Bots Act*" has not been enacted yet[13].

Moreover, in January 2025, the Department of Business and Trade, as well as the Department of the United Kingdom created an open consultation on the resale of live event tickets, labelled "*Putting fans first*"[14]. The main aim is to enhance consumer protection even further by a) tackling the incentives behind ticket scalping, b) making resale platforms more accountable, c) enhancing enforcement of legislation and d) promoting industry-led action to improve access for fans.

2. Many scholars who consider legislative attempts to overcome ticket scalping as lacking effectiveness, call for **technological industry-driven solutions** to the issue (Fenton, Gr., 2020, p. 58). This approach neither calls for prohibiting ticket resales, nor does it oppose reselling them for a profit. Their main aim is to enable fair prices and to facilitate consumer access to tickets. Some of these scholars propose introducing a ticketing system, based on blockchain and digital ledger technology. As it is known, blockchain is a method to record and store information. It consists of "blocks" containing relevant information. Authors believe that the implementation of blockchain into the process of obtaining tickets would allow all transactions to be traced and would thus promote transparency in ticket transactions (Waldstreicher, B., 2019, p. 6). At the same time, the ones in favour of introducing blockchain in the process of ticket resale admit that both technological and legislative limitations prevent a full implementation of this idea (Fenton, 2020, p. 59).

However, it is worth sharing that ticket issuers and event organizers have long since applied various technological means to restrict scalpers and the usage of bots within ticket transactions. It should be noted, however, that standard

[13] Full text available at - https://www.congress.gov/bill/118th-congress/senate-bill/3511/text (last visited on 22.01.2024).

[14] Cf. https://www.gov.uk/government/consultations/putting-fans-first-consultation-on-the-resale-of-live-events-tickets/putting-fans-first-consultation-on-the-resale-of-live-events-tickets-html (last visited on 22.01.2024).

CAPTCHA technology and multi-factor identification[15], which were specifically intended to limit bots access to websites, can now be bypassed (Elefant, 2018, p. 14). Therefore, in order to provide equitable access, various technological solutions have been implemented into the process of ticket sale and resale. For instance, some event organizers have commissioned the development of an online resale platform available on their website. According to the general terms and conditions of the respective organizer, these ticket resale platforms are intended to be the only legitimate online platform for authorized ticket resale. Should a ticket be obtained elsewhere or via using another means of transfer, the ticket holder will be denied admission. This method has been extensively used by FIFA and UEFA, even in the latest UEFA European Football Championship of 2024[16].

A similar approach regarding ticket resales was implemented by the organizers of the Paris Olympics of 2024. They commissioned the design of a specific application, called "*Paris 2024 tickets"* and intended as the only possible valid means for ticket resale and other ticket transactions, while denying entry to any ticket holder who has used another platform or method to transfer Olympics games tickets[17].

Such an approach does, however, require substantial finances to develop and maintain an independent ecosystem used for ticket transactions and is therefore not applicable to smaller event organizers. A preferred method for them is to enter into a mandate contract with a ticket resale platform. One of the very few drawbacks of this approach is that organizers and artists lose their control over the contents of ticket sales contracts, since they cannot influence the content of applicable general terms and conditions. This is not a major flaw, however, since it allows smaller companies and organizers, who do not want or cannot allocate financial resources to develop and maintain a specific ticket resale website on their own, to make sure that the interests of their audience are not damaged. Usually, such ticket resale platforms allow resale for a higher price and charge additional taxes, but set a margin, usually not higher than 20 % of the face value. After the ticket resale has occurred, the platform generates a new unique barcode, solely available for the buyer, whereas the old barcode becomes invalid. Thus, the seller can neither use the old barcode in order to gain access to the venue, nor can he or she conclude a subsequent sale contract, purporting to

[15] "*CAPTCHA (Completely Automated Public Turing test to tell Computers and Humans Apart) is a type of security measure known as challenge-response authentication. CAPTCHA helps protect you from spam and password decryption by asking you to complete a simple test that proves you are human and not a computer trying to break into a password protected account.*" - available at https://support.google.com/a/answer/1217728?hl=en (last visited on 25.01.2025)

[16] Cf. https://euro2024-sales.tickets.uefa.com/ - As of February 2025, the website is non-functional, since the UEFA Euro 2024 Tournament ended on 14.07.2024.

[17] Cf. https://press.paris2024.org/news/the-paris-2024-tickets-app-to-access-your-tickets-for-the-games-is-now-available-36bc-7578a.html (last visited on 28.01.2025)

transfer the ticket to someone else. This approach actually leads to eliminating both ticket scalping and any other purported ticket frauds.

Another method, whose implementation brings about the same desirable result, is the introduction of personalized tickets. It consists of including the names of initial buyers on the ticket. At the same time, the event organizer shall include a limitation on further transfer of tickets in the general terms and conditions. Thus, transferability is virtually eradicated, since the event organizer will be entitled to deny entry to any person other than the initial ticket buyer *(Stein, 2014, p. 47 - 48).*

3. The aforementioned approach is possible due to a special clause, included into the ticket sale contract, and can usually be found within the general terms and conditions, drafted by the event organizer. Actually, it consists of "attaching" the ticket to the original ticket buyer, thus creating an *intuitu personae* contractual bond. This is one of the possible **contractual restraints** used by event organizers in an attempt to retain control over ticket circulation. It should be noted that such a clause actually resembles a contractual prohibition of assignment, also known as "*pactum de non cedendo*". The latter allows parties to restrict or even to exclude a receivable from participation in civil and commercial affairs altogether. Given the fact that issuing personalized tickets reveals a similarity in legal consequences, a comparison between these two institutes seems to be justified.

3.1. One can establish a number of differences between contractual prohibitions on assignment and clauses imposing restrictions on ticket resale. Above all, they are applied to different objects of civil and commercial affairs. While there is little doubt that *pactum de non cedendo* is applicable to receivables of any kind, speculations do arise regarding the legal nature of tickets. More specifically, it is debatable whether they can be encompassed by the notion of "receivables" as well.

A brief comparative overview reveals that, regarding tickets, common law takes on a consistent approach of not including tickets into the notion of a receivable. Unequivocally, US case law considers admission tickets to be a revocable license *(Dreyer, A., Schwartz, M., p. 766).* The concept of revocability encompasses, *inter alia*, the possibility for event organizers to arrange resale restrictions, i.e. limitations of the transferability of a ticket. As early as 1905, in *Collister v Hayman (1905)*[18], the court acknowledged that a ticket itself "*is not the contract, although to some extent it is evidence thereof*". The court considers a theatre ticket to be a „*license, issued by the proprietor pursuant to the contract as convenient evidence of the right of the holder to admission to the theatre at the date named with the privilege specified, subject, however, to his observance of any reasonable condition appearing upon the face thereof. The license, although*

[18] Collister v. Hayman, 183 N.Y. 250, 252 (N.Y. 1905)

granted for a consideration, is revocable for a violation of such condition by the holder of the ticket in the manner specified therein".

Moreover, the court points out that there are no legislative prohibitions, restricting proprietors of a theatre from making reasonable regulations for the conduct of their business and, further, from imposing such reasonable conditions upon the purchasers of tickets as in their judgment will best serve the interests of that business. A ticket speculator is one who sells at an advance over the price charged by the management. Speculation of this kind, points out the court, frequently leads to abuse, especially when the theatre is full and just a few tickets are left, so that extortionate prices may be exacted. A regulation of the proprietor, which tends to protect his patrons from extortionate prices is reasonable and he has the right to make it a part of the contract and a condition of the sale. Unless he can control the matter by contract and by conditions appearing upon the face of the ticket that is evidence of the contract, he may not be able to control it at all, but must leave his patrons to the mercy of speculators[19].

Despite some recent discussions, both modern case law and legal scholars are inclined to uphold the construction of tickets as revocable license *(Bosnjak, 2021, p. 347)* and do not regard them as receivables. Therefore, it is safe to assume that provisions on *pactum de non cedendo* in US law do not apply to tickets.

At the same time, US courts do not seem reluctant to acknowledge that contractual limitations on transferability on tickets exist as a separate legal institute. The prerequisites for the validity of any clauses aimed at such a restriction were set out by the court as early as 1905 in *Collister v. Hayman*. The court held such clauses to be enforceable, as long as they do not violate equal protection guarantees and that they have been communicated properly to the buyer *(Dreyer/Schwartz, 2007, p. 766)*.

It is worth pointing out that tickets are not regarded as receivables in national legislations within the European Union as well. A typical example for that can be found in the German civil law doctrine. The esteemed representative of the Pandectist school Rudolph von Jhering was one of the first modern scholars to point out that tickets reveal legal features of bearer bonds *(von Jhering, R., 1886, p. 326)*. This view has been subsequently adopted within German scholars and case law *(Wolf/Lindacher/Pfeiffer, 2020, p. 1140 - 1151)*, who therefore unanimously perceive conveyance restrictions of personalized tickets as falling within the general provision[20] on contractual limitations of transfer of goods *(Holzhäuser, F., Bagger, T., 2014, p. 44)*. It is acknowledged that event organizers

[19] Cf. Collister v. Hayman, 183 N.Y. 250, 254 (N.Y. 1905)

[20] **Section 137 of the German Civil Code,** bearing the title **"Prohibition of dispositions in a legal transaction"** provides that "*The power to dispose over an alienable right may not be excluded or restricted by a legal transaction. This effectiveness of an obligation not to dispose over such a right is not affected by this provision*."

are entitled to impose various conditions and restrictions to free transferability of tickets. Should the ticket organizer issue a non-personalized ticket, the inclusion of a transfer limitation clause into the general terms and conditions, applicable to the ticket sale contract, is considered valid. However, this clause cannot be enforced vis-a-vis third parties, subject to Section 137 of the German Civil Code. Should the initial ticket holder purport to transfer the ticket, this would constitute a breach of a contractual obligation not to dispose of the ticket. Moreover, the problem to prove that a resale has actually occurred, is also present here. However, the opposite situation, where the ticket is issued as a personalized one and the name of the original ticket holder is printed on it, falls within the scope of application of Section 399 of the German Civil Code, regulating the contractual prohibition of assignment[21]. It would seem that both German scholars and case law acknowledge the possibility to effectively restrict a ticket from participating in civil and commercial affairs by rendering it intransferable, under the very same provision that allows parties to include a *pactum de non cedendo* into their contract. Thus, the purported sale of a personalized ticket would be considered null and void, just like the transfer of a receivable contravening a contractual prohibition on assignment within Section 399 of the German Civil Code.

A similar approach has been adopted in France as well. Despite the lack of an explicit provision within civil law legislation, French scholars and case law tend to regard tickets as a title, giving access to a show, which is an explanation, strongly resembling the US approach. In France, tickets are not considered as receivables, but are rather regarded as a proof that an innominate contract comprising elements of both lease and service contracts has been concluded between the event organizer and the ticket holder[22].

This brief comparative overview reveals that national legislations do not consider tickets to be receivables. With some exceptions, among them Germany, tickets are not perceived as bonds, but rather as documents, signifying the existence of a contract. Therefore, by transferring the ticket the new ticket holder actually "steps into the shoes" of the previous one. By obtaining the ticket, he or she is not simply a new creditor, but rather takes the place as a contractual party and is subject to all rights and obligations, arising thereof.

---

[21] Section **399 of the German Civil Code,** bearing the title **"Exclusion of assignment in case of change of content or by agreement"** provides that "*A claim may not be assigned if the performance cannot be made to a person other than the original obligee without a change of its contents or if the assignment is excluded by agreement with the obligor*."

[22] Cf. Ticketzweithandel Schmidt-Kessel, M., https://www.schmidt-kessel.uni-bayreuth.de/pool/dokumente/news-termine-pdfs/gutachten-ticketzweithandel-langfassung.pdf The report itself is accessible via this link - https://www.vie-publique.fr/files/rapport/pdf/114000588.pdf (both visited last on 07.02.2025). The ticket is defined as "*un titre d'accès à un spectacle*".

Another aspect in comparing clauses, limiting transferability of tickets, and the contractual prohibition on assignment, can be found in their **legal consequences**. The exact content of both clauses normally depends on the volition of contracting parties. Of course, since such arrangements are usually inserted into general terms and conditions, it should be noted that both are subject to control by the court regarding a potentially detrimental effect to consumers. Both types of clauses can present themselves in a stunning variety, provided that the legislator has not a priori limited their effect. Some national legislators allow the complete exclusion of receivables by virtue of a clause, as it is the case with Section 399 BGB. Personalized tickets share virtually the same effect, since their transfer is almost impossible. Such an approach is, just like with *pactum de non cedendo*, highly debatable.

A much more balanced approach is not to fully exclude transferability of tickets, but rather to include different conditions that should be met for the transfer to happen, for instance to transfer them via a particular platform etc. This resembles greatly the possibility for the debtor to retain an assessment right, whenever a receivable, encumbered with a contractual prohibition on assignment, is being transferred by the assignee to another party. In this case, the debtor can assess whether the legal consequences of the assignment are at variance with his or her legal position. A contractual prohibition on assignment is entirely intended to protect the individual interest of the debtor.

This is not quite the case with contractual restrictions imposed upon ticket conveyance. With a few exceptions, most notably security reasons, these clauses are not intended to protect the individual interest of the event organizer, but the public interest from interference by ticket scalpers. To put it from a *pactum de non cedendo* "perspective", in the case of clauses imposing conditions on the resale of tickets, the debtor (i.e. event organizer or any other ticket issuer) purports primarily to protect the interests of their new creditor (i.e. the new ticket holder). Such an outcome is not expected with contractual prohibitions on assignment.

This brief comparison between clauses restricting the transfer of tickets, on the one hand, and contractual prohibitions on assignment, reveal that there is not a full overlap between these two institutes. In spite of allowing provisions on *pactum de non cedendo* to be applicable in the case of ticket resale restrictions, there is considerable difference between these institutes, mainly in terms of legal essence, functions and consequences.

CONCLUSION

Ticket scalping, an issue for millennia, has now become even more pressing by the use of artificial intelligence and "scalper bots", specifically designed for gaining unfair advantage over consumers in the process of obtaining tickets. There are, however, legislative, technological and contractual restrictions

that can be applied together in an attempt to restore fair dealing and to prevent consumers' harm.

BIBLIOGRAFIE

1. Bach, Fl., Weiterveräußerungsverbot für Fußballbundesligakarten durch AGB. *Juristische Rundschau*, Heft 4 (2007), p. 138 - https://doi.org/10.1515/JURU.2007.045 Black's law dictionary, Ninth Edition, 2009, West. A Thomson Reuters Business, St. Paul;
2. Bosnjak, M. "Get Your Tickets!" from a Legitimate Source: Primary and Secondary Ticketing Markets in Nevada. *UNLV Gaming Law Journal*, vol. 22, (2021);
3. Cross, A., A brief history of scalping concert tickets, 2023 - https://globalnews.ca/news/9418484/concert-ticket-scalping-history/, published on 20.01.2023
4. Dreyer, A., and Schwartz, M. Whose Game Is It Anyway: Sport Teams' Right to Restrict (and Control) Ticket Resale. *Fordham Intellectual Property, Media & Entertainment Law Journal*, vol.17, (2007);
5. Elefant, S. Beyond the Bots: Ticked-off over Ticket Prices or the Eternal Scamnation?. *UCLA Entertainment Law Review*, vol. 25 (2018), https://doi.org/10.5070/LR8251039716
6. Elvove, Z., Kneecapping Scalping: Ending the Predatory Scourge Plaguing E-Commerce Using Unfair Practice Frameworks. *Brooklyn Law Review* vol. 89, (2023);
7. Fenton, Gr., Taming the Ticket Market, Entertainment and Sports Lawyer, vol. 36, No. 2/2020, p. 58, available at - https://www.greenbergglusker.com/content/uploads/2020/12/Graham-Fenton-ABA-Taming-the-Ticket-Market-esl36-2.pdf
8. Herrmann, L., 2022, Scalper Bots – Ein Beispiel für die Divergenz von gewollter Automatisierung & rechtlichen Grenzen. *Computer und Recht*, Vol. 38, Heft 6 (2022), p. 357, https://doi.org/10.9785/cr-2022-380608
9. Holzhäuser, F., Bagger, T. - Der Weiterverkauf von Bundesliga-Tickets – eine Analyse aus rechtlicher Sicht. *Sciamus. Sport und Management*, Heft 3 (2014);
10. McFadden, R.J. The bots act: A small step for fankind when a giant leap is needed. *Washburn Law Journal, vol. 55, (2016);*
11. Purtill, J., The man who invented ticket bots explains why you can't get that gig ticket, Posted 16 Oct 2017, available at - https://www.abc.net.au/triplej/programs/hack/ticketbot-inventor-ken-lowson-explains-scalping/9055238
12. Rawson, E., Discrimina Ordinum: The Lex Julia Theatralis. *Papers of the British School at Rome*, Vol. 55 (1987), https://doi.org/10.1017/S0068246200008965

13. Segrave, K, Ticket Scalping. An American History 1850–2005, McFarland & Co, Inc. Publishers, 2007;
14. Siwicki, M., Protection of consumers against abuse of artificial intelligence in electronic trade: the scalper bots case; Part of the book Artificial Intelligence and International Human Rights Law. Developing Standards for a Changing World., 2024, Edward Elgar Publishing, DOI:10.4337/9781035337934.00021
15. Stein, G., Will Ticket Scalpers Meet the Same Fate As Spinal Tap Drummers? The Sale and Resale of Concert and Sports Tickets. *Pepperdine Law Review*, vol. 42, (2014), **doi.org**/10.2139/ssrn.2398499;
16. Sturman, Z., Where's the Consumer Harm? The BOTS Act: A Fruitless Boogeyman Hunt. *Vanderbilt Journal of Entertainment and Technology Law*, vol. 22, (2020);
17. von Jhering, R., Rechtsschutz gegen injuriöse Rechtsverletzungen. *Gesammelte Aufsätze aus den Jahrbüchern für die Dogmatik des heutigen römischen und deutschen Privatrechts*, vol. 3, (1886);
18. Waldstreicher, B., Defeating the bots: how blockchain technology can help overcome the weaknesses of the Better Online Ticket Sales Act, 2019, p. 2, available at https://www.sportslaw.org/docs/Waldstreicher.pdf
19. Wolf/Lindacher/Pfeiffer, AGB-Recht 7. Auflage, C.H.Beck, 2020.

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 407-417

DIGITALISATION – PART OF THE PUBLIC ADMINISTRATION REFORM

E.E. ȘTEFAN

Received 10.01.2025; accepted 03.12.2025
First online publication: 20.12.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.295

Elena Emilia ȘTEFAN
Nicolae Titulescu University of Bucharest
E-mail: stefanelena@gmail.com
ORCID ID: https://orcid.org/0009-0004-4154-3199

Abstract

Nowadays, in what concerns the relation with public authorities, the general trend is remote communication, both in terms of obtaining information and in terms of an administrative act. From this perspective, the state of development of society as a whole calls for reform, in the sense of moving away from traditional methods and embracing new approaches to communication, in society in general and in administration in particular.

In this background, we learn from the media that a minister created virtually by artificial intelligence has been appointed in a European country. This made us curious to document the topic in order to find out as much as possible about the communication tools of the future. Therefore, the paper addresses a current topic of general interest, discussing the possibility of modernizing public administration by means of digitalisation.

Therefore, the intended scope of the paper is to document the topic of digitalisation of public administration, in order to learn as much as possible about it, both from a theoretical and a practical, applied perspective.

By using research methods specific to law, the conclusion of the paper will be emphasized, namely that the integration of new technologies into administration is part of existing trends in administration and that this comes as a support for people.

Key words: *reform, digitalisation, public administration, electronic civil servant, robot.*

INTRODUCTION

Nowadays, public authorities are meeting people's need for information and for accessing online public services, modernizing the administration and adapting it to the state of today's society. In this light, at European level, there is increasing talk of digitalisation and the need for everyone to be trained to cope with the challenges it brings. As recently highlighted "*the management of contemporary state-organized society requires a complex institutional architecture, rigorously organized, which has to be able to ensure the efficient functioning of the state mechanism*" (*Bărbățeanu, 2025, p. 1*).

At global level, public administration is involved in the broad digitalisation process that has impacted society at large. Furthermore, "*law is connected to history and social environment*" (*Anghel, 2024, p. 12*). However, even if it is truly a factor of progress, "digitalisation brings with it new issues of responsibility, legal liability, limits and respect for citizens' rights and freedoms" (Ștefan, 2024, p. 565). Furthermore, *"in the digital age, protecting data confidentiality has become a major challenge, given the exponential growth in the volume of information stored and transmitted electronically*" (*Ene-Dinu, 2024, p. 162*). That is why this topic should constantly be in the scientific community's attention because it will shape our behaviour in the future.

In order to achieve the intended scope, the paper is organized into three parts: Part I analyses the reform at a conceptual level, Part II summarizes the legislation on digitalisation, and Part III presents a case study on the introduction of virtual civil servants into the administration. The documentary sources accessed for this scientific research, from national and comparative law, have been analysed and legally interpreted in order to draw a conclusion. Also, the methods of legal interpretation have been developed by our doctrine (*Popa and Anghel and Ene-Dinu and Spătaru-Negură 2017, 197-202*). Using specific legal research methods, the conclusion of the paper will be underlined, namely that, although new technologies are a factor of progress in the history of mankind, there is a need for responsibility in their application in administration, so as to maintain the balance between people's needs, respect for fundamental rights and public interest.

I. REFORM: CONCEPT AND LEGISLATION

According to the Explanatory Dictionary of the Romanian Language, the word *reform* shall mean: "*limited or structural political, economic, and social transformation to achieve progress*" while *to reform* shall mean "*to change for the better, to correct, to improve*" (*https://dexonline.ro/definitie/reform%C4%83*). Therefore, at the general conceptual level, reform implies change. However, all change requires time, resources, and vision. In light of these conceptual clarifications, the assumption we start from in this section is that reform is a component of change.

In our opinion, no reform can be made if the legislator is not grounded in social realities in order to understand the needs of society at a given moment and their

impact on it. Reform for reform's sake will not be successful because it requires resources, infrastructure, time, and qualified personnel. „(...) *The funds of public financial resources belong to the whole society*" (*Cîrmaciu, 2023, p.80*). Reform is a long and lasting process that requires a lot of patience. *At national level*, the reform was based on the political will embodied in the government program.

Among the most important documents, we hereby list the following: *Government strategy to speed up reform* in public administration 2001-2003 (*published in Official Journal no. 660 of 19 October 2001*). This document shows that: "2. *The need for reform* - The trend toward globalization, accompanied by the dynamic development of social systems, places nation states in a completely new position, in which institutions and administrative systems must be adapted.

The need for reform is driven by four main categories of reasons: a.) *Economic reasons*: low economic growth and a reduction in budgetary resources allocated to public administration; the private sector's need for modern, flexible administration that is open to public-private partnerships; b.) *Technological reasons*: introduction of information and communication technology in public administration; c.) *Sociological reasons:* Citizens, as beneficiaries of public services, are increasingly demanding and no longer accept their needs to be determined exclusively by what administrations offer them; d.) *Institutional reasons*: the integration of Romania in the European Union structures entails a different way of managing services (...)".

Subsequently, *the accession to the European Union* on 1 January 2007 led to a comprehensive process of European integration, which included the harmonization of national legislation with EU legislation. In our opinion, the accession of Romania to the EU is part of the administrative reform. "*The Romanian government was and is in the permanent contact with European officials, who note the progress made by our country*" (*Cîrmaciu, 2023, p. 3*).The national reform program continued throughout 2013-2016 (*https://www.mmuncii.ro/j33/images/Documente/Familie/Program_de_guvernare_2013-2016.pdf*). Subsequently, strategies for developing the administration were developed (Government Resolution no. 909/2014 on the approval of the *Strategy for strengthening public administration 2014-2020 and the establishment of the National Committee for coordinating the implementation of the Strategy for strengthening public administration* 2014-2020, published in Official Journal no. 834 of 17 November 2014).

Currently, the *Strategy for open government in Romania 2025-2030* (*published in Official Journal no. 336 bis of 15 April 2025*). According to it "National Anti-Corruption Strategies that perfected the public policy framework implemented in Romania with the aim of promoting and supporting open government. To date, three such strategies have been developed, with the National Anti-Corruption Strategy for 2021-2025 (...) being the strategic document currently in force. The aim of the National Anti-Corruption Strategies was to implement reforms in the field of integrity and anti-corruption through measures

to combat corruption and promote integrity and transparency, thereby contributing significantly to increasing citizens' trust in public institutions (...)". We note that at the European Union level, the Commission assists EU Member States in undertaking reforms in public administration and governance by providing technical support (*https://reform-support.ec.europa.eu/what-we-do/public-administration-and-governance_ro*). Therefore, digitalisation is necessary for society, by meeting a social need.

II. DIGITALISATION IN PUBLIC ADMINISTRATION - IN BRIEF

II.1. Public authorities involved in the digitalisation process

In our country, digitalisation is performed by the following authorities: Ministry of Economy, Digitalisation, Entrepreneurship, and Tourism and the Authority for the Digitalisation of Romania.

According to the normative act (Government Resolution no. 189/2025 on the organization and operation of the Ministry of Economy, Digitalisation, Entrepreneurship, and Tourism published in Official Journal no. 185 of 3 March 2025), the Ministry (...) "operates as a specialized body of the central government, subordinated to the Government, public institution with legal personality, which draws up and applies the strategies and the Government Program in the field: (...) of digitalisation".

It acts as a "state authority ensuring the exercise of control over the uniform application and enforcement of legal regulations in its areas of activity, as well as the functioning of entities operating under its subordination, authority, or coordination, and exercises the functions of coordinating digitalisation policies and measures. In the field of digitalisation: ensures interinstitutional coordination in the process of implementing, operating and monitoring national strategies in the field of information technology and digital transformation, developed by the Authority for the Digitalisation of Romania, a legal entity under the authority of the Ministry (...)".

According to the normative act [G.R. no. 89/2020 on the organization and operation of the Authority for the Digitalisation of Romania, published in Official Journal no. 113 of 13 February 2020, art.1 para. (1)], the Authority for the Digitalisation of Romania *"*(...) fulfils the role of designing strategies and public policies in the field of digital transformation (…) and to coordinate their implementation (...)".

A.D.R. goals are, among others: a) contributes to the digital transformation of the Romanian economy and society; b) implements eGovernment in public administration in Romania (...) [Idem, art.3].

II.2. Brief considerations on digitalisation

The national regulatory framework applicable to digitalisation was developed over a period of several years, and the reform was implemented gradually. The adopted regulations were published in the Official Journal. "*The*

Official Gazette of Romania (...) represents the official "newspaper" of our state in which, in Part I, the normative acts of the central public authorities are published" (*Boghirnea, 2022, p. 14*).

In summary, a major step forward was the adoption of the legal framework on the use of electronic signatures and electronic documents by public authorities. This involves several legislative acts, such as: G.E.O. no. 38/2020 on the use of documents in electronic format by public authorities and public institutions, published in Official Journal no. 289 of 7 April 2020 and Law no. 455/2001 on the electronic signature, published in Official Journal no. 429 of 31 July 2001 (subsequently repealed by Law no. 214/2024 on the use of electronic signatures, time stamps, and the provision of trust services based on them, published in Official Journal no. 647 of 8 July 2024).

Then, the elimination of the storage binder on 4 July 2023 was well received in society, a factor of progress in the relationship between the administration and the administered individuals. It was a clear sign that the administration was beginning to modernize. Law no. 9/2023 amending and supplementing Government Emergency Ordinance no. 41/2016 on establishing measures to simplify central public administration and amending and supplementing certain normative acts (published in Official Journal no. 14 of 5 January 2023) has several interesting provisions, such as:

- art. 2 para. (1) – "*Public institutions, specialized bodies of central and local government, as well as private legal entities which, according to the law, have obtained public utility status or are authorized to provide a public service, under public authority, are required to accept an electronic copy of the identity card, sent by email (...)"*;

- art. 2 para. (3) – "*Each and every public institution, specialized body of central or local government (...) is required to eliminate the requirement to submit certified copies of documents when providing public services, replacing them with certification of conformity with the original by the competent official"*.

Subsequently, G.E.O. no. 56/2024 approving the National Program for the Digital Transformation of Local Public Authorities (published in Official Journal no. 520 of 4 June 2024) was also approved.

At EU level, we note that Decision (EU) 2022/2481 of the European Parliament and of the Council of 14 December 2022 establishing the Digital Decade Policy Programme 2030 was adopted (published in OJ L 323, 19.12.2022). The Digital Decade Policy Programme 2030, set up by Decision (EU) 2022/2481, guides the digital transformation of all EU Member States along four main lines of action, with concrete and measurable targets and objectives: digital public services, digital skills, digital transformation of businesses, secure and sustainable infrastructures (*https://www.mcid.gov.ro/wp-content/uploads/2024/04/Plan-national-de-actiune-roadmap-pentru-publicare.pdf, fila 1*).

In this background, at national level, in accordance with the provisions of Decision (EU) 2022/2481 (...), the National Action Plan on the Digital Decade for Romania was adopted by Memorandum. On 14 October 2024 ADR announced its official approval as a strategic document of major importance that underlines Romania's strong commitment to digital transformation and alignment with the EU's digital goals (*https://www.adr.gov.ro/autoritatea-pentru-digitalizarea-romaniei-anunta-aprobarea-oficiala-a-planului-national-de-actiune-privind-deceniul-digital-pentru-romania*).

III. CASE STUDY ON VIRTUAL CIVIL SERVANTS IN PUBLIC ADMINISTRATION

A case study on virtual public services has been carried out in this section, starting from the idea that "public services are unquestionably a pillar of society" (Cliza, 2023, p.49). Therefore, examples of virtual civil servants at the level of public administration who provide public services, as well as chatbots, were selected.

At the level of local public authorities, the first virtual civil servant in Romania was launched in Cluj on 15 April 2018, known as ANTONIA. It still operates within the Cluj-Napoca City Hall and takes citizens' requests. *"Civil Servant Antonia"* portal is implemented within the framework of the project "Increasing the transparency of decision-making and simplifying administrative procedures for citizens-ANTO-CIIC (...) (*https://portal.primariaclujnapoca.ro/).* The overall objective of the project is to strengthen the institutional capacity and make the activity of Cluj City Hall more efficient, by simplifying administrative procedures and reducing bureaucracy, implementing measures from the perspective of public services provided to citizens, both at web portal and info kiosk terminals (*Idem*).

A few years later, *at government level*, i.e. central public administration, *robot ION*, the world's first governmental honorary advisor based on artificial intelligence, was launched for the first time on 1 March 2023 (*https://www.mcid.gov.ro/premiera-romaneasca-ion-primul-consilier-guvernamental-din-lume-ce-va-folosi-inteligenta-artificiala-9546/*). According to public information, ION's role is to help the Government to receive Romanians' opinions in real time, so that it can then inform government representatives of their problems and wishes (*Idem*). Robot ION looks like a mirror and it seems that in the first week after its launch it received half a million messages and tags from Romanians, on various topics such as: education, improving the public health system and conditions for people with disabilities, low salaries and pensions, and the need to improve living conditions in the big cities of the country (*https://hotnews.ro/video-ce-s-a-ntmplat-cu-robotul-ion-controversatul-consilier-ia-lansat-cu-mare-regie-n-primavara-guvernul-pregateste-ceva-26256*).

Unfortunately, robot ION did not perform up to expectations, making many mistakes and had a short lifetime. It is currently being tested and ION

version 2.0 will be released, which will also answer questions on certain public services.

With regard to chatbots, research shows that several city halls have resorted to this form of communication. For example, in Bucharest, District 3 City Hall "is the first public administration in Romania to use artificial intelligence," according to a news report from 07.11.2023 (https://www.primarie3.ro/index.php/presa/comunicat/primaria-sectorului-3-prima-administratie-publica-din-romania-cu-inteligenta-artificiala/6120). According to public information, "artificial intelligence supports citizens seeking information and assistance in resolving administrative needs, being available 24/7 to provide quick answers" (*Idem*).

In July 2025, Satu Mare launched the City Hall chatbot, an artificial intelligence chat system, which is considered an innovative solution in relations with citizens, improving and streamlining direct communication with the city's residents (https://www.primariasm.ro/chatbotul-primariei-este-functional). When searching the Satu Mare City Hall website using the keyword "chatbot," we were greeted with the official message: "*The City Hall chatbot is operational!"* (https://www.primariasm.ro/tag/chatbot). Also, in Satu Mare County, the Town Hall of Turț Commune has a chatbot (https://primariaturt.ro/chatbot/).

An AI chatbot system has been operating on the Focsani city hall website since this summer. (https://www.monitoruldevrancea.ro/2025/08/12/chatbot-ai-pe-site-ul-primariei-municipiului-focsani/).

Recently, we learned from the media that Albania has appointed an AI minister. Her name is *"Diella, which means sun, and she is the digital assistant that the Albanian government has tasked with fighting corruption"*(https://www.euronews.ro/articole/albania-a-desemnat-primul-ministru-ai-din-lume-pentru-a-combate-coruptia).

According to the Prime Minister of Albania, "*Diella is the first member of the government who is not physically present but is virtually created by artificial intelligence, which is tasked with conducting public auctions that will be 100% free of corruption*" (Idem). Diella "*was launched in January 2025 as an AI-generated virtual assistant, and its image is that of a woman dressed in traditional Albanian costume to help the population use the e-Albania platform, which provides official documents and various services*" (https://agerpres.ro/politic-extern/2025/09/12/albania-numeste-un-ministru-generat-de-ai-responsabil-cu-achizitiile-publice--1483745).

CONCLUSION

As a result of the scientific research carried out, we can draw some conclusions from the analysis of the documentary sources to which we had access, considering that the research objective has been achieved.

First of all, Romania is fulfilling its EU obligations and updating its legislation to bring it into line with EU laws, and the paper presents the applicable legislative framework, both in what concerns the reform and the digitalisation. Second of all, Romania has adopted the National Action Plan on the Digital Decade for Romania in accordance with Decision (EU) 2022/2481 of the European Parliament and of the Council of 14 December 2022 establishing the Digital Decade Policy Programme 2030. Another conclusion concerns the public authorities involved in the digitalisation process in general, identifying the Ministry of Economy, Digitalisation, Entrepreneurship, and Tourism and the Authority for the Digitalisation of Romania.

The paper also presented a case study that took into account two objectives: identification of virtual civil servants and chatbots at the level of public administration, based on relevance criteria. The first electronic civil servant Antonia which was implemented in 2018 at the city hall of Cluj Napoca and robot ION the first governmental honorary advisor based on artificial intelligence, launched within the Government in 2023 were analysed. We thought it would be interesting to present these two examples, given that, while Antonia is an electronic civil servant at local government level that is still working today, robot ION has only worked for a short period of time at central government level in Romania. The research also identified chatbots at the level of city halls such as Satu Mare or Bucharest District 3 City Hall, as well as Albania's first AI prime minister, Diella.

*The final conclusion of the paper points out that our country follows the trend of the digitalisation of public administration, in accordance with the international legislation, but the steps made by the country are small because we need appropriate legislation, well trained personnel, but also digitalisation dedicated infrastructure. The topic of administrative reform through digitalisation is very broad and could only be developed to a limited extent in this paper. Therefore, in future research, we will explore other components of reform such as administrative reform in the European context***.**

BIBLIOGRAFIE

1. The Authority for the Digitalisation of Romania, https://www.adr.gov.ro/autoritatea-pentru-digitalizarea-romaniei-anunta-aprobarea-oficiala-a-planului-national-de-actiune-privind-deceniul-digital-pentru-romania;

2. Anghel, E. *Analysis of the origin and basis of custom, as a source of law* in International Journal of Legal and Social Order, 4(1):12, 2024; DOI: https://doi.org/10.55516/ijlso.v4i1.211;

3. Boghirnea, I. *The principle of publicity of the national normative acts. Legal effects* in International Journal of Legal and Social Order, 1(1):14, 2022; DOI: https://doi.org/10.55516/ijlso.v1i1.60;

4. Bărbățeanu, V. *Referendum is an instrument of democracy in a state governed by the rule of law: an analisys through the lens of the Romanian Constitutional Court's case-law* in International Journal of Legal and Social Order *5*(1):1, 2025; DOI: https://doi.org/10.55516/ijlso.v5i1.238 ;
5. Cluj Napoca City Hall, https://portal.primariaclujnapoca.ro/*;*
6. European Commission, https://reform-support.ec.europa.eu/what-we-do/public-administration-and-governance_ro;
7. Cîrmaciu, Diana. *Trends in the romanian taxation,* International Journal of Legal and Social Order 3 (1):3, 2023, DOI: https://doi.org/10.55516/ijlso.v3i1.129
8. Cîrmaciu Diana, Miheș Cristian. *The interference of fiscal regulations with those in the criminal field. The right to silence and the right not to self incriminate of a legal person in Romania* in European Integrations Studies 3(1): 80, 2023 DOI: https://doi.org/10.46941/2023.e2.7;
9. Cliza, M.C., *Public services at the service of citizens - case study: cleaning services* in International Journal of Legal and Social Order 3 (1):49, 2023; DOI: https://doi.org/10.55516/ijlso.v3i1.130;
10. DEX, https://dexonline.ro/definitie/reform%C4%83;
11. Decision (UE) 2022/2481 of the European Parliament and of the Council of 14 December 2022 establishing the Digital Decade Policy Programme 2030, published in Official Journal of the European Union L 323/4, 19.12.2022;
12. Ene-Dinu, C.B.G, *The role of blockchain technology in ensuring correspondence confidentiality and GDPR compliance* in Proceedings of the 38th International Rais Conference, vol.1:162, 2024; DOI:10.5281/zenodo.14514763;
13. Government Resolution no. 189/2025 on the organization and operation of the Ministry of Economy, Digitalisation, Entrepreneurship, and Tourism published in Official Journal no. 185 of 3 March 2025;
14. Government Resolution no. 89/2020 on the organization and operation of the Authority for the Digitalisation of Romania, published in Official Journal no. 113 of 13 February 2020;
15. Government Resolution no. 909/2014 on the approval of the Strategy for strengthening public administration 2014-2020 and the establishment of the National Committee for coordinating the implementation of the Strategy for strengthening public administration 2014-2020, published in Official Journal no. 834 of 17 November 2014;
16. G.E.O. no. 38/2020 on the use of documents in electronic format by public authorities and public institutions, published in Official Journal no. 289 of 7 April 2020;
17. G.E.O. no. 56/2024 approving the National Program for the Digital Transformation of Local Public Authorities, published in Official Journal no. 520 of 4 June 2024;

18. Hegheș, N.E., *The non - retroactivity of' new legal norms-fundamental principle of law. Exceptions* in International Journal Of Legal And Social Order (1):153, 2022; DOI: https://doi.org/10.55516/ijlso.v1i1.74;
19. Law no. 455/2001 on the electronic signature, published in Official Journal no. 429 of 31 July 2001;
20. Law no. 214/2024 on the use of electronic signatures, time stamps, and the provision of trust services based on them, published in Official Journal no. 647 of 8 July 2024;
21. Law No. 9/2023 amending and supplementing Government Emergency Ordinance No. 41/2016 on establishing measures to simplify central public administration and amending and supplementing certain normative acts, published in Official Journal no. 14 of 5 January 2023;
22. Ministry of Research, Innovation and Digitalisation, https://www.mcid.gov.ro/premiera-romaneasca-ion-primul-consilier-guvernamental-din-lume-ce-va-folosi-inteligenta-artificiala-9546/;
23. Mass-media, https://www.euronews.ro/articole/albania-a-desemnat-primul-ministru-ai-din-lume-pentru-a-combate-coruptia ;
24. Mass-media, https://agerpres.ro/politic-extern/2025/09/12/albania-numeste-un-ministru-generat-de-ai-responsabil-cu-achizitiile-publice--1483745;
25. Popa, N. (coord.) and Anghel, E. and Ene-Dinu, C. and Spătaru-Negură, L.-C. (2017). *Teoria generală a dreptului. Caiet de seminar (General Theory of Law. Seminar Booklet)* 2nd edition. C. H. Beck Publishing House;
26. Satu Mare City Hall, https://www.primariasm.ro/chatbotul-primariei-este-functional;
27. Satu Mare City Hall, https://www.primariasm.ro/tag/chatbot;
28. Turț Town Hall, https://primariaturt.ro/chatbot/;
29. City Hall of District 3 Bucharest, https://www.primarie3.ro/index.php/presa/comunicat/primaria-sectorului-3-prima-administratie-publica-din-romania-cu-inteligenta-artificiala/6120;
30. Government Program, https://www.mmuncii.ro/j33/images/Documente/Familie/Program_de_guvernare_2013-2016.pdf;
31. National Action Plan on the Digital Decade for Romania, https://www.mcid.gov.ro/wp-content/uploads/2024/04/Plan-national-de-actiune-roadmap-pentru-publicare.pdf;
32. Public information, https://hotnews.ro/video-ce-s-a-ntmplat-cu-robotul-ion-controversatul-consilier-ia-lansat-cu-mare-regie-n-primavara-guvernul-pregateste-ceva-26256;
33. Government strategy to speed up reform in public administration 2001-2003, published in Official Journal no. 660 of 19 October 2001;
34. The Strategy for open government in Romania 2025-2030, published in Official Journal no. 336 bis of 15 April 2025;

35. Ștefan, E.E, *Integrity and Transparency in the Work of Public Authorities. Aspects of Comparative Public Law* in Juridical Tribune – Review of Comparative and International Law (14) 4 (December 2024):565, 2024; DOI: 10.62768/TBJ/2024/14/4/03.

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 418-431

PROTECTING THE DIGITAL REALM: A CASE STUDY OF ROMANIA'S CYBER SOVEREIGNTY *

P. TAL

Received 10.12.2024; accepted 20.02.2025
First online publication: 07.03.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.252

"States occasionally do conduct cyber activities that transit through, and target, networks and computers located in other States" (*Schöndorf, 2020*)

Pavel TAL[1],
"Dunarea de Jos" University of Galati, Romania
E-mail: Tal@Cybureau.org
ORCID ID: *https://orcid.org/0000-0002-4046-0867*

Abstract

Cyber sovereignty, a nation's right to govern its cyberspace, has emerged as a critical issue in the 21st century. Indeed, cyber threats increasingly challenge national security worldwide, so cyber sovereignty has become a critical priority for nations seeking to safeguard civilian and military digital domains.

Romania, a significant player in European cyber defence, has developed robust policies to safeguard its digital infrastructure and maintain sovereignty in cyberspace. This paper presents a case study of Romania's approach to cyber sovereignty, examining the strategic and legal frameworks that underpin its efforts to secure digital boundaries across civilian and military spheres. Through a detailed examination of Romania's military and national strategy and cyber-related legislative framework published in the last two decades, the research aims to illustrate how Romania addresses the demands of an evolving cybersecurity landscape and defines its cyber boundaries and sovereignty.

The findings reveal a lack of well-defined cyber sovereignty in Romania. None of the 22 official strategies and policy, civilian and military, publications published between the years 2002-2021 explicitly defines the term "Cyber Sovereignty" or illustrates Romania's cyber borders; (1) Some refer to the borderless nature of cyberspace (2) others refer to Romanian cyberspace, (3) and few indicate the need to ensure cyber security and defence abroad the country and at the international level.

PROTECTING THE DIGITAL REALM: A CASE STUDY OF ROMANIA'S CYBER SOVEREIGNTY*

This paper contributes to a deeper understanding of cyber sovereignty and its implementation within Romania's national strategy and legal context. It emphasises the importance of a well-defined cyber sovereignty in Romania and worldwide.

Key words: *effective remedy, criminal case, legal order, legal security, access to justice.*

INTRODUCTION

The various literature defines the term"Cyber Sovereignty" and addresses its complex and indeterminate nature, while most researchers align cyber sovereignty with fixed physical boundaries:

Nadeem Mirza et al. define that "states have authority within a fixed boundary to devise rules, laws, and norms about behaviour of individuals, institutions, applications, and other actors and factors in the cyberspace" (*Nadeem Mirza et al., 2021*). Pandey designates "Cyber Sovereignty" as "the control of cyberspace and the dissemination of information within a country's sovereign territory" (*Pandey, 2024*).

Fiveable definitions limit cyber sovereignty to local cyberspace, arguing that "Cyber sovereignty refers to the concept that nations have the right to govern their own cyberspace without external interference, reflecting their unique political, cultural, and legal frameworks" while emphasising the applying cyber sovereignty out of state's borders, "This idea emphasizes that states can create and enforce laws and regulations that apply to digital spaces within their borders, influencing how data is controlled and shared across international boundaries" (*Fiveable, n.d.).*

Others fail to align cyber sovereignty with fixed physical boundaries but assert that the concept refers to the nations' cyberspace:

Jensen describes "Cyber Sovereignty" as "The extent to which nations exercise sovereignty over cyberspace and cyber infrastructure" (*Jensen, 2014*). Similarly, Leiter characterises it as "the ability to create and implement rules in cyberspace through state governance" *(Leiter, 2020*). The Tallinn Manual addresses the internal ("A State enjoys sovereign authority with regard to the cyber infrastructure, persons, and cyber activities located within its territory, subject to its international legal obligations") and external ("A State is free to conduct cyber activities in its international relations subject to any contrary rule of international law binding on it") components of "Cyber Sovereignty" (*M. N. Schmitt, 2017*).

Others refer to the complexity of sovereignty in cyberspace and, therefore, to the ability to define the term "Cyber Sovereignty" properly:

Baezner and Robin address the nature and complexity of cyber sovereignty and its definition: "While cyber sovereignty is a vague concept in general that is often used in relation to state power and independence in cyberspace, sovereignty

itself is a clearly defined concept in International Law. Therefore, the concept of cyber sovereignty needs to be defined more precisely" (*Baezner & Robin, 2018*).

Prof Michael Schmitt describes two attitudes towards "whether sovereignty is simply a principle of international law from which binding international law rules emerge, or a primary rule of international law, the violation of which by cyber means constitutes an 'internationally wrongful act'" mentioning two positions and the fact that the United States and Israel remain on the fence "either by failing to express a view or by discussing the matter without taking a firm position thereon"(*M. Schmitt, 2020*). The same as Dr Schöndorf's claim that "the State of Israel has largely refrained thus far from making specific statements on whether and how particular rules apply" (*Schöndorf, 2020*).

Support for this hypothesis on strategic cyber sovereignty ambiguity may be found in international strategic ambiguity relating to cyber norms and specifically to cyber sovereignty (*Barker, 2020; Brake, 2015; Broeders & Cristiano, 2020; Palladino & Amoretti, n.d.; Ruohonen, 2021*).

The research literature analyses cyber sovereignty of various states, including The U.S. (*Kelton et al., 2022*), China (*Creemers, 2020*), Ukraine (*Dimich & Yeromina, 2022*), Russia (*Gaiser, 2021*), Israel (*Pavel, 2024*), Thailand (*Chachavalpongpun, 2023*), Indonesia (*Ro'is, 2022*), Morocco (*Maleh & Maleh, 2022*), Turkey (*Eldem, 2021*), Bhutan (*Tshering Tshering, 2021*), and The EU (*Barrinha & Christou, 2022*).

In addition, the research literature analyses various aspects of Romania's cyberspace, including the cyber security policy (Petcu & Barbu, 2022), The CYRESRANGE project (*Dinu & Cîrnu, 2024*), education (*Vasiloiu, 2022*), approaches and efforts (*Brânda, 2021*), including its passive cyber defence (*Ceuca, 2023*), law (*Dragomir & Florescu, 2022*), cybercrime (*Zlati, 2021*), disinformation (*Bârgăoanu & Pană, 2024*), feminism (*Voina et al., 2021*), and regional cyber aspects (*Nagy, 2021*).

Nevertheless, the research literature lacks an analysis of Romania's national cyber sovereignty. To minimise this research gap, the study analyses the following research questions: (RQ1) What is Romania's official definition of its sovereignty in cyberspace? (RQ2) What are the official boundaries of Romania's cyberspace? (RQ3) Do the definitions differ between official Romanian agencies?

I. METHODOLOGY

The analysis is qualitative research based on the following steps:

Phase A – the sources –

1. Map all of Romania's official cyber policies and strategies published by the Government of Romania at the Legislative Portal (*Government of Romania, n.d.*).

2. Map all of Romania's official cyber policies and strategies as published by the United Nations Institute for Disarmament Research in the Cyber Policy Portal (*United Nations Institute for Disarmament Research, n.d.*).
3. A general search for Romania's cyber-related strategy policy using a search engine.
4. Collect all the publications to Table 1 – "Romania's Cyber Sovereignty and Boundaries in its Civilian and Military National Strategy and Legal Frameworks".

Phase B – the content –

5. Search for the terms "Sovereignty" and "Boundary" or "Border" in the context of cyberspace in every publication that appears in Table 1 – "Romania's Cyber Sovereignty and Boundaries in its Civilian and Military National Strategy and Legal Frameworks".
6. Perform a broader indication of cyber sovereignty or boundaries definitions if a document does not explicitly include such a term.

II. FINDINGS

The total number of published Romanian national documents regarding cybersecurity policy, structure, and legal framework is 22, covering two decades of civilian and military national policy. The findings are gathered in Table 1 – "Romania's Cyber Sovereignty and Boundaries in its Civilian and Military National Strategy and Legal Frameworks."

Subject	Name	Publisher	"Sovereignty"	"Boundary" / "Border"	General Reference
Cybersecurity Policy	Military Strategy of Romania	(*Ministry of National Defence of Romania, 2005a*)	-	-	-
	The Military Strategy of Romania	(*Ministry of National Defense, 2016*)	-	-	"The Communications, Information and Cyber Defense Forces provide, through their standing and deployable capabilities, combat support for the management, operating, and maintenance of the infrastructure, communications systems and services of, information technology, information security, and cyber defense, in the country and

					abroad".
	Military Strategy of Romania	(*Ministry of National Defence, 2021*)	-	-	-
	Romania's National Security Strategy	(*Ministry of National Defence of Romania, 2005b*)	-	-	-
	The National Security Strategy of Romania	(*The President, 2007*)	-	-	-
	National Defence Strategy Romania 2015-2019	(*Presidential Administration, 2015*)	-	-	-
	National Defence Strategy 2020-2024	(*Presidential Administration, 2020*)	-	-	-
	Romania's Cybersecurity Strategy and Action Plan for 2022-2027	(*Government of Romania, 2021*)	-	-	"Cyber attacks target networks and computer systems on the territory of Romania, including those with an impact on national security". "Cyberspace is not limited by borders, so cyber security must be thought of and ensured at an international level".
	White Paper on Defense - 2015	(*Ministry of National Defence, 2015*)	-	-	-
	White Paper on Defense - 2021	(*WHITE PAPER of 11 May 2021, 2021*)	-	-	-
	National Strategy on Digital Agenda for Romania	(*Ministry of Communication and Information Technology, 2014*)	-	"This document acknowledges that there may exist some gaps in legislation pertaining to the use, operation or maintenance of information systems. It is of utmost importance to create the correct climate for change in ITC and these needs to start from the	-

				legislative framework which should clearly define the boundaries and the cascading effects of this charter to all the underlying functions".	
	Cyber Security Strategy of Romania	(*Government of Romania, 2013*)	-	"Cyberspace is characterised by the absence of borders, dynamism and anonymity, generating equal both opportunities to develop knowledge-based information society and risks to its functionality (at the individual, state and even transborder)".	-
Structures	Law no. 415 of June 27, 2002 regarding the organisation and functioning of the Supreme National Defense Council	(*Law No. 415 of June 27, 2002 Regarding the Organization and Functioning of the Supreme National Defense Council, 2002*)	-	-	-
	The functioning regulation of the Supreme Council of Defense of the Country	(*The Functioning Regulation of the Supreme Council of Defense of the Country, 2002*)	-	-	-
	LAW no. 346 of July 21, 2006 (*republished*)	(*LAW No. 346 of July 21, 2006 (*republished*), 2006*)	-	-	-
	DECISION no. 494 of May 11, 2011 regarding the establishment of the National Cyber Security Incident Response Center - CERT-RO	(*DECISION No. 494 of May 11, 2011 Regarding the Establishment of the National Cyber Security Incident Response Center - CERT-RO, 2011*)	-	-	-
	DECISION no. 584	(*DECISION No. 584*	-	-	-

	of August 8, 2019	*of August 8, 2019, 2019*)			
	RFC 2350 description for CERT-RO	(*DECISION No. 584 of August 8, 2019, 2019*)	-	-	"The CERT-RO constituency is composed of all users, systems and networks from Romanian cyber-space". "CERT-RO is authorised to address all types of computer security incidents which occur, or threaten to occur, in Romanian cyber-space".
	DECISION no. 1,005 from November 23, 2020	(*DECISION No. 1,005 from November 23, 2020, 2020*)	-	-	-
	EMERGENCY ORDINANCE 104/2021 on establishing the National Cyber Security Directorate	(*The National Cyber Security Directorate, 2021*)	-	"cyber threats do not have a clear national address of a sender, are not blocked at state borders".	-
Legal Framework	LAW no. 362 of December 28, 2018, on ensuring a common high level of security of networks and IT systems	(*The Functioning Regulation of the Supreme Council of Defense of the Country, 2002*)	-	"Determines, based on the notifications received, the national and cross-border impact of the incidents and informs the relevant authorities at the national level, as well as similar authorities in other potentially affected state".	-
	Decision No. 271	(*DECISION No. 271 of May 15, 2013, 2013*)	-	"The cyberspace is characterised by the lack of borders, dynamism and anonymity, generating both opportunities for the development of the	

				knowledge-based information society, but also risks to its operation (at the individual, state and even cross-border level)".	

Table 1 – "Romania's Cyber Sovereignty and Boundaries in its Civilian and Military National Strategy and Legal Frameworks"

The findings indicate that none of the 22 covered official strategies and policies, and civilian and military publications published between 2002 and 2021 directly refer to Romania's cyber borders, boundaries, or sovereignty.

Some national policy publications refer to the nature of cyberspace as "not limited by borders" (*Government of Romania, 2021*) and that it "is characterized by the absence of borders" (*Government of Romania, 2013*). Therefore, "cyber threats do not have a clear national address of a sender, are not blocked at state borders" (*The National Cyber Security Directorate, 2021*), and the cyber defence of Romania's Army is "in the country and abroad" (*Ministry of National Defense, 2016*).

Some publications refer to Romanian cyberspace, but there are no definitions of the boundaries of cyberspace: "The CERT-RO constituency is composed of all users, systems and networks from Romanian cyber-space". "CERT-RO is authorized to address all types of computer security incidents which occur, or threaten to occur, in Romanian cyber-space" (*DECISION No. 584 of August 8, 2019*).

III. DISCUSSION

The study aims to outline Romania's cyber sovereignty and boundaries based on its national strategy and legal frameworks. The findings indicate a lack of comprehensive definition and discussion of these issues.

The lack of an official definition of cyber sovereignty in Romania's national publications addresses Baezner & Robin's findings, which analysed 93 national cyber strategies of 69 states. The analysis revealed that 18 out of 93 documents contained the term "Sovereignty," and only one (Canada) contained the term "Cyber sovereignty."

In addition, the researchers assert that "The contexts in which the word "sovereignty" was used in strategies were various, but the word was never clearly defined in any of the documents". Therefore, the researchers emphasise "a lack of shared understanding and definition of the word "sovereignty" in the context of cybersecurity", a misunderstanding that needs to be rectified (*Baezner & Robin, 2018*).

Therefore, the paper can address the research questions and argue that (RQ1) Romania did not define its cyber sovereignty and boundaries in the civilian and military national strategy and legal frameworks. (RQ2) Even though the various Romanian national strategies and legal frameworks avoid defining Romania's cyber sovereignty and boundaries, some refer to the borderless nature of cyberspace and the fact that cyber threats are not blocked at state borders and therefore, the need to ensure cyber security and defence at abroad the country and at the international level. In addition, several national official strategies and policy publications refer to the "Romanian cyberspace". (RQ3) No distinction was found between military and national strategies defining Romania's cyber sovereignty.

Even though the few indications of Romanian cyber sovereignty refer to cyberspace's borderless nature, Romania's Army's cyber defence is defined explicitly as "in the country and abroad".

CONCLUSION

The conclusion emphasises the various research outcomes for reducing confusion surrounding "Cyber Sovereignty".

Several reasons may lie behind the lack of a coherent definition of Romania's cyber sovereignty: (1) Misunderstanding and insufficient awareness of the need to define the civilian and military cyber boundaries as part of national strategy. (2) There is a lack of international consensus on how sovereignty applies in cyberspace, which is in its early stages and remains a particular case compared to the other domains, and debates over sovereignty are still ongoing (Baezner & Robin, 2018). (3) The inherently borderless nature of cyberspace makes traditional territorial concepts challenging to apply. Unlike physical domains, cyberspace is a complex, interconnected, constantly evolving environment that defies traditional notions of territorial boundaries. This makes applying traditional concepts of sovereignty, rooted in the physical territory, to cyberspace challenging. (4) Governments often prefer to maintain strategic ambiguity in their cyber strategies to allow operational flexibility. Therefore, nations have been reluctant to agree on norms that might restrict their freedom in cyberspace, which limits the development of cohesive definitions in national strategies. Therefore, we may consciously try to avoid a public discussion on cyber sovereignty and boundaries, as in the case of Israel (Pavel, 2024). (5) Cyberspace evolves faster than traditional legal or regulatory frameworks. New technologies continually alter the cyber landscape, complicating efforts to establish stable definitions of boundaries and sovereignty that can adapt to such rapid advancements. (6) The constantly evolving threat landscape, including state-sponsored cyberattacks, cybercrime, and cyberterrorism, further complicates the issue of cyber sovereignty. In addition, attributing cyber activities to specific actors or nations remains technically challenging. Therefore, countries

must adapt their strategies to address these evolving threats, which may require rethinking traditional approaches to sovereignty.

Future research may analyse two approaches: (1) National cyber sovereignty in the EU member states and especially the Balkans, to explore whether Romania's approach toward cyber sovereignty definitions is unique or familiar among other region's states. (2) Romania's approach to other cyber-related definitions, to identify whether the lack of Romania's cyber sovereignty appears in national publications relating to various cyber-related terms, such as cyber terrorism, cyber warfare, cyber deterrence, and cyber resilience.

BIBLIOGRAFIE

1. Baezner, M. ;, & Robin, P. (2018). *ETH Library Cyber Sovereignty and Data Sovereignty*. https://doi.org/10.3929/ethz-b-000314613

2. Bârgăoanu, A., & Pană, M. (2024). Cyber influence defense: Applying the DISARM framework to a cognitive hacking case from the Romanian digital space. *Applied Cybersecurity & Internet Governance*. https://doi.org/10.60097/ACIG/190196

3. Barker, T. (2020, January 16). *Europe Can't Win Its War for Technology Sovereignty*. Foreign Policy. https://foreignpolicy.com/2020/01/16/europe-technology-sovereignty-von-der-leyen/

4. Barrinha, A., & Christou, G. (2022). Speaking sovereignty: the EU in the cyber domain. *European Security*, *31*(3), 356–376. https://doi.org/10.1080/09662839.2022.2102895

5. Brake, B. (2015). Strategic Risks of Ambiguity in Cyberspace. In *Contingency Planning Memorandum* (Issue 24). https://www.cfr.org/report/strategic-risks-ambiguity-cyberspace

6. Brânda, O.-E. (2021). Romanian Cybersecurity Efforts. In *Routledge Companion to Global Cyber-Security Strategy*. https://www.taylorfrancis.com/chapters/edit/10.4324/9780429399718-11/romanian-cybersecurity-efforts-oana-elena-br%C3%A2nda

7. Broeders, D., & Cristiano, F. (2020, March 18). *Cyber Norms and the United Nations: Between Strategic Ambiguity and Rules of the Road*. Italian Institute for International Political Studies. https://www.ispionline.it/en/publication/cyber-norms-and-united-nations-between-strategic-ambiguity-and-rules-road-25417

8. CEUCA, R.-O. (2023). Passive Cyber Defense as a Norm Preservation Tool: Romania's Behaviour as a Norm Antipreneur in Cybersecurity. *Romanian Cyber Security Journal*, *5*(2), 1–16. https://doi.org/https://doi.org/10.54851/v5i2y202302

9. Chachavalpongpun, P. (2023). Nationhood in the Cloud: Cyber Sovereignty in Thailand. *Asian Studies Review*, *47*(2), 392–411. https://doi.org/10.1080/10357823.2022.2109591

10. Creemers, R. (2020). China's conception of cyber sovereignty. In *Governing Cyberspace: Behavior, Power and Diplomacy* (pp. 107–142). https://books.google.co.il/books?hl=en&lr=&id=F2vsDwAAQBAJ
11. DECISION No. 1,005 from November 23, 2020 (2020). https://legislatie.just.ro/Public/DetaliiDocument/234190
12. DECISION No. 271 of May 15, 2013 (2013). https://legislatie.just.ro/Public/DetaliiDocument/148324
13. DECISION No. 494 of May 11, 2011 Regarding the Establishment of the National Cyber Security Incident Response Center - CERT-RO (2011). https://legislatie.just.ro/Public/DetaliiDocument/129052
14. DECISION No. 584 of August 8, 2019 (2019). https://legislatie.just.ro/Public/DetaliiDocument/217149
15. Dimich, A., & Yeromina, L. (2022). Contemporary Scientific Approaches to the Definition of the Concept «Information Sovereignty of Ukraine». *Information Security of the Person, Society and State*, *34–36*, 13–19. https://doi.org/10.51369/2707-7276-2022-(1-3)-2
16. DINU, A., & CÎRNU, C.-E. (2024). Empowering National Cybersecurity: The CYRESRANGE Project. *Romanian Cyber Security Journal*, *6*(1), 1–10. https://doi.org/https://doi.org/10.54851/v6i1y202408
17. DRAGOMIR, A., & FLORESCU, I. (2022). Romania's Implementation of International and European Cyber Law to Strengthen National Cybersecurity. *International Journal of Information Security and Cybercrime*, *11*(2), 19–28. https://doi.org/10.19107/IJISC.2022.02.01
18. Eldem, T. (2021). Between Multi-stakeholderism and Cyber Sovereignty: Understanding Turkey's Cybersecurity Strategy. In *Routledge Companion to Global Cyber-Security Strategy*. Routledge. https://www.researchgate.net/publication/349723868_Between_Multi-stakeholderism_and_Cyber_Sovereignty_Understanding_Turkey's_Cybersecurity_Strategy
19. Fiveable. (n.d.). *Cyber sovereignty*. Retrieved 9 November 2024, from https://fiveable.me/key-terms/technology-policy/cyber-sovereignty
20. Gaiser, L. (2021). Seeking a New Order for Global Cybersecurity : The Russian approach to cyber-sovereignty. *Routledge Companion to Global Cyber-Security Strategy*, 153–164. https://doi.org/10.4324/9780429399718-15
21. Government of Romania. (n.d.). *Legislative Portal*. Retrieved 5 November 2024, from https://legislatie.just.ro/Public/Acasa
22. Government of Romania. (2013). *Cyber Security Strategy of Romania*. https://www.cyberwiser.eu/sites/default/files/RO_NCSS_2013_en.pdf
23. Government of Romania. (2021, December 30). *Strategy from December 30, 2021 of cyber security of Romania, for the period 2022-2027*. https://legislatie.just.ro/Public/DetaliiDocumentAfis/250235

24. Jensen, E. (2014). Cyber Sovereignty: The Way Ahead. *Texas International Law Journal*, *50*. https://digitalcommons.law.byu.edu/faculty_scholarship/239
25. Kelton, M., Sullivan, M., Rogers, Z., Bienvenue, E., & Troath, S. (2022). Virtual sovereignty? Private internet capital, digital platforms and infrastructural power in the United States. *International Affairs*, *98*(6), 1977–1999. https://doi.org/10.1093/IA/IIAC226
26. LAW No. 346 of July 21, 2006 (*republished*) (2006). https://legislatie.just.ro/Public/DetaliiDocument/73882
27. Law No. 415 of June 27, 2002 Regarding the Organization and Functioning of the Supreme National Defense Council (2002). https://csat.presidency.ro/ro/prima-pagina/legea-de-organizare
28. Leiter, A. (2020). Cyber Sovereignty: A Snapshot From a Field in Motion. *Harvard International Law Journal Frontiers*, *60*, 1–6. https://journals.law.harvard.edu/ilj/wp-content/uploads/sites/84/Leiter-PDF-format.pdf
29. Maleh, Y., & Maleh, Y. (2022). *Cyber Sovereignty in Morocco*. 77–89. https://doi.org/10.1007/978-3-031-18475-8_7
30. Ministry of Communication and Information Technology. (2014). *National Strategy on Digital Agenda for Romania*. https://www.trusted.ro/wp-content/uploads/2014/09/Digital-Agenda-Strategy-for-Romania-8-september-2014.pdf
31. Ministry of National Defence. (2015). *White Paper on Defense*. https://eda.europa.eu/docs/default-source/Defence-Procurement-Gateway/ro_white-paper-on-defence.pdf
32. Ministry of National Defence. (2021). *Military Strategy of Romania*. https://www.mapn.ro/legislatie/documente/STRATEGIA-MILITARA-A-ROMANIEI-ENG.pdf
33. Ministry of National Defence of Romania. (2005a). *Military Strategy of Romania*. https://www.files.ethz.ch/isn/156801/RomaniaMilitaryStrategy.pdf
34. Ministry of National Defence of Romania. (2005b). *Romania's National Security Strategy*. https://www.files.ethz.ch/isn/156799/Romania%20nationalsecurity.pdf
35. Ministry of National Defense. (2016). *The Military Strategy of Romania*. https://eda.europa.eu/docs/default-source/Defence-Procurement-Gateway/ro_milstrategy.pdf
36. Nadeem Mirza, M., Abid Ali, L., & Hasnain Qaisrani, I. (2021). Conceptualising Cyber Sovereignty And Information Security: China's Image Of A Global Cyber Order. *Webology*, *18*(5), 598–610. https://www.webology.org/data-cms/articles/20220301123539amwebology%2018%20(5)%20-%2099%20pdf.pdf

37. Nagy, M. (2021). Cyber Security Strategies of the Visegrád Group States and Romania. *Acta Universitatis Sapientiae, European and Regional Studies*, *19*, 72–87.
38. Palladino, N., & Amoretti, F. (n.d.). The Ambiguity of Digital Sovereignty between Cybersecurity and Digital Rights. *International Political Science Association*. Retrieved 16 November 2023, from https://www.ipsa.org/wc/paper/ambiguity-digital-sovereignty-between-cybersecurity-and-digital-rights
39. Pandey, K. (2024, August 20). *Chinese notion of cyber sovereignty: Building an alternate digital order*. Observer Research Foundation. https://www.orfonline.org/expert-speak/chinese-notion-of-cyber-sovereignty-building-an-alternate-digital-order
40. Pavel, T. (2024). Defining Digital Boundaries: A Study on Israel's Cyber Sovereignty Policy. *International Journal of Applied Technology & Leadership*, *3*(1), 1–15. https://www.researchgate.net/publication/377219706_Defining_Digital_Boundaries_A_Study_on_Israel's_Cyber_Sovereignty_Policy?_tp=eyJjb250ZXh0Ijp7ImZpcnN0UGFnZSI6InB1YmxpY2F0aW9uIiwicGFnZSI6InNlYXJjaCIsInBvc2l0aW9uIjoicGFnZUhlYWRlciJ9fQ
41. PETCU, I., & BARBU, D.-C. (2022). The New Challenges of Romania's Cyber Security Policy. *Romanian Cyber Security Journal*, *4*(1), 57–67. https://doi.org/10.54851/V4I1Y202207
42. Presidential Administration. (2015). *National Defence Strategy Romania 2015-2019*. https://eda.europa.eu/docs/default-source/Defence-Procurement-Gateway/national-defense-strategy-2015---2019.pdf
43. Presidential Administration. (2020). *National Defence Strategy 2020-2024*. https://www.presidency.ro/files/userfiles/National_Defence_Strategy_2020_2024.pdf
44. Ro'is, N. (2022). Cyber Sovereignty Gotong Royong, Indonesia'a Way of Dealing with the Challenges of Global Cyber Sovereignty. *Pancasila and Law Review*, *3*(1), 15–30. https://doi.org/10.25041/PLR.V3I1.2573
45. Ruohonen, J. (2021). The Treachery of Images in the Digital Sovereignty Debate. *Minds and Machines*, *31*(3), 439–456. https://doi.org/10.1007/S11023-021-09566-7/METRICS
46. Schmitt, M. (2020, December 17). *Israel's Cautious Perspective on International Law in Cyberspace: Part I (Methodology and General International Law)*. EJIL: Talk! https://www.ejiltalk.org/israels-cautious-perspective-on-international-law-in-cyberspace-part-i-methodology-and-general-international-law/
47. Schmitt, M. N. (2017). *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*. Cambridge University Press.

https://www.cambridge.org/core/books/tallinn-manual-20-on-the-international-law-applicable-to-cyber-operations/E4FFD83EA790D7C4C3C28FC9CA2FB6C9
48. Schöndorf, R. (2020, December 9). *Israel's Perspective on Key Legal and Practical Issues Concerning the Application of International Law to Cyber Operations*. EJIL: Talk! https://www.ejiltalk.org/israels-perspective-on-key-legal-and-practical-issues-concerning-the-application-of-international-law-to-cyber-operations/
49. The Functioning Regulation of the Supreme Council of Defense of the Country (2002). https://csat.presidency.ro/ro/prima-pagina/regulament-de-functionare
50. The National Cyber Security Directorate. (2021). *EMERGENCY ORDINANCE 104/2021 on establishing the National Cyber Security Directorate*. https://dnsc.ro/vezi/document/emergency-ordinance-104-2021-on-establishing-the-national-cyber-security-directorate
51. The President. (2007). *The National Security Strategy of Romania*. https://www.bbn.gov.pl/ftp/dok/07/ROU_National_Security_Strategy_Romania_2007.pdf
52. Tshering Tshering, J. (2021). *Digital Data Sovereignty: A Case Study on Bhutan*. https://www.researchgate.net/publication/353443155_Digital_Data_Sovereignty_A_Case_Study_on_Bhutan
53. United Nations Institute for Disarmament Research. (n.d.). *Romania - Cyber Policy Portal*. Retrieved 5 November 2024, from https://cyberpolicyportal.org/states/romania
54. Vasiloiu, I. C. (2022). Cybersecurity education in Romania - competitive advantage in the EU market. *Proceedings of the International Conference on Virtual Learning*, *17*, 297–307. https://doi.org/10.58503/ICVL-V17Y202225
55. VOINA, A., PAVELEA, A., & CULIC, L. (2021). Hashtag Feminism in Romania: #MeToo and Its Effects on Cyberspace Behavior. *Transilvania*, *11–12*, 62–70. https://doi.org/10.51391/trva.2020.12.07
56. WHITE PAPER of 11 May 2021 (2021). https://legislatie.just.ro/Public/DetaliiDocumentAfis/242221
Zlati, G. (2021). Cybercrime in Romania. *Jurnalul Baroului Cluj*, *2021*. https://heinonline.org/HOL/Page?handle=hein.journals/jbcluj2021&id=6&div=&collection=.

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 432-436

ENGAGEMENT BETWEEN TRADITION AND MODERNITY

M. I. TEACA

Received 10.11.2025; accepted 16.12.2025
First online publication: 19.12.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.291

Mihaela Ioana TEACA
Assistant Professor, PhD, University of Oradea - Faculty of Law
E-mail: mihaela.teaca@yahoo.fr
ORCID ID: https://orcid.org/0009-0003-4075-5651

Abstract

For the life of a couple, engagement represents a stage preceding marriage, being the solemn promise to found a family.

For the life of a couple, engagement represents a stage preceding marriage, being the solemn promise to found a family. In the traditional collective mentality, its value is supported by the social function, being in fact an understanding between families, as basic elements of the local community. In modern society, the social character of engagement has faded greatly, its role being mainly to externalize the marriage commitment, to express the feelings of the future spouses.

The institution of engagement is regulated normatively, after years of lack of interest on the part of the legislator, but it has proven lenient with the sanctions applied, so that engagement is an institution known and loved by all, but too little protected, so that it does not have a more symbolic character.

Key words: *engagement, tradition, modernity.*
JEL Classification:(K33).

INTRODUCTION

In a couple's life, engagement is a symbolic moment that represents the promise of marriage. In the earlier society we commonly refer to as traditional, engagement carried significant legal weight and was accompanied by social and moral implications. It also constituted an agreement between the families of the two fiancés. Today, the institution of engagement focuses primarily on the couple's personal feelings, symbolized through the exchange of rings, while its other dimensions have become considerably diminished.

ENGAGEMENT BETWEEN TRADITION AND MODERNITY

From the earliest marriage regulations, engagement was both recognized and governed. Early local laws contained provisions concerning engagement. During the reign of Prince Matei Basarab, the required age for entering into an engagement was set at 12 for girls and 14 for boys. Engagement held substantial importance, and becoming engaged to someone who was already promised to another was considered an act of adultery (Aniței, 2022, p. 36).

The Calimach Code established that engagement was mandatory and could last for up to two years. It defined two forms of engagement: the "perfected" form, which involved a religious ceremony and closely resembled marriage, and the "imperfect" form, which involved the offering of a pledge but did not create a legal obligation to marry. However, if the engagement was broken, the party responsible was required to provide compensation (Firoiu, *Istoria statutului și dreptului românesc*, 1993, p. 152).

The Caragea Law Code (1818) regulated engagement as well as the grounds for its dissolution, including the conditions under which sums of money advanced as wedding arrangements were to be returned (Firoiu, *Istoria statutului și dreptului românesc*, 1993, p. 152). Later, the possibility of extending the engagement by an additional two years (for a total of four) was introduced in exceptional situations, such as the illness of one partner or the completion of university studies abroad. The legal effects of engagement were closely linked to the gifts exchanged at the moment of its conclusion. The parents of the engaged couple could themselves decide the conclusion of an engagement; sometimes discussions took place even after the birth of children, while in other cases, the young couple—motivated by their feelings—would send their parents to formally arrange the match (Mihăilă C. O., *Călătorie prin trecut și prezent. Căsătoria și regimurile matrimoniale*, 2020, p. 572 ff.)[1]. The dissolution of an engagement was regarded as an exceptional event and represented the ultimate form of social stigmatization for the engaged young woman (Hanga, *Istoria dreptului românesc*, 1980, p. 505).

The former Civil Code contained no provisions regarding engagement, as the intention was to shift the matter toward the religious sphere, considering it to have primarily moral connotations. Before the adoption of the 1864 Civil Code, the conclusion of an engagement involved various formalities—prior, concurrent, and subsequent—whose ritualistic nature complicated the marital arrangements of future spouses.

The Civil Code defines engagement as "the mutual promise to conclude marriage"[2] and expressly states that its provisions apply only to engagements entered into after the Code came into force. Based on this definition, the conditions required for a valid engagement bear similarities to those necessary for

[1] https://doi.org/10.24193/SUBBiur.65(2020).4.17
[2] Art 266 Cod civil, Legea 71/2011

marriage: free and unvitiated consent, the condition of sex differentiation, the application of the principle of consensualism, and the existence of a cause—namely, the promise to marry in the future. It should be noted that the legislator does not regulate any obligation to conclude the marriage, nor does it sanction the failure to do so. No time limit is prescribed, nor is marriage in any way conditioned on engagement. In the case of minors, parental or legal guardian approval is required. However, no medical certificate or authorization from the guardianship court is necessary (Romoșan, *Dreptul familiei*, 2014, p. 29).

A legally significant aspect governed by the Civil Code pertains to the termination of the engagement (Art. 267 ff. Civil Code). In such cases, gifts received on the occasion or during the course of the engagement, but given in contemplation of marriage, must be returned. If the engagement ends due to the death of one of the parties, this obligation ceases to exist (Florian, *Dreptul familiei*, 2022, p. 57).

The legislator also addresses the matter of compensation, which the party at fault may be required to pay. This includes expenses incurred in anticipation of the marriage, as well as those that may be considered as having been made in contemplation of marriage, without excluding moral damages that may be awarded when the non-faulting party suffers moral prejudice.

The doctrinal debates concerning the legal nature of liability have crystallized into two main theories: that of contractual civil liability and that of tortious civil liability. One may ask: For what exactly are the parties liable— for failing to conclude the marriage, or for abandoning the promise of marriage by breaking the engagement?

Moreover, the legislator specifies that the promise does not entail an obligation to conclude the marriage. No time frame is indicated within which the promise of marriage must be fulfilled. What criteria should be used to assess whether the termination of the engagement is abusive? Can a person's moral values serve as criteria of evaluation for a legally regulated institution—one that does not, however, offer even exemplary parameters for such an assessment?

Consequently, the prevailing view is that the civil liability arising from the abusive termination of an engagement is tortious liability, requiring the presence of its essential elements: an unlawful act, damage, a causal link between the unlawful act and the damage, and fault (Florian, Floare, *Dreptul Familiei*, 2024, p. 62).

Romanian courts have been called upon to rule on various aspects related to engagement.

In a decision issued by the Zărnești District Court, Civil Judgment No. 1520/2019, the claimant requested that the court compel the defendant to return the sum of 68,000 euros, offered as gifts in consideration of the engagement, as well as a diamond engagement ring. However, based on the claimant's statements, the court found that the engagement had allegedly been concluded in 2006 on

New Year's Eve, although he later modified this claim, asserting that the engagement was actually concluded in 2012, so as to fall under the current Civil Code. The court dismissed the claim based on the established date of the engagement.[3]

In another decision issued by the Bucharest District Court, Sector 3 (Judgment No. 3641/2015 of March 13, 2015), the claimant requested the restitution of gifts made during the engagement period, amounting to 280,000 euros, following the defendant's abusive termination of the engagement. The gifts consisted of money used by the defendant to purchase real estate, after which she severed ties with the claimant and no longer allowed him access to the properties, which were registered solely in her name. The court took note of the settlement reached between the parties, under which the claimant took possession of two of the three properties, while one remained in the defendant's ownership.[4]

From a comparative perspective, examining traditional and modern engagement reveals that the traditional purpose of engagement was the formation of alliances between families, whereas in modern society its purpose is merely a romantic promise, a delicate symbolic moment. In terms of form, traditionally it involved a religious and social ceremony, while today it tends to be a largely private event. The importance…

The importance of engagement in traditional society was considerable, carrying significant legal and moral consequences. Today, it entails legal effects only when it is abusively broken, yet it is not subject to any formal requirements, and proof of its existence may be established through any means of evidence (Mihăilescu I., *Sociologia familiei*, 2010, p. 68).

Traditionally, engagement was closely linked to canon law (Cîrmaciu, 2015, pp. 53-58), as it preceded and was mandatory before the conclusion of marriage, through which the Church blessed and consecrated the future spouses' decision to marry (Gavrilă V., *Cununia – viață întru Împărăție*, 2004, pp. 51–53). Today, the civil marriage ceremony may or may not be followed by a religious wedding, but when a church service is performed, it includes specific preliminary blessings associated with engagement.

CONCLUSION

In traditional society, engagement functioned as a mechanism of social unification and the formalization of alliances. Its functions involved confirming marital intentions, achieving social agreement, and integrating the newly formed couple into the structure of the community.

In modern society, its meaning has shifted. The emphasis falls on its private character, even though certain traditions—such as the giving of a ring, the marriage proposal, or the celebration of the engagement through a party—are

[3] www.rolii.ro, accesat in data de 20.11.2025, ora 15.20
[4] www.rolii.ro, accesat in data de 20.11.2025, ora 15.35

preserved. Engagement does not disappear, but it transforms into a symbol that maintains a connection with the past.

Engagement represents a living and even dynamic link between tradition and modernity, an eloquent example of contemporary socio-cultural transformations. It reflects the tension between continuity and change, between normative expectations and subjective choices, as well as the way individuals negotiate the meaning of emotional relationships in societies marked by diversity, mobility, and increased access to multiple cultural models.

BIBLIOGRAFIE

1. Nadia-Cerasela Aniței, *Poate constitui instituția logodnei element al patrimoniului cultural imaterial?*, Revista Română de Drept al Afacerilor, no. 5/2022;
2. Diana Cîrmaciu, *Universitarul Gheorghe N. Leon*, Editura Pro Universitaria, București, 2015;
3. Emese Florian, *Dreptul familiei*, C. H. Beck Publishing House, Bucharest, 2022;
4. Emese Florian, Marius Floare, *Dreptul Familiei*, C. H. Beck Publishing House, Bucharest, 9th ed., 2024;
5. Dumitru V. Firoiu, *Istoria statului și dreptului românesc*, Fundația Chemarea Publishing House, Iași, 1993;
6. Vladimir Hanga, *Istoria dreptului românesc*, vol. I, Romanian Academy Publishing House, Bucharest, 1980;
7. Ioan Dorel Romoșan, *Dreptul familiei*, Universul Juridic Publishing House, Bucharest, 2014;
8. Carmen Oana Mihăilă, *Călătorie prin trecut și prezent. Căsătoria și regimurile matrimoniale*, Studia UBB, *Despre (r)evoluții în Drept*, vol. 65, no. 4, 2020.

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 437-454

CYBERBULLYING. THE ISSUE OF SECURITY IN THE ONLINE ENVIRONMENT IN THE AGE OF DIGITIZATION

C.-E. TOLBARU

Received 27.09.2025; accepted 05.12.2025
First online publication: 16.12.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.278

Carmina-Elena TOLBARU
PhD. Associate Professor (Law)
National University of Science and Technology Politehnica Bucharest,
Faculty of Economic Sciences and Law (Romania)
E-mail: carmina.tolbaru@upb.ro
ORCID ID: https://orcid.org/0000-0002-1854-8352

Abstract

The paper addresses the phenomenon of cyberbullying as an emerging form of digital violence in the context of accelerating digitalization processes and the extensive use of information technologies. The analysis is carried out from an interdisciplinary perspective – psychological, sociological, legal and technological –, focusing on defining characteristics of online bullying (repetitiveness, anonymity, power imbalance) and its disproportionate impact on victims. The study investigates behavioral typologies, gender and age differences, as well as the relationship between cyberbullying and traditional forms of bullying.

From a legal point of view, the research highlights the gaps in the Romanian legislative framework, analyzing in parallel the European standards and the recent jurisprudence of the European Court of Human Rights (the cases Buturugă v. Romania, Volodina v. Russia, M.Ș.D. v. Romania). The findings show the need for an autonomous criminalization of cyberbullying, as well as the adaptation of criminal legislation and public policies to the new digital realities. In this regard, the paper formulates integrated reform proposals – legislative measures, educational and social programs, technological solutions based on artificial intelligence and inter-institutional cooperation mechanisms – with the aim of strengthening the protection of victims and reducing the incidence of the phenomenon.

The conclusion underlines the need for a coherent national and European approach, in which legal instruments are complemented by digital education,

social responsibility and the active involvement of online platforms in preventing and combating cyberbullying.

Key words: *cyberbullying, criminal law, digital violence, victim protection, public policies, ECHR cases.*

INTRODUCTION

The profound transformations brought about by digitalization in contemporary society have redefined the way we interact, communicate and expose ourselves online. With all the undeniable benefits, this technological expansion also generates a series of vulnerabilities, among which the phenomenon of cyberbullying stands out – an emerging form of violence that, due to its invasive, repetitive and often anonymous nature, raises serious problems of online security and protection of fundamental rights. In the specialized literature, cyberbullying is defined as an intentional and repeated behavior of psychological or social aggression, carried out through electronic means – social networks, instant messaging, forums, gaming platforms – and exploits the anonymity, speed and permanence of digital communication (*Ray, McDermott & Nicho, 2024; Patchin &Hinduja, 2006, pp. 148-169*). The COVID-19 pandemic has increased reliance on digital media, especially among children and adolescents, leading to a documented increase in online bullying (*Sorrentino et al., 2023, p. 3*). Unlike traditional bullying, cyberbullying is characterized by the public visibility of the abuse, the difficulty of escaping it even in private, and the considerable challenges it poses in terms of regulation, surveillance, and effective intervention.

This paper aims to investigate the manifestations, causes, effects and institutional responses to cyberbullying, especially among adolescents and young people, but also by extension among adults. The phenomenon is analyzed in the context of accelerated digitalization, the lack of explicit criminal regulations and the difficulty of identifying aggressors in the online space.

The aim of the approach is to understand how the defining elements of cyberbullying – repetitiveness, power imbalance, anonymity – manifest themselves in various digital environments, as well as how they affect victims and create normative gaps. The following research questions are formulated:

- *What are the main forms and typologies of cyberbullying in the contemporary online environment?*

- *How do age, gender and digital environment influence the incidence of cyberbullying?*

- *What legislative, technical and educational instruments can effectively contribute to preventing and combating this phenomenon?*

The research is qualitative and interdisciplinary, being carried out through documentary analysis and review of international scientific literature; analysis of

normative content regarding European and Romanian regulations in criminal matters and data protection; case studies of the jurisprudence of the European Court of Human Rights (ECHR – Buturugă v. Romania, Volodina v. Russia, M.Ș.D. v. Romania); comparative analysis between traditional and cyberbullying forms.

A clear identification of the distinctive features of cyberbullying compared to traditional bullying is expected, as well as a systematization of digital behavioral typologies. It is estimated that a legislative vacuum will be highlighted in Romanian criminal law regarding cyberbullying and an integrated approach of technological, legislative and educational intervention is proposed.

The relevance of the topic is amplified by the increasing incidence of the phenomenon, including in Romania, as well as by the need to align the legal framework with current digital realities.

I. CONCEPTUAL DELIMITATIONS AND THEORETICAL FRAMEWORK

I.1. Definition and characteristics of cyberbullying

Cyberbullying is a relatively recent concept, emerging as an extension of traditional bullying, in the context of digitalization and expanded access to information and communication technologies (ICT). In classical literature, bullying is defined by three fundamental features – intentionality, repetition, and an imbalance of power (*Olweus, 1999, p. 9*). This definition remains a cornerstone and has been further elaborated in recent research, which adapts it to the digital context and to cyberbullying (*Menesini & Salmivalli, 2017, pp. 240–253; Sorrentino et al., 2023*). These features have been taken over and adapted in defining aggressive behaviors in the online environment.

In the literature, cyberbullying is described as "any aggressive, intentional, and repeated behavior involving the use of digital technologies by an individual or group to harm another individual who cannot easily defend themselves" (*Patchin & Hinduja, 2006, pp. 148-169*). Unfortunately, from a legal perspective, in many legal systems, cyberbullying is not clearly regulated, often subsumed under the general notions of harassment, defamation, threats, or invasion of privacy.

I.2. Related terms and concepts - online aggression, digital violence, cyberstalking

Specialized studies propose a series of related terms that outline different facets of aggression in the digital environment, through the prism of the complexity and diversity of forms of manifestation. Thus:

- Online aggression designates a hostile behavior carried out via the Internet, without necessarily assuming repetitiveness or imbalance of power (*Pornari & Wood, 2010, p. 82*).

- Digital violence is a broader concept, which includes harassment, threats, distribution without consent of personal or intimate information, deepfakes and forms of online exploitation (*Citron, 2014, pp. 67-73*).

- Cyberstalking involves the continuous monitoring of a person's activity in the online environment, for the purpose of intimidation, abusive surveillance or threat (*Weekes, Storey & Pina, 2025*).

Although, most of the time, these terms are used as synonyms, from an analytical point of view, it is important to notice the differences between them, as they have relevant connotations for understanding victimization mechanisms and for outlining appropriate institutional responses.

II. TYPES AND MANIFESTATIONS OF CYBERBULLYING

II.1. Diversity of forms of digital aggression

Cyberbullying encompasses a broad range of manifestations that continuously evolve alongside technological advancements and the diversification of digital communication platforms. Recent studies indicate that the intensive use of social networks, instant messaging applications, and online gaming environments is closely associated with the emergence of new forms of aggression that transcend the boundaries of traditional bullying (*Kowalski et al., 2014, pp. 1075–1077; Huang et al. 2021, pp. 3–4*).

These behaviors are often amplified by the characteristics of the digital environment, such as anonymity, the rapidity of content distribution, the lack of spatiotemporal boundaries, and the difficulty in identifying the perpetrators (*Slonje, Smith & Frisén, 2012, pp. 26-32*). The digital environment therefore favors a form of persistent harassment, difficult to interrupt, which can occur at any time of the day, without the victim being able to retreat to a safe space (*Smith, 2012, p. 95*).

II.2. Behavioral typologies

The literature identifies a wide range of behaviors associated with cyberbullying. “Online aggression” is defined as those hostile actions carried out via the Internet or messaging, which do not necessarily involve repetition or power imbalance (*Pornari &Wood, 2010, pp. 81-94*). Cyberstalking is analyzed as a form of invasive digital monitoring in personal relationships, where partners obsessively monitor the victim’s online activity, for the purpose of intimidation or control. These practices are included in the broader concept of interpersonal electronic surveillance and are highlighted as real digital violence in recent studies (*Montero-Fernández, López-Sebastián & Del Moral-Pascual, 2023*). Among the most frequently reported forms of cyberbullying are:

- intentional exclusion of a person from a group or message thread;
- repeated sending of hostile messages;
- online impersonation and the publication of false or compromising content;
- the dissemination of intimate information without consent;
- the distribution of sexual images without the person's consent;

- as well as behaviors specific to the gaming environment, such as ”griefing”.

In the specialized literature there are proposals for a typology of aggressive motivations in the school and online context, distinctions between rage, revenge, reward and recreation, which can anticipate the roles of aggressor and/or victim (Runions et al., 2018). Therefore, there is a great diversity of cyberbullying manifestations, which can be identified and investigated by reference to the media used (mobile phones, internet), to the more specific ways of using ICT (text messages, instant messaging, email, web pages, etc.), as well as by the type of behavior. These categories offer a useful perspective in the in-depth understanding of the typologies, the digital context in which they occur and the motivations of the aggressors is essential for identifying effective prevention and intervention strategies.

II.3. Age and gender differences

One of the most important vulnerability factors in cyberbullying is age. Adolescents and preadolescents are particularly exposed, both as potential victims and as aggressors, as this stage of development involves intensive use of technology and increased sensitivity to social validation *(Kowalski et al., 2014, pp. 1083–1085*). Also, emotional self-regulation and risk assessment capacities are being formed, which contributes to impulsive decisions and heightened reactions to online attacks.

Longitudinal studies suggest that involvement in cyberbullying behaviors occurs at increasingly younger ages and may continue into adolescence and early adulthood, but with a lower frequency (*Ševciková & Šmahel, 2009, pp. 227–229*). Thus, age becomes both a predictor and a differentiating element in the intensity and form of manifestation of the phenomenon.

Gender is another significant determinant of cyberbullying. There is empirical evidence that indicates a gender-specific distribution of aggressive behaviors, both as victims and as aggressors. In general, boys are more likely to engage in direct, visible forms of aggression (e.g., name-calling, threats), while girls more frequently engage in subtle or relational forms, such as exclusion, rumor-spreading, and social manipulation (*Slonje & Smith, 2008, p. 150; Smith, 2012, pp. 95-96*).

In terms of cyberbullying, girls are often more likely to engage in indirect, social media-specific forms, such as denigrating through posts or sharing personal content without consent (*Livingstone & Görzig, 2014, pp. 10-11*). On the other hand, boys are more likely to engage in trolling or flaming, especially in contexts such as online video games (*Thacker & Griffiths, 2012, pp. 21-23).*

However, these gender differences are not always uniform. Some recent research shows that the roles of victim and aggressor can alternate and be influenced by contextual factors, such as peer pressure, anonymity, social network

dynamics, and the degree of parental supervision (*Estévez et al., 2020, pp. 2-3, 15*).

II.4. Psychosocial factors

Beyond age and gender, a number of psychosocial factors contribute to an increased risk of victimization or involvement in online aggressive behaviors. These include:

• low empathy, which limits the aggressor's ability to understand the impact of his actions on the victim;

• moral disengagement, which allows aggressors to justify their behaviors (*Pornari & Wood, 2010, pp. 82- 83*);

• social isolation or lack of support from peers or family;

• poor parental supervision or lack of digital literacy;

• exposure to violent or aggressive content, which can normalize abusive behavior.

In a large systematic review, high empathy, active parental mediation, and a positive school climate are significant protective factors against cyberbullying (*Kasturiratna et al., 2024*). Similarly, research indicates that high levels of affective empathy are associated with a reduced likelihood of becoming a bully, but also with increased coping capacity among victims of cyberbullying (*Monteiro, 2024, p. 621*).

II.5. The influence of the digital environment

Technology plays an ambivalent role: on the one hand, it offers opportunities for communication, learning and expression, but on the other hand, it exposes users to risks and forms of aggression that are difficult to control. Online platforms not only allow the transmission of hostile messages, but also amplify them through viralization mechanisms, algorithms that reward controversial content and the lack of effective moderation measures (*Kowalski et al., 2014, pp. 1075–1077, 1080–1083*). In addition, anonymity and lack of supervision favor uninhibited behaviors that are less likely in face-to-face interactions. Thus, the online environment becomes not just a simple channel of communication, but a framework that shapes social behavior, often in the absence of clear norms or accountability (*Slonje, Smith & Frisén, 2012, p. 27*).

III. THE EFFECTS OF DIGITAL VICTIMIZATION

III.1. The psychological dimension of impact

Cyberbullying has a profound impact on the mental health of victims, often more severe than traditional forms of bullying. The most commonly reported psychological consequences include: anxiety, depression, shame, social withdrawal, anger, sleep disturbances, low self-esteem and, in extreme cases, suicidal ideation (*Hay, Meldrum & Mann, 2010, pp. 148-151; Kowalski et al., 2014, pp. 1090–1093*).

Unlike offline aggression, cyberbullying involves continuous exposure: the victim can be followed 24/7 by phone, social networks, email or other electronic means. Thus, the lack of a "safe haven" accentuates emotional suffering and creates a constant state of vulnerability (*Slonje, Smith & Frisén, 2012, pp. 26-32*).

Also, the anonymity of the aggressors and the difficulty of controlling the dissemination of information online lead to a loss of control over one's own image and personal identity. Offensive photos, comments or rumors can spread quickly, with the potential to reach a wide audience, which accentuates the public humiliation and stigmatization of the victim (*Citron, 2014, pp. 3-9, 23-27; Smith, 2012, pp. 95-96).*

III.2. Behavioral and social effects

Behaviorally, victims may develop avoidance of online environments, withdrawal from social activities, school absenteeism, decreased academic performance, and in some cases, aggressive reactions as a form of defense or counterattack (*Patchin & Hinduja, 2006, pp. 155-158, 160-161; Kowalski et al., 2014, pp. 1090–1093*). In certain situations, the victim may also become the aggressor, in a mechanism for transforming suffering into violence (*Kowalski et al., 2014, p. 1092*). At the same time, there is a distancing from family and friends, a lack of trust in adults, and a reluctance to report abuse — for fear of reprisals, mistrust, or ridicule (*Slonje, Smith & Frisén, 2012, pp. 29-30*). This institutionalized silence means that many cases of harassment remain unreported and untreated.

III.3. Overlap with and differences from traditional bullying

Unlike traditional forms of violence, cyberbullying is carried out through technology and online platforms, with distinct characteristics that increase its complexity and impact. Although cyberbullying and traditional bullying share a number of characteristics (intention to harm, power imbalance, repetitiveness), the differences between them significantly influence the intensity of the impact.

To differentiate cyberbullying from traditional bullying, seven specific characteristics have been identified in the specialized literature (*Smith, 2012, pp. 93-103*):

(1) it depends on a certain degree of technological expertise;

(2) it is a form of indirect manifestation, conferring anonymity;

(3) the perpetrator does not usually see the victim's reaction, at least in the short term;

(4) the complex role of the observer in cyberbullying - the viewer can be with the perpetrator when an act is sent or posted; with the victim when it is received; or none, when receiving the message or when visiting the respective website;

(5) traditional bullying is perpetrated through the status acquired by the perpetrator by demonstrating (abusive) power over others in front of witnesses, which is not applicable to cyberbullying;

(6) cyberbullying can reach high audience levels, unlike the audience involved in traditional bullying;

(7) the lack of a safe haven in cyberbullying – no matter where they are, the victim can be sent messages on their mobile phone or computer or they can access harmful information on social networks.

The distinctive features of cyberbullying — extended visibility, lack of physical contact, anonymity and virality — can lead to a much higher level of psychological distress, especially among adolescents. Thus, unlike classic bullying, cyberbullying incidents usually occur over longer periods than traditional bullying incidents.

Furthermore, the lack of immediate emotional feedback—often present in face-to-face bullying—reduces the possibility of empathy or remorse on the part of the aggressor, which makes the abuse easily perpetuated (*Slonje, Smith & Frisén, 2012, p. 27*).

IV. COPING STRATEGIES AND PREVENTION/INTERVENTION MEASURES

IV.1. Individual coping strategies

Victims of cyberbullying use a wide range of strategies, from simple technical measures – blocking the aggressor, deleting or reporting content, changing privacy settings – to direct responses to the aggressor. Studies show that avoidance and technological self-protection are the most common, but social support (family, friends, teachers) and the development of emotional regulation skills have a significant protective effect (*Hellfeldt, López & Andershed, 2020, pp. 12-14*).

IV.2. Educational and psychosocial interventions

Prevention programs based on digital education, introduced as early as primary school, reduce both victimization and aggressive online behaviors. Recent meta-analyses confirm the effectiveness of anti-bullying programs that include modules dedicated to the digital environment, especially when they actively involve students, parents and teachers (*Polanin et al., 2022, pp. 449-450*). Last but not least, awareness campaigns, digital mentoring and peer-to-peer support platforms complement school-based intervention.

IV.3. Technological solutions

Machine learning algorithms can detect aggressive language and abusive content, triggering automatic alerts or proactive moderation. However, their performance depends on linguistic and cultural context, and requires combination with human moderation and decision-challenge mechanisms (*Mahmud, Khan & Choudhury, 2023*). Platforms can implement "design frictions" (empathetic nudges, confirmation windows) to reduce the impulsiveness of hostile behaviors (*Metzler & Garcia, 2024, pp. 735–748*).

IV.4. Institutional role and public policies

Educational authorities, police and non-governmental organisations should work with digital platforms to establish clear reporting and intervention protocols. At the European level, the Digital Services Act (2024) imposes strong obligations on platforms to mitigate risks to user safety, and Member States must develop national support mechanisms for victims, including free psychological counselling and 24/7 helplines (*Husovec, 2024, pp. 70-72*).

V. LEGAL RESPONSE AND LEGISLATIVE CHALLENGES

V.1. Gaps in the national legal framework

In Romania, the phenomenon of cyberbullying does not currently benefit from an express and autonomous regulation in the Criminal Code. The term ”cyberbullying” is missing from the normative corpus, which creates difficulties in legal qualification and, implicitly, in protecting victims and sanctioning perpetrators. Associated behaviors are usually classified as already existing crimes, such as:

- harassment (art. 208 Criminal Code);
- threat (art. 206);
- psychological violence - bullying (introduced in the National Education Law by Law no. 221/2019);
- violation of privacy (art. 226);
- child pornography (art. 374);
- violation of the secrecy of correspondence (art. 302);
- computer forgery (art. 325) or illegal access to an information system (art. 360).

Of these, the closest to digital harassment is the regulation in art. 208 paragraph (2) of the Criminal Code, which defines an aggravated form of harassment that includes: “making telephone calls or sending communications by any means of remote transmission, which, by frequency or content, causes the victim a state of fear” (Criminal Code, 2009, updated) [1].

This provision, however, has important limitations: it does not fully cover the multiple dimensions of digital aggression, such as sharing images, impersonation, trolling or using social platforms for defamation. At the same time, it requires proof of a state of fear, a condition that is difficult to objectify and prove in court (*Cioclei, 2024, p. 156*).

V.2. ECHR case law

In recent years, the European Court of Human Rights (ECHR) has provided an increasingly broad interpretation of Articles 3 and 8 of the Convention, recognizing the serious impact of cyberbullying on individuals’ fundamental rights, particularly in contexts of gender-based violence, privacy and degrading treatment. Although there is still no case that directly addresses

[1] Law no. 286 of 2009, published in the Official Journal of Romania no. 510 of 24 July 2009.

"cyberbullying" in the established sense of the term, several relevant judgments have addressed concrete forms of cyberbullying, contributing to the consolidation of a jurisprudence in the field.

a) Buturugă v. Romania (11 February 2020)

A landmark in European jurisprudence on the recognition of cyberbullying as a form of violence is the ECHR Judgment in the case of Buturugă v. Romania. The applicant accused the Romanian authorities of failing to effectively investigate allegations of illegal access by her ex-partner to her email and Facebook accounts, as well as the misuse of personal data, thus claiming that she was the victim of a series of acts of domestic and digital violence (unauthorised access to her accounts, copying and use of personal messages and images).

Curtea Europeană a Drepturilor Omului a constatat încălcarea art. 3 (interzicerea tratamentelor inumane sau degradante) și a art. 8 (dreptul la viață privată) din Convenția Europeană a Drepturilor Omului, reținând că statul român nu și-a îndeplinit obligația pozitivă de a proteja viața privată a reclamantei și de a investiga eficient faptele reclamate (*CEDO, 2020*).

The ECHR has expressly stressed that: "digital intrusions into private life, such as telephone surveillance or illegal access to personal accounts, represent modern forms of domestic violence that must be treated with the same seriousness as physical abuse" (*Buturugă v. Romania, §76–80*).

This decision practically enshrines the recognition of cyberviolence as a dimension of gender-based violence and requires member states to adapt their legislation and protection mechanisms.

b) Volodina v. Russia (September 14, 2021)

An important precedent set after the Buturugă v. Romania case is the decision of the European Court of Human Rights in the Volodina v. Russia case, which aims to extend the recognition of digital abuse as degrading treatment.

In this case, the applicant was the victim of repeated acts of digital surveillance, intimidation through messages, tracking with GPS devices, unauthorized access to online accounts and storage of private materials.

The Court found a violation of Article 3 of the Convention, considering that this type of digital surveillance and control constitutes a form of degrading treatment, with psychological effects comparable to physical violence. The Court held that the Russian authorities failed to adopt effective measures to prevent and sanction these acts, thus violating the positive obligations imposed by Article 3 of the Convention (prohibition of inhuman and degrading treatment). The Russian state was sanctioned for failing to ensure an effective legislative and institutional framework for protecting the victim and investigating the facts (*ECHR, 2021*).

The ECHR has stressed that: "States have a positive obligation to protect vulnerable persons against modern forms of abuse, including those facilitated by electronic or digital means" (*Volodina v. Russia (No. 2), §90–93*).

It has thus highlighted the intersection between technology and domestic violence, recognising that cyberviolence in intimate relationships must be treated with the same seriousness as traditional forms of aggression. The Court has also reiterated the importance of effectively investigating such complaints and providing victims with a real remedy.

c) M.Ș.D. v. Romania (December 3, 2024)

A more recent and particularly relevant case for cyberbullying is M.Ș.D. v. Romania, in that it explicitly recognises cyberbullying as a form of gender-based violence, extends the State's obligations to adapt criminal law to new digital risks and requires the authorities to exercise rigorous procedural diligence in investigating digital crimes, including in the absence of direct physical violence.

In this case, the Court examined a complaint lodged by a young woman who had been subjected to a campaign of cyberbullying through identity theft, the publication of defamatory content and the distribution of personal images without consent, all carried out by her former partner. The applicant argued that the national authorities had downplayed the seriousness of the acts and had failed to conduct an effective investigation.

The Court held that there had been a violation of Art. 8 of the Convention, emphasizing that:"When the State fails to protect individuals – especially women – from emerging forms of violence facilitated by technology, the right to private life and personal security is violated." (*M.Ș.D. v. Romania, §102*)

d) Relevance for national regulations

The ECHR judgments in the cases of Buturugă v. Romania (2020), Volodina v. Russia (2021) and M.Ș.D. v. Romania (2024) outline a robust jurisprudential framework for the recognition and sanctioning of digital violence. Buturugă enshrined the state's obligation to effectively investigate cyberbullying and illegal access to personal data, treating it as a form of gender-based violence protected by art. 3 and 8 ECHR. Volodina expanded the interpretation of these articles, emphasizing that digital bullying should not be analyzed in isolation, but in the context of abusive relationships, where cyber surveillance, manipulation of information and online threats can have effects comparable to physical violence. The M.Ș.D. argued for the first time that cyberharassment and digital identity theft constitute serious forms of violence against women and children, requiring the existence of a coherent legal framework and effective remedies. Together, these cases require states, including Romania, to distinctly criminalize serious forms of cyberviolence, adapt criminal procedures to technological realities and ensure rapid and effective protection for victims, aligning national legislation with ECHR standards and European initiatives such as the Digital Services Act.

V.3. Current legislative challenges

The absence of an autonomous criminalization of cyberbullying in Romanian criminal law generates multiple practical and conceptual difficulties. First, the existing legal instruments do not reflect the technological specificity of

these acts, which leads to incomplete or forced classifications. Second, the administration of evidence is often hampered by online anonymity and the cross-border nature of digital communication. In addition, there is no coherent system of victim protection, especially in the case of minors, and judicial practice is uneven, with divergent solutions for similar acts. Romania has also not yet implemented a legislative mechanism dedicated to combating digital bullying in the school environment, although Law 221/2019 amending and supplementing National Education Law No. 1/2011 - on psychological violence/bullying, also includes digital forms of bullying in its definition[2].

Implications for Romanian law and European standards. Recent ECHR jurisprudence – in particular the Buturugă, Volodina and M.Ș.D. cases – confirms the need to recognise and sanction digital harassment as a form of violation of fundamental rights. From a national perspective, these standards require:

- revising the Criminal Code to explicitly introduce the crime of cyber harassment;
- expanding the procedural framework for the efficient investigation of acts committed by electronic means;
- strengthening the protection of victims, especially in cases of gender-based violence, where technology is used as a means of control and intimidation.

At the same time, Romanian legislation needs to be aligned with European trends, such as the Digital Services Act (2024), which imposes concrete obligations on online platforms to moderate abusive content, and recent initiatives of the European Commission on combating online violence against women and girls.

V.4. European law and harmonisation trends

At the European Union level, despite the existence of regulations on cybercrime (e.g. the Budapest Convention, Directive 2011/92/EU on combating child sexual abuse[3], or the GDPR Regulation), there is no uniform criminalization of cyberbullying as a distinct crime.

The EU's recently adopted Directive (EU) 2024/1385 on combating violence against women and domestic violence[4] criminalises at EU level several forms of *cyberviolence* under Article 83 TFEU. These include the non-consensual sharing of intimate or manipulated material (such as deepfakes), cyberstalking, cyber harassment, and the non-consensual recording of

[2] Law no 221/2019 published in the Official Journal of Romania no. 929 of 19 November 2019.

[3] Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse, sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, (published in *OJ L 335, 17.12.2011, pp. 1–14I)*

[4] Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence, (published in *OJ L 2024/1385, 24.5.2024)*

intimate material. The Directive goes beyond earlier calls of the European Parliament's 2022 resolution on cyberbullying against women and girls[5], which urged the Commission to issue a binding legal act to prohibit the distribution of sexualised content without consent, to criminalise practices such as doxxing and online hate speech, and to introduce rapid mechanisms for the removal of harmful online content.

Also, the Digital Services Act (DSA) Legal Framework, which came into force in 2024, imposes strict obligations on digital platforms to moderate illegal content, including harassment and hate speech, providing a new protection tool for users.

In conclusion, the absence of a clear regulation of cyberbullying in the Romanian Criminal Code and the lack of harmonisation at EU level creates a vacuum of normative protection. It is necessary to develop a coherent criminal policy, based on contemporary social and technological realities, supported by ECHR jurisprudence and international human rights standards.

VI. RECOMMENDATIONS AND PUBLIC POLICIES

Effectively combating cyberbullying requires a multidimensional approach, combining legislative, technological, educational and institutional instruments. The analysis presented above clearly indicates the existence of significant gaps in the Romanian legal framework, the insufficiency of preventive resources and the lack of integrated public policies. Therefore, a set of concrete and coherent measures is needed, subsumed under a broader objective: ensuring a safe, inclusive and responsible digital environment.

VI.1. Legislative measures

In order to ensure effective protection against cyberbullying and align it with European and international standards, the following legislative directions must be adopted:

1). Autonomous criminalization of cyberbullying in the Criminal Code, by introducing a distinct offense that captures the specifics of this phenomenon – the anonymity of the perpetrators, the speed and extent of dissemination, identity theft and the use of electronic means for abusive purposes.

2). Revision of Art. 208 of the Criminal Code (harassment) to expressly include forms of cyberviolence as an aggravating circumstance, in accordance with the ECHR jurisprudence in the Buturugă, M.Ș.D. and Volodina cases.

3). Establishment of a specific regulatory framework for the protection of minors in the digital environment, which would provide for sanctions applicable to companies that tolerate or do not promptly remove abusive content from their platforms.

[5] European Parliament. (2022). European Parliament resolution of 5 July 2022 on cyberviolence and cyberbullying against women and girls (2021/2035(INI)).

4). Harmonization of national legislation with recent European legal instruments, including:

- Digital Services Act (Regulation (EU) 2022/2065)[6], which establishes clear responsibilities for online platforms in moderating illegal and harmful content;

- Directive on violence against women and domestic violence (Directive (EU) 2024/1385)[7];

- Istanbul Convention [8] , which imposes strong legislative and administrative measures to combat gender-based violence, including in the digital environment.

Combating cyberbullying requires a preventive and formative approach, by integrating the digital dimension into educational and social policies:

- Introducing digital education into the national curriculum at all levels of education, with modules dedicated to online security, digital rights and responsibilities, informed consent in the digital environment and recognition of abusive behaviors in networks;

- Implementing prevention programs in schools, carried out through partnerships between the Ministry of Education, local authorities, non-governmental organizations and school psychologists, which should include interactive workshops and practical simulations;

- Conducting national awareness campaigns on the risks and consequences of cyberbullying, addressed to adolescents, parents and teachers, using visual communication channels adapted to the target audience (social media platforms such as TikTok, YouTube, Instagram);

- Continuous professional training of teachers and staff from public order structures, for the early identification and appropriate management of cyberbullying cases, including by familiarizing them with rapid reporting tools and effective intervention procedures.

VI.2. Technological and administrative measures

Preventing and combating cyberbullying cannot be achieved exclusively through legislative or technological changes. A paradigm shift is needed in education, in digital culture and in the way society responds to new forms of

[6] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), (published in *OJ L 277, 27.10.2022, pp. 1–102).*

[7] Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence, (published in *OJ L, 2024/1385, 24.5.2024*)

[8] Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (the Istanbul Convention) ratified by Romania through Law no. 30/2016 on May 23, 2016.

violence. Only through an integrated national strategy, supported by inter-institutional cooperation and dialogue with private actors, can a safer, more inclusive and more responsible online environment be built for all citizens, especially for young people and vulnerable groups.

Thus, reducing the impact of cyberbullying also requires the implementation of efficient technological tools and administrative mechanisms, with the involvement of both public authorities and private actors:

- Legal obligations for online platforms to implement automatic filters, intuitive reporting systems and clear and restrictive terms of use regarding offensive content and abusive behavior;
- Public-private partnerships (Google, Meta, TikTok, etc.) to develop solutions based on artificial intelligence, capable of detecting and limiting the spread of potentially abusive content before it goes viral;
- Establishment of a national digital registry of complaints regarding online harassment, interconnected with the police, courts and the main social platforms, in compliance with personal data protection standards under the supervision of the National Authority for the Supervision of Personal Data Processing;
- Free psychological support services for victims, including emergency hotlines and anonymous online chats, operated by specialists in counseling and crisis intervention.

CONCLUSION

Cyberbullying is one of the most current and dangerous manifestations of violence in the digital age. The diversity of forms of aggression, the difficulty of identifying perpetrators and the profound psychological impact on victims transform this phenomenon into a major challenge for legal systems, educational institutions and society as a whole.

This paper has analyzed cyberbullying from an interdisciplinary perspective, approaching it both as a social and psychological phenomenon and as a legal issue. The defining characteristics of cyberbullying — the intention to harm, the repetitive nature, the imbalance of power and the anonymity of the aggressor — as well as the behavioral typologies associated with it have been highlighted. Gender and age differences, as well as the emotional and social effects of digital victimization have also been explored.

The analysis of the national legal framework revealed the absence of a clear and autonomous criminalization of cyberbullying in the Romanian Criminal Code, which creates a vacuum of normative protection. In this regard, the recent case law of the European Court of Human Rights — in particular the cases of Buturugă v. Romania (2020), Volodina v. Russia (No. 2) (2021) and M.Ș.D. v. Romania (2024) — provides important guidelines on the interpretation of Articles

3 and 8 of the Convention in the context of digital abuse, reinforcing the positive obligation of states to protect citizens from technologically facilitated violence.

The paper finally proposes a series of legislative, educational and institutional recommendations aimed at underpinning a coherent public policy to prevent and combat cyberbullying. Not only an update of criminal norms is needed, but also a change of approach, involving school, family, digital platforms and authorities in a joint effort to guarantee online safety. Combating cyberbullying is not just a matter of legislation, but one of social culture and collective responsibility.

BIBLIOGRAFIE

1. Cioclei, V. (2024). Drept penal. Partea specială. Vol. II. Infracțiuni contra persoanei. Bucharest: C.H. Beck Publishing House.
2. Citron, D. K. (2014). *Hate crimes in cyberspace*. Harvard University Press.
3. Estévez, E., Cañas, E., Estévez, J. F., & Povedano, A. (2020). Continuity and overlap of roles in victims and aggressors of bullying and cyberbullying in adolescence: A systematic review. *International Journal of Environmental Research and Public Health, 17*(20),7452. https://doi.org/10.3390/ijerph17207452
4. European Court of Human Rights. (2020, 11 february). Case of *Buturugă v. România*. https://hudoc.echr.coe.int/fre?i=001-201342
5. European Court of Human Rights. (2021, 14 september). Case of *Volodina v. Russia (No. 2)*. https://hudoc.echr.coe.int/fre?i=001-211794
6. European Court of Human Rights. (2025, april). Case of *M.Ș.D. v. România*. Strasbourg Observers. https://strasbourgobservers.com/2025/04/22/strasbourgs-consolidation-on-technology-facilitated-gender-based-violence-m-s-d-v-romania/
7. Hay, C., Meldrum, R. C., & Mann, M. (2010). Bullying victimization and adolescent self-harm. *Youth Violence and Juvenile Justice, 4*(2), 148–169. https://doi.org/10.1007/s10964-009-9502-0
8. Hellfeldt, K., López, A. B., & Andershed, H. (2020). Cyberbullying and psychological well-being in young adolescents: The potential mediational role of perceived social support from family friends and teachers. *International Journal of Environmental Research and Public Health, 17*(1), 45. https://doi.org/10.3390/ijerph17010045
9. Huang, J., Zhong, Z., Zhang, H., & Li, L. (2021). Cyberbullying in social media and online games among Chinese college students and its associated factors. *International Journal of Environmental Research and Public Health, 18*(9), 4819. https://doi.org/10.3390/ijerph18094819
10. Husovec, M. (2024). The Digital Services Act's red line: What the Commission should not do to very large online platforms. *Journal of Cyber Policy, 9*(2), 254–274. Husovec, Martin, The Digital Service Act's Red Line: What the Commission Can and Cannot Do About Disinformation (January 10,

2024). Available at SSRN: https://ssrn.com/abstract=4689926. or http://dx.doi.org/10.2139/ssrn.4689926

11. Kasturiratna, K. T. A. S., Hartanto, A., Chen, C. H. Y., Tong, E. M. W. & Majeed, N. M. (2024). Umbrella review of meta analyses on the risk factors, protective factors, consequences and interventions of cyberbullying victimization. *Nature Human Behaviour*. https://doi.org/10.1038/s41562-024-02011-6

12. Kowalski, R. M., Giumetti, G. W., Schroeder, A. N., & Lattanner, M. R. (2014). Bullying in the digital age: A critical review and meta-analysis of cyberbullying research among youth. *Psychological Bulletin, 140*(4), 1073–1137. https://doi.org/10.1037/a0035618

13. Livingstone, S., & Görzig, A. (2014). When adolescents receive sexual messages on the internet: Explaining experiences of risk and harm. *Computers in Human Behavior, 33*, 8–15. https://doi.org/10.1016/j.chb.2013.12.021

14. Mahmud, T., Khan, M. U., & Choudhury, S. M. (2023). Cyberbullying detection for low-resource languages and dialects: Review of the state of the art. *Information Processing & Management, 60*(5), 103454. https://doi.org/10.1016/j.ipm.2023.103454

15. Metzler, H., & Garcia, D. (2024). Social drivers and algorithmic mechanisms on digital media: Implications for online harm reduction. *Perspectives on Psychological Science, 19*(5), 735–748. https://doi.org/10.1177/17456916231185057

16. Menesini, E., & Salmivalli, C. (2017). Bullying in schools: The state of knowledge and effective interventions. *Psychology, Health & Medicine, 22*(1), 240–253. https://doi.org/10.1080/13548506.2017.1279740

17. Monteiro, A. P., Marques, F., Relva, I. C., Simões, M., Sani, A. I., & Correia, E. (2024). The Relation Between Bullying and Cyberbullying, Emotional Intelligence, and Empathy in Portuguese Adolescents. *Adolescents*, *4*(4), 620-634. https://doi.org/10.3390/adolescents4040043

18. Montero-Fernández, D., López-Sebastián, A., & Del Moral-Pascual, M. (2023). *Click Surveillance of Your Partner! Digital Violence among Young Couples. Social Sciences, 12*(4), article 203. https://www.mdpi.com/2076-0760/12/4/203

19. Olweus, D. (1999). *Bullying at school: What we know and what we can do*. Oxford: Blackwell Publishing.

20. Patchin, J. W., & Hinduja, S. (2006). Bullies move beyond the schoolyard: A preliminary look at cyberbullying. *Youth Violence and Juvenile Justice, 4*(2), 148–169. https://doi.org/10.1177/1541204006286288

21. Polanin, J. R., Espelage, D. L., Grotpeter, J. K., Ingram, K., Michaelson, L., Spinney, E., Valido, A., & Robinson, L. E. (2022). A systematic review and meta-analysis of interventions to decrease cyberbullying perpetration and victimization. *Prevention Science, 23*(3), 439–454. https://doi.org/10.1007/s11121-021-01259-y

22. Pornari, C. D., & Wood, J. (2010). Peer and cyber aggression in secondary school students: The role of moral disengagement, hostile attribution bias, and outcome expectancies. *Aggressive Behavior, 36*(2), 81–94. https://doi.org/10.1002/ab.20336
23. Ray, G., McDermott, C. D., & Nicho, M. (2024). Cyberbullying on social media: Definitions, prevalence, and impact challenges. *Journal of Cybersecurity, 10*(1), tyae026. https://doi.org/10.1093/cybsec/tyae026
24. Ševčíková, A., & Šmahel, D. (2009). Online harassment and cyberbullying in the Czech Republic: Comparison across age groups. *Zeitschrift für Psychologie / Journal of Psychology, 217*(4), 227–229. https://doi.org/10.1027/0044-3409.217.4.227
25. Sorrentino, A., Sulla, F., Santamato, M., di Furia, M., Toto, G. A., & Monacis, L. (2023). Has the COVID-19 pandemic affected cyberbullying and cybervictimization prevalence among children and adolescents? A systematic review. *International Journal of Environmental Research and Public Health, 20*(10), 5825. https://doi.org/10.3390/ijerph20105825
26. Slonje, R., & Smith, P. K. (2008). Cyberbullying: Another main type of bullying? *Scandinavian Journal of Psychology, 49*(2), 147–154. https://doi.org/10.1111/j.1467-9450.2007.00611.x
27. Slonje, R., Smith, P. K., & Frisén, A. (2012). The nature of cyberbullying, and strategies for prevention. *Computers in Human Behavior, 29*(1), 26–32. https://doi.org/10.1016/j.chb.2012.05.024
28. Smith, P. K. (2012). Cyberbullying and its impact on young people's emotional health and well-being. In P. K. Smith & G. Steffgen (Eds.), *Cyberbullying through the new media: Findings from an international network* (pp. 27–40). Psychology Press.
29. Thacker, S., & Griffiths, M. D. (2012). *An exploratory study of trolling in online video gaming. International Journal of Cyber Behavior, Psychology and Learning, 2*(4), 17–33. https://doi.org/10.4018/ijcbpl.2012100102
Weekes, C.J., Storey, J.E. & Pina, A. (2025). Cyberstalking Perpetrators and Their Methods: A Systematic Literature Review. *Trauma, Violence & Abuse*. Sage Publications. 2025 Apr 24. https://doi.org/10.1177/15248380251333411.

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 455-468

LIKE, SHARE, (IN) SECURITY IN THE AGE OF INFLUENCERS

C. UNGUR-BREHOI

Received 10.11.2025; accepted 12.12.2025
First online publication: 16.12.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.282

Carmen UNGUR-BREHOI
Department of Political Sciences and Communication,
FIRISPSC, University of Oradea.
E-mail: carmenbrehoi@gmail.com
ORCID ID: https://orcid.org/0000-0001-8499-2438

Abstract

Influencers occupy a powerful yet highly contested position in contemporary digital society, facing complex ethical, economic, and social challenges. Their impact on the society is huge, only that their messages can amplify polarization, toxicity, and harmful social behaviors. A simple post or story can create chaos for the audience by spreading unrealistic lifestyle content, manipulating the viewers by misinformation and low-quality knowledge. The present study analyzes some of the constraints that the public nowadays needs to face when it comes to choosing and following the content of influencers.

Whether it's about the tension between authenticity and commercial dependency based on brand partnerships and platform monetization, maintaining credibility for creators becomes really difficult. Critical thinking of the audience is the only capacity that can separate a sincere message from hidden advertising and personal opinion.

Influencers frequently address large and diverse audiences, including minors and vulnerable groups, yet they often operate without formal ethical training or regulatory oversight. The promotion of unrealistic standards raises serious concerns regarding psychological well-being, public health, and consumer safety.

Algorithmic pressure, labour precarity, political instrumentalization are other aspects that we have to take into consideration. The content creators' capacity to shape opinions makes them targets for coordinated political messaging, propaganda, and commercial-political hybrid campaigns. Many lack the institutional safeguards, editorial standards, or fact-checking structures

required to manage such influence responsibly. Legal and regulatory uncertainty, particularly regarding taxation, advertising transparency, data protection, and consumer rights often lag behind the speed of platform innovation.

In the next pages, through some relevant examples from Romanian media, we will observe the most recent cases of the influencers' challenges, that reflect upon fascinated and dependent audiences.

Key words: *content, social media, influencer, politics, e-commerce.*

INTRODUCTION

In today's digital economy, many content creators are increasingly driven by likes, shares, views, and comments rather than by ethical responsibility, professional deontology, or the safety of their audiences. Platform algorithms reward engagement above all else, pushing creators to produce content that is shocking, polarizing, or emotionally charged. As a result, controversy often becomes more profitable than accuracy, and virality outweighs responsibility. This dynamic encourages the spread of misinformation, harmful trends, unrealistic lifestyles, and sometimes dangerous challenges, especially among young and vulnerable audiences.

At the same time, many creators depend financially on this system, which puts them under constant pressure to remain visible and competitive. However, this dependency does not remove their ethical responsibility. When creators prioritize interaction metrics over audience well-being, they risk turning influence into exploitation. The growing gap between digital success and moral accountability raises serious questions about the future of online culture, trust, and the protection of public interest in the digital space.

I. CREATING INFLUENT CONTENT

The term "influencer" stands, according to the dictionaries, to "a person or thing that influences another" or in the last years to "a person who has become well known through regular social media posts and is able to promote a product or service by recommending or using it online"[1]. Influencers are also known as content creators and are individuals with a strong online presence and a high number of followers, especially on social media platforms (Instagram, TikTok, YouTube, etc.), who can influence opinions, behaviors, or purchasing decisions. They can gather large communities by online users around them, who follow the activity of influencers and who, over time, begin to trust the values they hold and the recommendations they make. Their authority is perceived as authenticity,

[1] https://www.oed.com, accessed on 12.09.2025. In the very beginning, the term is used in connection to the Church (1664) and later to the sovereigny and political power. Marketing borrows the term in the 1960s, and later "influencer" enters the fashion, media and publicity. After 2007, influencers are in regard with the internet field, bloggers, media campaigns and social media.

expertise in a particular domain, because of an active and attractive lifestyle (authenticity must not be confused with sincerity). Social media creators can boost the visibility and brand awareness on platforms like Facebook, Instagram, X/Twitter and TikTok[2] by using content formats (stories, reels, live streams, and cross-collaborations).

By their profile type we can observe that there are the celebrities or the widely recognized public figures—typically from the film, music, or sports industries—who possess extensive audiences at a global scale; despite their substantial reach, their engagement rates are not consistently high), the domain specialist or the experts (who serve as authorities within particular domains, such as technology, fashion, or specialized subcultures. and whose evaluations are regarded as credible due to their established expertise), the cultural leaders or the trendsetters (that rapidly adopt and disseminate emerging trends, thereby positioning themselves as leaders in those areas, wint an audience that follows them primarily to remain informed about the latest developments) and the consumers (influencers who reflect the perspectives of the general public by offering opinions and evaluations of products or services they personally use, they rely on authenticity, as they communicate from the standpoint of an average consumer).

According to their communities there are more types of content creators[3]: the mega-influencers or the hero creators (they are not experts in the industry, they are celebrities such as Cristiano Ronaldo, The Rock, Taylor Swift, Ariana Grande, smiley_omul, Andra, Andreea Balan, Gina Pistol; one of their posts sell online massively, and they have over one million followers from diverse backgrounds and interests); the macro-influencers (have between 100,000 and one million followers and most of them come from online, having a YouTube channel and being a vlogger-such as Kim Kardashian, Kiki, Jo Placencio, Priyanka Chopra, Mircea Bravo, Andreea Esca, Mihaela Radulescu, Alexia Eram, Calin Georgescu; they are the so-called brand ambassadors and are very expensive in campaigns, also some are disproportionately vulnerable to being implicated in various forms of influencer fraud); the micro-influencers (have between 10,000 and 100,000 followers and are considered experts in their niches by those who follow them, having a strong bond with them, because micro-influencers offer high-quality content characterized by authenticity, relatability, and meaningful value-such as Connor Norby, Russ Crandel, Ilie Bolojan, christiantour, romandra.travel, visit_oradea, places_romania, uoradea); the nano-influencers (are the ordinary people, that have under 10,000 followers, they sell brands products to smaller

[2] These platforms have massive audiences. At the moment the most convenient for content creators is Facebook, with nearly three billion active users. In the top follows Instagram with two billion people and then TikTok with one billion monthly users all around the world.
[3] https://mocapp.net/, accessed on 15.10.2025

communities, such as family and friends, with whom they have real engagement and personal interactions-Chef Eugen Pocian, dorbobakery).

If we classify the influencers by their field of activity or content then we notice that there are as many as the domain they represent: beauty, fashion, gaming, auto, traveling, lifestyle, tech and gadget influencers, health, food and beverage, parenting, fitness and wellness, education, science, music, business influencers, but also photography, art/design, home, garden, shopping, parents, kids, outdoor, cinema, book lovers, blockchain/crypto, society/Politics, media, model, entertaining, sport/fitness[4]...

By the media channel used there are then the vloggers also named the YouTubers (are content creators who generally work on YouTube, the largest and most popular video platform in the online environment), the bloggers (are blog owners, who write on different themes, about different subjects, in a personal style) and recently the podcasters (they have and make podcast episodes about a certain niche, in which they discuss either alone or with guests).

No matter the type or the field the influencers come from, they are all interested to keep their followers, to bring new followers and to have an impact upon them. Talented and experienced content creators can produce high-quality, convincing, engaging content in order to sell a product (the creator's or the product of a different brand). The work of the social media creator is to obtain the likes, the shares and in the end, the profit (it can be visibility, popularity, brand awareness, different benefits, including financial ones). In order to be credible, the influencers should have a certain reputation, they must have tested the product, do some research about it, build their presentation and then actually present it and try to convince to audience to buy it. on the other hand, as happens to many digital jobs such freelancing, ride-sharing, platform work (*Cirmaciu D, Iancu E, 2025, pp. 265-277*) being a content creator offers flexibility but lack stability, safety benefits, paid leave, or long-term protection.

[4] These are only some of the fields according to keepface.com, a world influencer marketing platform that "connects brands with curated influencers through ready-to-use data-driven lists". According to them, their target is to " make influencer discovery, outreach, and campaign management seamless" whether the influencer is "running a product launch, affiliate program, or brand activation.". On their site there are more influencer recommended lists, trending lists, discounted lists, new and noteworthy lists, that are "ready to deliver results" and are subclassified into: Instagram street style influencers-city looks to inspire, top motherhood influencers - find support, luxury style women influencers - discover the spark, skincare micro influencers: fresh faces to watch, female micro influencers specializing in travel, leading food influencers - savor local flavor, Romania's best influencers, micro beauty influencers to follow on Instagram: instant glow, Azerbaijan’s science & education influencers: trending wisdom, US macro food influencers: bite into top trends today, turkiye’s food influencers: savor the trends & connect now, Top Russian male Instagram photography creators - must-follow picks, Entertainment Instagram influencers greece - enjoy trending stars and many more... www.keepface.com, accessed on 09.10.2025.

II. FROM CONTENT TO REALITY

Media literacy and safety refer to the ability of users to critically and safely engage with new media, recognize manipulation, misinformation, and harmful content, and understand the psychological and social impact of digital media. Influencers can also have a very strong political role — not only as marketing entities, but as vectors of electoral influence. Critical thinking can save the mass to realize if their messages are "authentic" or "paid / directed". The existence of coordinated campaigns of a certain creator raises questions about transparency and responsibility, scandals they are involved in also can get to backlash, the fake followers are still used on social media, so this can harm the reach and the influence of the influencer.

The public should remain vigilant and check from more sources of information when following influencers. It is also true that authorities (including consumer protection and electoral bodies) must keep up these new and surprising situations and should regulate this space more effectively to protect consumers (and voters). If we could compare a journalist with a content creator we observe that the differences are huge-the journalist has to obey a certain professional deontology, has the obligativity to check from at least two sources each information, while the influencer doesn't have any restrictions, but (in the best-case scenarios) his moral standards. If we refer to digitally created virtual influencers who are not even human[5], but upload content and connect with their followers, social values such as trust, responsibility and transparency are in danger (*Robinson B, 2020, pp.4-6*). In Spain a deoological code for the influencers is being created. The National Authority for Consumer Protection (ANPC) in Romania has started checking the Instagram accounts of the most important Romanian influencers, in order to assess how they reveal the commercial intent of their posts. The concrete recommendations to Romanian influencers who only slightly comply with the advertising rules are to clearly label commercial content using hashtags such as #advertising and #sponsorship and to make this visible and easy for followers to notice. The Romanian Advertising Council (RAC), an independent professional organization whose aim is self-regulation in advertising, has meetings with influencers where is discussed the need to initiate working groups to debate a code of good practices, as well as to create a certification project similar to the one in France, along with training and education programs for influencers.

[5] Such as Miquela Souza, the first digitally created virtual influencer or a content generated imagery influencer, a fictional character, created by a real person, on the screen. There are many more: Imma, Barbie, Guggimon, Janky, Ana Tobor (in Romania) with millions of followers online. Virtual influencers are already part of the global Influencer Marketing industry and have an engagement rate three times higher than real influencers and are followed by women aged between 18 and 34 and by teenagers (13-17 years old). There is even a website dedicated to the industry, called virtualhumans.org, founded by Christopher Travers.

The European Union expresses their concern regarding the "unfair commercial practices" in order to protect the customers, but also to make the seller and the influencers more aware of a possible delict[6]. Under EU law, the public has the right to know if their "favourite athlete, singer, blogger is paid to endorse specific products and services", by sponsorsed endorsement being included "free gifts" (also unsolicited gifts), "free trips or discount codes", "partnership arrangement, free product or event invitation". The EU legislations states clearly that it is mandatory for influencers engaged in product promotion to disclose that they are acting as product sponsors and not merely consumers.

III. (IN)SECURITY WHISTLEBLOWING

While the press, the radio and the television are bound by very strict regulations, in the case of influencers it doesn't. The content creators can promote absolutely anything online, and no one can hold them accountable for what they say or verify what they do. From this point of view, influencers are more related to the advertisers than to the journalists. In theory, anyone such an advertising company, can promote anything, without having any kind of responsibility and without thoroughly checking what they are promoting. The audience will decide whether they test it or not. Here we are dealing with unfair marketing practices, that might sell the product and deceive the client.

To prove this fact, the vlogger Andrei Petroff decided to test his "companions". In 2023, Petroff revealed in a video that went viral on YouTube[7] how he managed to persuade several influencers in Romania to promote a product that does not exist, namely "King Charles III's Cheese" sent for advertising by the so-called "Royal Court of Romania", institution that does not exist either. For the prank to be successfull, he wrapped the cheese bought from the market in a way that would create the impression of a noble origin. Later on, Petroff contacted more influencers by email to arrange the promotion of the cheese, sending them a sample along with a bottle of wine. Those he contacted included Oana Roman, Alexia Eram, Ioana Grama, Alina Ceușan, and Ana Morodan. Some were delighted by the honour to present such a product and hurried to create the most original content[8], and didn't even think to check whether the story was true. They delivered fake information along with their videos, for a paid request. The scandal

---

[6] https://europa.eu/youreurope/citizens/consumers/unfair-treatment/unfair-commercial-practices /index_en.htm Whenever someone buys goods or services online and on the spot in the EU from a websitethey are protected against unfair practices, following different steps explained on the site. Sellers must provide clear, accurate, and easy-to-understand information about their products so the consumer can make informed decisions.
If sellers fail to do so, their actions may be unfair, and the consumer has the right to seek redress.

[7] https://youtu.be/p-VOQglo-4M?si=n6TFf0mbr7uWZs16, accessed on 23.10.2025.

[8] Oana Roman posted a piece of content in which she expressed being impressed by the "king's cheese", a post she later deleted. She also threatened to sue them. vlogger, after checking the information received and trying to check the details with The Romanian Royal House.

has brought attention to the issue of uncontrolled promotion by influencers and the need for a more responsible approach within the industry, who suffers because of the lack of specific regulation.

The absence of rules in the vast social media is considered "work in progress", also for the sake of the influencer, as a profession. Another scandal involving content creators with hundreds of followers got to court at the beginning of October 2025. A collaboration between a marketing agency, a company eager to extend the business and some parenting influencers remained with debts for the famous influencers, such as siblondelegandesc.ro.

IV. WHEN INFLUENCE MEETS E-COMMERCE

In the last decades, trading got to the next level: e-commerce. Through apps ithe content creators are having all the tools they need to put business first, not the client and its interests, nor the quality. Creator-led shopping is the concept where influencers post outfits, home decor, recipes, beauty looks with direct links to buy item. In return, influencers earn commissions when their followers [9] purchase products from their shared links or storefronts. Easy money for the influencers, no matter their message type (funny, convincing, critique, sentimental), because the algorithms favour interactive posts of the users, regardless of whether the comments contain insults or praise. Massive, popular online marketplaces such as Shein, Temu, Trendyol, known for selling a huge variety of goods, especially fashion, at extremely low prices use influencers to sell their products. Trendyol[10] has done exactly this: it built a home for creators where market comes first (*Kemora H., Pasaribu P.N, 2025, pp. 123-142*). The company is actively engaging influencers from Eastern Europe to support its growing presence across the CEE region, including countries like Romania, Poland, and Bulgaria. Through its affiliate program, the brand offers attractive commission rates (up to 75%), custom discount codes. Their program mainly targets fashion and lifestyle influencers with high local engagement on platforms such as Instagram and TikTok [11]. Content creators connect consumers directly with

[9] LTK (formerly LikeToKnow.it) is a leading creator-commerce platform that connects influencers or creators with shoppers, enabling them to share shoppable content. Users follow their favourite creators, discover trends and products then shop seamlessly across categories save items, get alerts or simply click to pay for the products. https://www.shopltk.com, accessed on 24.11.2025.

[10] Trendyol is Turkey's top e-commerce platform, started in 2010 and has entered into agreements to raise $1.5 billion Dollars from a number of high-profile investors, valuing the company over $16.5 billion Dollars. M majority-owned (over 85%) by China's Alibaba Group, it is described as a "decacorn", in order to to describe a privately held company with a valuation that exceeds $10 billion (the term is a combination of the prefix "deca-", meaning "ten" and the word "unicorn", a one billion Dollars startup) to signify ten times that achievement). They serve ove 40 million clients in the world and involve over 250.000 sellers. www.trendyol.com, accessed on 12.09.2025.

[11] In its first year on the Romanian market (2024), Trendyol recorded 1.3 million active shoppers and sold over 13 million products. In 2025 it reached 2,3 million users. Also with the support of

Turkish and Chinese manufacturers. It's win-win for all parties, up to a point: the bankruptcy of the local producers, artists, or entrepreneurs and their replacement with cheap and low-quality e-commerce platforms[12]. In 2024, in Romania, more than 2,800 Romanian influencers also contributed to the Trendyol product promotion, posting around 150,000 Instagram stories on their social media accounts. In 2025 the number tripled in size: Trendyol is deploying over 9,000 influencers and three ambasadors into the Romanian market (the singers and TV presenters Theo Rose, Gina Pistol și Smiley)[13]". Interested creators can usually apply through dedicated sign-up pages or partner networks like Keepface and Takefluence, with basic requirements such as a minimum follower count (around 10,000 on Instagram) and solid engagement metrics.

In its rush for high profits, Trendyol had encountered in Romania a few great scandals, implying the lack of deontology. Famous creators such as Mircea Bravo chose to advertise for such a huge platform, no matter the image costs. Some influencers are open to any type of content. For example, in October 2025 one influencer made even the unbelievable possible: a reel with the proper funeral outfit... only from Trendyol[14]. The Romanian Football Club Rapid has taken the online retail platform Trendyol to court in April 2025[15], when has accused the Turkish company of using the club's logo and branding without authorization on various clothing items offered for sale. Even the payment of taxes has become a question mark for these e-commerce platforms, as well as for the influencers who promote them (*Cirmaciu D., 2024, pp. 1-6*).

V. IF IT'S FREE, THE USER IS THE PRODUCT

Influencers are preseent in every sector of life, but it can be a bigger danger when in politics. During the 2024 presidential elections, several TikTok influencers[16] were involved in a campaign supporting the Romanian politician and

---

influencers that presented the company's products on social media. https://business-review.eu/lifestyle/beauty-fashion/romania-becomes-trendyols-largest-market-in-cee-as-the-company-celebrates-one-year-in-our-country-278578, accessed on 28.10.2025.

[12] Analysts state that in a few years, after the local specialized business will be suffocated by these platforms, the prices of their products will probably grow and customers will remain low-quality buyers.

[13] It's the second consecutive year in which Trendyol is organizing its Black Friday campaign in Romania, and the first edition to include local Romanian merchants and brands. Currently, over 4,000 Romanian sellers are active on the platform and are participating in this year's event. https://startupcafe.ro/black-friday-2025-turcii-de-la-trendyol-arunca-in-lupta-peste-9-000-de-influenceri-pe-piata-din-romania-88932, accessed on 20.10.2025.

[14] The influencer is called Iustina Loghin, has 225.000 followers and the funeral reel from her Instagram story gathered 2750 views. https://www.youtube.com/shorts/edKaYuCsAK4, accessed on 22.11.2025.

[15] https://evz.ro/dan-sucu-a-dat-in-judecata-trendyol-razboi-si-cu-influencerii.html, accessed on 24.08.2025.

[16] https://www.bbc.com/news/articles/c20ndg1eeeno, accessed on 11.09.2025

agronomist, Calin Georgescu. Known for his praises of the WWII's fascist leaders in Romania, Georgescu[17] appeared out of nowhere and won the first-round of Romania's presidential election. It was a shock for the media and the Romanian audiance, especially that his campaign was held on social media, mainly on Tiktok. Another shock was the fact that the elections were annulled[18] amid accusations, suspicious TikTok accounts and secret payments to online influencers and of Russian interference (although Moscow denied interfering in the election). An unprecedented political crisis has emerged as Romanian authorities accuse TikTok influencers of taking part in social media campaigns that artificially amplified Georgescu's online presence. According to Romanian intelligence at that time, his sudden and unexpected rise in popularity stemed from a "highly organized" and "guerrilla-style social media campaign" that disseminated identical messages and relied on influencers[19], having spent a "zero budget" on election promotion, denying he was even campaigning. The intelligence documents identified later that in the period 24th October - 24th November that from one TikTok account were made payments of almost 400.000 Dollars to different users who were promoting Georgescu, although the TikTok campaigning was not being marked, in violation of the platform's rules and of Romanian electoral law. Georgescu denied knowing any of the influencers or funders mentioned in the reports. The subject created investigations for both the Romanian media and for the one abroad. The case was followed up by BBC, across four main reports[20]. Some of the BBC articles mention that a campaign video of him "cantering through fields on a white steed" helped obtaining the likes and the shares needed to make him so famous overnight. In another report the use of influencers was called a "major attempt to interfere in the country's presidential elections"with the

[17] https://www.politico.eu/article/calin-georgescu-romania-elections-far-right-tiktok-nato-skeptic-russia-ukraine-exports/, accessed on 20.09.2025

[18] Georgescu was banned from running, which created many public reactions and protests in front of the Romanian state instutions. He was also detained, facing a criminal investigation that included an attempting to overthrow constitutional order, accusations that he denied. His speech found a ready audience because it related "the distrust of the System", "conspiracy theories swirl" (he questioned the existence of Covid, of the moon landing and claims that water is something other than H2O). TikTok helped channel all the mass' frustration, poverty, the perception of corruption for Georgescu.

[19] https://www.bbc.com/news/articles/cgq18w507dko, accessed on 10.09.2025

[20] "Romania hit by major election influence campaign and Russian cyber-attacks" (signed by Sarah Rainsford, on 5th December 2024), "Romania's cancelled presidential election and why it matters" (signed by Paul Kirby and Nick Thorpe, 6th December 2025), " How meddling blamed on Russia exploited real grievances in Romania" (Sarah Rainsford, 10th December 2025), "The TikTokers accused of triggering an election scandal" (signed by Rowan Ings, 30th April 2025). It's interesting It is worth noting that the greater the importance of the information, the higher the rank of the journalist assigned to sign the piece. (from a BBC Eastern Europe correspondent, in Bucharest, then Europe digital editor & Central Europe correspondent, to BBC Global Disinformation Unit & BBC Trending). https://www.bbc.com/articles/cqx41x3gn5zo, accessed on 13.09.2025.

use of the social media platforms, in particular TikTok, and "with a series of cyber-attacks", sharing "identical messaging and using influencers"[21].

On the 30th of April, a few days before the second round of elections, BBC is publishing the text "Testimonials from Romanian influencers accused of promoting Georgescu on TikTok: «A clever approach»"[22]. Reading it, we are informed that TikTok influencers have been accused by Romanian authorities of taking part in social media campaigns that artificially inflated Georgescu's online visibility. He chose another, more efficient recipe: "had no campaign office" and "didn't engage in traditional campaigning". With the influencers, on TikTok videos that exploited the algorithms, showing Georgescu "practising judo". bathing in cold springs during winter, "riding horses in traditional Romanian outfits", he went viral before the election and soared in the polls, "winning almost 23% of the vote". From the same article is stated that for one month, over 100 influencers[23] were hired and posted "paid content indirectly" promoting Georgescu. The method used was quite unique. The campaign started a few weks before the elections but didn't include mentioning a certain name of a candidate, but the hashtag "stability and integrity". A marketing platform (called FameUp) that allows brands to hire influencers at scale to promote products, was inviting the influencers to post different videos on their influencers' pages. Many of the influencers declared afterwards that they didn't even feel they were part of a propaganda process, some paid (but not curious to check where the money/gifts came from, many not declaring that were paid), some that were only sharing content that encouraged the Romanian population to vote. The influencerswere impressed by the fast response of their communities, through likes and shares, but also waves of comments that were backing to the independent candidate Calin Georgescu. It was "a tactic to game TikTok's algorithm and get his name trending, which would in turn push his content into more users' feeds". In the same period "thousands of inauthentic accounts whose comments boosted Georgescu on the platform" were blocked[24].

---

[21] According to the material, this was done with efforts "coordinated by a state-sponsored actor" (most probably, guided by Moscow). https://www.bbc.com/news/articles/cgq18w507dko, accessed on 12.09.2025.

[22] https://www.bbc.com/articles/cqx41x3gn5zo, accessed on 17.09.2025.

[23] Mostly were preferred and chosen the micro-influencers, who could get in an accessible way to more of their communities.

[24] TikTok reported that it had taken down a network of more than 27,000 fake accounts that employed fictitious personas to post comments about the Romanian elections. The *BBC* report also cites one of their TikTok sources that said they: "blocked millions of fake engagement attempts, removed hundreds of thousands of spam accounts, prevented impersonation of political candidates, and disrupted three covert influence networks with limited reach". The whole campaign seemed similar to an operation run in Ukraine, mentions the same article. `Moreover, the so-called Romanian "King of TikTok", Bogdan Peschir, supposedly paid thousands of dollars to facilitate the campaign, and "cyberattacks, leaks, and sabotage" were possible online.

The journalistic documentation presents interviews with three influencers[25] that took part in process and mentions the fourth one, Bogdan Peschir with the online name of bogPR. Regarding Bogdan Peschir there were many press materials that concerned the influencers' implications in the polical matters, both in the national and international media. An influent bussiness man and a former IT specialist, Peschir increased the notoriety of his TikTok account, to the maximum level, 50, having one of the highest scores in Romania and being among the highest in Europe. According to the the criminal investigation authorities, Peschir paid almost one million Dollars to over 250 influencers via TikTok gifts in order "to induce them to vote for "a certain candidate" in the presidential elections", althought his lawyers denied this claiming that "none of the donations made by Peschir on TikTok were for electoral purposes"[26]. Some examples of conversations found on Bogdan Peșchir's phone during the digital search were shared through different media texts and present the context of the exchange, the sums of money (mostly sent through Revolut), the proofs for earning the gifts (screeshots, photos)[27]. Many names of influencers, collaborators on Peschir, were made publically[28]. In May 2025, BBC is making an audio documentary podcast about "The TikTokers inside an election fire-storm", with 47 influencers involved in the campaign[29]. Peschir was arrested for one month, on the 21st March [30] for "corrupting voters through electronic means of

[25] Cristina from Iasi, Romeo Rusu, from Constantaand Lucian Elgi, a musician and influencer.

[26] His lawyers also declared that his client feels "discriminated for his political views" and that Peschir had been active in the cryptocurrency market for seven years, donating money on TikTok for the last two years with no connection to any political affiliation. https://romania.europalibera.org/a/bogdan-peschir-eliberare-arest-corupere-alegatori-calin-georgescu/33396956.html, accessed on 19.09.2025.

[27] https://www.g4media.ro/stenograme-din-dosarul-lui-bogdan-peschir-bogpr-am-si-io-o-rugaminte-am-venit-din-puscarie-si-sunt-amart-poti-sa-mi-dai-si-mie-cv-bani-contra-cost-fac-ce-vrei-inpar-pliante-cu-domnu-george.html; https://www.g4media.ro/ipocrizia-patriotilor-lui-calin-georgescu-care-boicoteaza-supermarketurile-ce-mananca-afaceristul-urmarit-penal-calin-donca-paste-din-italia-malai-din-slovacia-hrisca-din-polonia.html, accessed on 19.09.2025.

[28] Through them are Samuel Plesa and many "TikTok users", but also Victor Micula, who apparently earn 60.000 Dollars, sent through Revolut. He used the money to pay the TikTok influencers to promote the AUR extremist party and then admitted all the details in a TikTok video, along with other influencers; Makareli, Allin, Bamba, George Pian. https://www.ebihoreanul.ro/stiri/ancheta-penala-dupa-ce-victor-micula-ar-fi-platit-influenceri-de-pe-tiktok-sa-promoveze-partidul-aur-190785.html, accessed on 17.09.2025.

[29] https://www.bbc.com/audio/play/p0l8lgd4, accessed on 18.09.2025. Stability and progress are now mentioned by most of these influencers.

[30] The gifts were offered on TikTok during live sessions, or via Revolut. The largest gift (donation) on TikTok is called TikTok Universe and is worth 3,700 lei. Later on, a new twist of the case appeared in January 2025: #stabilityandintegrity campaign was paid for by the centre-right National Liberal Party (PNL), who were backing their own candidate in the elections.

communication"[31]. Other influencers were being under criminal investigatio regarding the offense of voter bribery[32].

Messages sent by influencers must be verified by themselves first of all, thought and created in such ways not to attack the rights and freedoms of the others. Legal state organs started in the same period to investigate different influencers and their electronic communication, observing not only the fact that some spread disinformation narratives[33], but also serious offenses that endanger voters' safety and the right to hold an opinion (*Ghergut-Babii, AN, Poleac, G., Obada, D, 2025, pp. 1-22)*. There were five influencers charged by Prosecutor's Office attached to the High Court of Cassation and Justice, in a separate case, but related to these political involvements, with inciting violence, hatred, or discrimination; issuing threats; promoting the cult of persons convicted of genocide, crimes against humanity, or war crimes; and publicly supporting fascist, legionary, racist, or xenophobic ideologies or doctrine.[34]

CONCLUSION

Content creators or influencers have become central actors in both e-commerce and contemporary political communication, exercising significant power over consumption patterns, public opinion, and behavioral norms. In trading, they function as key intermediaries between platforms, brands, and consumers, accelerating purchasing decisions through perceived authenticity and social trust. This has contributed to the rapid expansion of platform-based commerce, but also to increased risks related to misleading advertising, overconsumption, lack of transparency, and weak tax and regulatory compliance.

In the political sphere, influencers increasingly shape political narratives, normalize ideological positions, and mobilize audiences outside traditional institutional frameworks. Their impact is amplified by algorithmic systems that prioritize emotional engagement over factual accuracy, enabling the rapid spread of polarizing, manipulative, or misleading content. The fusion of commercial and political influence further blurs the boundaries between advertising, personal

[31] According to Article 386 of the Criminal Code, voter bribery consists of "offering or giving money, goods, or other benefits with the aim of determining a voter to vote or not to vote for a certain list of candidates or a particular candidate" and "is punishable by 6 months to 3 years in prison and the prohibition of certain rights". www.just.ro, accessed on 24.10.2024.

[32] Seventeen home searches took place on March in Bucharest and in the Romanian counties of Brasov, Botosani, Calarasi, Dolj, Galati, Giurgiu, Maramures, Mures, and Timis, at the residences of individuals, in a criminal case where a criminal investigation is being conducted regarding the offense of voter bribery. https://www.digi24.ro/, accessed on 24.10.2025.

[33] Ana Maria Prodan, Ana Tepus, Connect-er were just some of the Romanian celebrities accused of such posts on thei personal Instagram, Facebook and TikTok pages. https://www.veridica.ro/2024-anul-marii-resetari/naratiuni-rusesti-promovate-de-influenceri-pro-georgescu-pe-instagram-si-tiktok, accessed on 21.09.2025.

[34] https://www.romania-insider.com/romanian-prosecutors-pro-georgescu-influencers-voter-bribery-2025, accessed on 23.09.2025.

opinion, and ideological persuasion. Only critical thinking can guide the security of the internet and social media users.

Overall, the growing power of influencers reveals a structural shift in authority from institutions to platform-based personalities. While this transformation creates new economic opportunities and participatory spaces, it also generates profound ethical, social, and regulatory challenges. Without stronger accountability mechanisms, transparent platform governance, and robust digital literacy, influencer-driven systems risk undermining consumer protection and security, democratic processes, and public trust.

BIBLIOGRAFIE

1. Bahassan, Osama, Biswas, Arnab, Ha, Louisa, "The Role of Journalistic Background and Digital Content Creation Experience in Perceived Information Literacy: A Global Study of Content Creators", in *Journal. Media*, no.6/2025, https://doi.org/10.3390/journalmedia6040190
2. Cirmaciu, D., Iancu, EA., "Challenges in the Changing World of Labor Relations. Human Resources, Finance and Crimes in the Decade of Digitalization" in Hoskova-Mayerova, S., Flaut, C., Flaut, D., Rackova, P. (eds), Changes and Innovations in *Social Systems. Studies in Systems, Decision and Control*, vol 505. Springer, Cham. https://doi.org/10.1007/978-3-031-43506-5_15
3. Cirmaciu, Diana, "About Taxation: Tax Incentives Vs Tax Amnesty" in International Journal of Legal and Social Order, no. 1/2024. DOI: https://doi.org/10.55516/ijlso.v4i1.219
4. Ghergut-Babii, Alexandra-Niculina, Poleac, Gabriela, Obada, Daniel-Rares, "Challenges for NGO Communication Practitioners in the Disinformation Era: A Qualitative Study Exploring Generation Z's Perception of Civic Engagement and Their Vulnerability to Online Fake News", in *Journalism and media*, no. 6/2025, https://doi.org/ 10.3390/journalmedia6030136
5. Kemora, Haura, Pasaribu, Popy Novita, "Customers' Preference of Online Marketplace: Trendyol and Hepsiburada Case Study", in *Jurnal Manajemen*, vol.14, /2023. http://dx.doi.org/10.32832/jm-uika.v14i1.9793
6. Robinson, Ben, Towards an Ontology and Ethics of Virtual Influencers in *Australasian Journal of Information Systems,* Vol. 24, 2020, doi:https://doi.org/10.3127/ajis.v24i0.2807
7. https://www.bbc.com
8. https://www.ebihoreanul.ro
9. https://business-review.eu
10. https://europa.eu
11. https://www.g4media.ro
12. https://romania.europalibera.org
13. https://evz.ro
14. www.keepface.com

15. www.just.ro
16. https://mocapp.net
17. www.oed.com
18. https://www.politico.eu
19. https://www.romania-insider.com
20. https://www.shopltk.com
21. https://startupcafe.ro/
22. www.trendyol.com
23. https://www.veridica.ro
24. www.virtualhumans.org
25. https://youtu.be.

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 469-478

THE PRINCIPLE OF EQUALITY ACCORDING TO CUSTOMARY LAW

M. VELÇANI

Received 02.02.2025; accepted 15.02.2025
First online publication:15.02.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.246

Majlinda VELÇANI
Aleksandër Moisiu",University of Durrës, Albania
E-mail: majlindavelcani@uamd.edu.al
ORCID ID: https://orcid.org/0009-0004-3054-0208

Abstract

The purpose of this paper is to summarize the concepts of customary law and analyze how international customary law functions and how the principle of equality is conceived in customary law. For many centuries in the absence of written constitutions and constitutional laws, the norms which regulated state and social activity were customary norms. Repeated over time and continuously, they had the 'legal' power in a certain territory. Customary law is defined as the set of customs, practices and beliefs that are accepted as mandatory rules of conduct by a community. These practices or rules were also used to regulate relations between different states. Even today, customary law is one of sources of law, in cases where we have legal gaps. What is one of the most delicate issues in social arrangements under the influence of customary law is inequality and discrimination against women. This inequality under the influence of customary law still occurs in different countries of the world. Initially, during the work, the definitions of customary law will be given, continuing further with customary international law. One of the important issues to be elaborated is customary law in Albania and how equality and discrimination are under the influence of the norms of of customary law.

Key words: *customary law, customary international law, equality, canons.*

INTRODUCTION

The origin of customary law is very ancient, as an institution in the society of the primitive community, it acted in full force until the creation of state legal institutes. The existence of the Canons was an expression of local autonomy or an

almost formal dependence of the provinces and deep geographical areas where the central imperial authority found it difficult to apply its positive law.

Customary law, as a regulator of social relations, has made it possible in the legal context with its provisions to regulate some areas of family law, expressed in institutes such as: birth, marriage, rights and obligations within the family. Likewise, the treatment of civil law institutes: property, inheritance, obligations, trade, sale, purchase, lease, loan, suretyship, pledge, capucari, usury and damages. Every customary right originates from the customs and traditions of a human community, that is, from practices that have existed for a long time and that, for this reason, have been recognized and accepted socially as binding, taking on the force of law.

Many studies still and today continue to talk about the influences that customary law has or that still continues to be studied in this field. If we were talking about a long time ago, this system of norms would constitute the most important regulatory order in society and in relationships between states. In many states they were in the form of Canons, we take here the case of Albania and the countries that were under the influence of the Ottoman Empire. Over time, these Canons were then replaced by formal constitutions.

I. MEANING OF CUSTOMARY LAW

When a certain legal practice is followed and the relevant parties consider it to be a legal opinion or obligation, it is said to be customary law (*opinio juris*). The majority of customary laws deal with long-standing social norms in a given nation. The collection of ideas, conventions, and practices that are acknowledged by a society as obligatory codes of behavior is known as customary law. On the other hand, the phrase can also refer to areas of international law, such as anti-slavery or anti-piracy laws, where certain norms have been virtually universally accepted as the foundation for action. Selecting the proper methodology to identify which norms and actions truly constitute customary law is a key challenge in the recognition of customs. It is not immediately evident how conceptual analyses of customary law and traditional Western theories of jurisprudence may be usefully harmonised *(J. Comaroff, S Roberts,1981*), and some scholars have characterized customary law norms in their own terms.

Although convergent behavior is typically implied by the concept of custom, not all customs have legal standing, according to Hund. Thus, Hund follows Hart's lead and makes the distinction between social rules which possess both internal and exterior dimensions and conventions, which just possess outward dimensions. Internal factors include worshippers' thoughtful attitudes towards particular actions that they consider required by a shared standard. Externalities are not required, but they do show themselves as consistent, observable behavior. According to Hart's theory, social norms are consequently legally binding customs. Hart highlights three further distinctions between legally

binding social rules and customs (*Hund, J.,1998*). First, there is a social norm that states that customary behavior is frowned upon and that departures are discouraged by social disapproval. Second, when this criticism is accepted in society as a valid justification for following the custom. Thirdly, when individuals within a group exhibit habitual behavior, it's not only because they're doing it or because everyone else is; for some, it's a common standard that needs to be adhered to.

The legacy of mediaeval customaries, which are collections of regional customary law that arose in a particular city or municipal jurisdiction and were gradually brought together primarily by case law before being recorded by jurists, served as the foundation for the contemporary codification of civil law. Local customs became the unquestionable rule that governed specific rights, obligations, and privileges among community members, giving them the legal status (In R. v Secretary of State For Foreign and Commonwealth Affairs, 1982). Common law is a recognized source of law within jurisdictions of the civil law tradition, where it may be subject to statutes and regulations (*Merryman, John, 2007*).

I. CUSTOMARY INTERNATIONAL LAW

A large number of jurists have argued for the expansion of custom because they see it as a helpful tool that can counteract the strict nature of treaty law (*S. James Anaya,1998, p. 44*). Customary law establishes norms that are applicable to all. States may seek an exception to newly established customary law norms by opposing to a developing practice before it becomes a legally enforceable custom. This is known as the theory of ongoing objection. Custom is the main source of international law and has inspired the creation of several regulations governing interstate interactions. The implied consent of states is what gives customary international law its binding power (*Fon V., Parisi F.,2009, p. 279*).

Customary law is formed according to a relatively small number of principles. According to the notion of customary law, custom is any behaviour that takes place outside of the bounds of the law and that people, groups, and states adhere to in their dealings out of a sense of duty to the law. When the application of customary international law (*I. Boghirnea, 2024, p.48*) is necessary to resolve a dispute, an international court confirms the existence of the two fundamental components of a custom. These components are sometimes referred to as the "qualitative" and "quantitative" components of jurisprudence and practice, respectively. States are deemed bound by the ensuing custom when both conditions are met, and international practice becomes recognised as customary international law. Regarding the first formative ingredient, the existence of a stable and largely uniform international practice that many governments have consistently complied with is necessary for the establishment of customary international law. No time limit has been established for compliance; yet, a lengthy period of time serves to both demonstrate that the practice was

consistently followed and to elucidate its purpose and context. Furthermore, states' natural and unforced behaviour should give rise to the practice. Declarations of international law make reference to the universality and coherence of customary law. If behavioural fluctuations make it hard to identify a general practice, then the criteria of consistency is not met. The need for uniformity in terms of expanding and general acceptability is reaffirmed by the most recent cases in international law, which give new norms particular regard. or neighbourhood associations (*Fon V., Parisi F.,2009, p. 282*).

Opinio juris sive necessitatis, which expresses the need that customary activity be regarded by states as satisfying a fundamental norm of social behaviour, is a common term used to identify the second formative factor. As per the opinion juris requirement, governments are required to act with the conviction that the practice being applied is carried out to satisfy a fundamental legal responsibility, and that the state does not follow the practice out of convenience or diplomatic courtesy for a specific duration. The purpose of this condition is to guarantee that customary law originates from a broad agreement among states rather than from an arbitrary and unqualified convergence of state practice. (*Fon V., Parisi F., 2009, p. 283*).

In both historical and contemporary contexts, customary law has been essential in regulating relations between sovereign states due to the absence of a universal legislature and the high cost of draughting and ratifying international treaties. Even though customary law has the power to establish norms that are legally enforceable everywhere, states can gain exceptions to either new or preexisting customary law principles through the use of continuing and subsequent objection doctrines. (*Fon V., Parisi F., 2009, p. 283*).

The term "customary law" in international law refers to the Law of Nations or legal standards that have evolved over time via customary interactions between states, whether they are motivated by diplomacy or aggression. Essentially, it is thought that states have a legal duty to handle their affairs in a way that is consistent with historically recognised behaviour. Additionally, these traditions might alter in response to a state's adoption or rejection of a certain conduct. Some customary law precepts have become prescriptive norms that can only be altered or violated by another standard with a similar degree of power. Some norms, like the ones that forbid slavery and genocide, are said to have universal support, which gives them authority. Customary international law can be distinguished from treaty law, which consists of express agreements between nations to undertake obligations. However, many treaties are attempts to codify pre-existing customary law.

Legal pluralism is the term used to describe the situation when one or more forms of customary law coexist alongside formal law in numerous nations across the globe.

THE PRINCIPLE OF EQUALITY ACCORDING TO CUSTOMARY LAW

Customs are the source of law according to Catholic canon law. However, canon law jurisprudence is different from civil law jurisprudence in that it requires the legislature's direct or implicit assent in order for a custom to become legally binding. It is necessary to prove "long usage" under English common law. "Customary rights" is the term used to describe judiciary in practice. Something that has been done for a certain location since ancient times has the potential to become a custom, which is a type of local legislation. The legal criteria that define a custom are precise.

Customary international law is defined as "a general practice approved by law" in the International Court of Justice Statute (Statute of the International Court of Justice, Article 38 1.b) .Generally speaking, two things are necessary for the norm of Customary International Law to exist: state practice (*usus*) and the belief that such a practice is necessary, even though it may be forbidden or allowed depending on the nature of the law as a legal matter, *opinio juris sive necessitatis*, (M Henckaerts, page 4). States' verbal and physical actions together make up a practice that aids in the development of customary international law. According to the term, physical acts include things like standing on the battlefield, wielding particular kinds of weaponry, and facing various kinds of people. The governmental comments on draft treaties, executive orders and regulations, military manuals, national legislation, court rulings with national legal force, directives to the armed forces and security forces, military communications during war, diplomatic protests, official legal adviser opinions, presentations before international courts, statements in international forums, and government positions towards resolutions approved by international organisations are examples of verbal acts. This list demonstrates how the actions of the legislative, executive, and judicial branches can influence the development of customary international law. Acts involving states include negotiations, resolution adoption by conferences or international organisations, and vote announcements. Recall that, with very few exceptions, resolutions are typically not binding on their own. As a result, the assessment of any given resolution during the process of forming the norm of Customary International Law is based on its substance, level of acceptability, and the impact of a state's pertinent practices. A resolution should be given more weight the more support it receives. The standards of behaviour that develop "outside legal constraints and which individuals and organisations spontaneously follow in the course of their interactions" are referred to as customary laws. *(Calde, Nimrah, 2021, p.138).* Customary rules, in contrast to state laws, are typically deemed legitimate due to a universal consensus that following such a code of conduct is beneficial for each individual rather than the use of coercive force. There are some differences between common law and state law. While customary laws differ from group to group, the former is often upheld by an adversarial judicial framework, and the latter prioritises the community and

applies consistently within the nation's territorial authority. These customary laws are limited to "specific legal areas". (*Calde, Nimrah,2021, p. 139*).

II. ALBANIAN CUSTOMARY LAW

The unwritten rules that have governed social interactions in some Albanian provinces for generations are known as customary law. It is a centuries-old historical-social phenomenon that is mostly found in the nation's mountainous areas. The class nature of this right is highlighted by the growth of private property and is ever-evolving, but it always stems from an ancient customary right with deeply ingrained historical origins. The Albanian people's ability to withstand pressure to adhere to the laws of the occupying governments and maintain customary law over an extended period of time is a testament to their determination to defend their existence, language, and culture. Some of the basic features of the social psychology of our people were reflected in Albanian customary law, such as: honour. faith, manhood, hospitality etc. It is another proof of autochthony and individuality of the Albanian people (*Albanian Encyclopedic Dictionary,1985*). As far as is known, Albanians have long been subject to customary law. It is impossible to pinpoint the exact moment that it was used for the first time. She was most likely born very early, though, and this had to have been during the Illyrian era. During that time, a number of institutions were put in place that have proven particularly crucial to the centuries-long operation of this unwritten privilege. Research indicates that the customary law was also in effect during the times when the Illyrian kingdom was losing its independence. There is information on permitting the Illyrian customary law to be applied locally in Roman legal texts. Additionally, Albanian customary law was in effect even during the Byzantine era. Furthermore, numerous sources attest to the implementation of customary law in the Albanian lands concurrent with their legal-state systems during the reigns of the Bulgarians and the Ottoman Empire. Therefore, the canons served as the foundational sources of Albanian customary law during the Ottoman Empire's administration. A plethora of canons were applied in the Albanian regions, but the most popular were the Canon of Lekë Dukagjini, the Canon of Arbër (Skenderbeu) and the Canon of Labëria. Numerous additional canons also functioned in a localised manner. These canons' general institutions were comparable. The canon as the main source of Albanian customary law was in itself a constitution, even more than the constitution, since it contained social and legal norms from the birth of a person to death (*Qerimi I.,2021*).

While these canons operated historically in the Albanian regions, they had a vital role in protecting national identity, non-assimilation and patriotism. It should be emphasised, therefore, that both canon law and customary law were significant at the time they were applied. However, since the Albanian state was established, particularly after 1928 and when the draughting of modern Albanian

legislation in the various legal fields began, the canon is typically only found in national historical archives and museums and must also be protected by UNESCO (*Qerimi I., 2021*). As a by product of social and economic development, our customary law has operated in Albania as a social psychology tool, a right that has expressed the people's ethnic and cultural identity against the rights of foreign invaders, and a means of preserving the original Albanian character (*Elezi I.,1983, p.29*).

The Albanian Canons are unparalleled in their kind and serve as a reflection and indisputable value of the historical-social phenomena of the people, who were conceived and born in particular unique geographical, economic, and national circumstances. As such, they have been and will continue to be a subject of ongoing study and analysis from a variety of angles, resulting in claims and contradictions, conclusions and rebuttals, and agreements and disagreements. The canons are still a holdover from a bygone era, a civilisation characterised by marked gender disparities and injustices, and not infrequently by harsh punishments that were deemed illegitimate, a culture that was dominated by medievalism or even prehistoric times. However, the Canons also bring us the undiscovered historical truths better than any other source since they are a faithful mirror of a bygone era, of a society and its institutions, of morality and social organisation, the hierarchy, and the national cosmos of the mediaeval arboreal populace both historical and documentary (*Merlika R., 2018, p. 12*).

III. EQUALITY ACCORDING TO CUSTOMARY LAW

Customary law frequently contains laws that discriminate against women based on their gender, which is against the equality provisions of the constitution. The theory of dialogic democracy provides useful instruments that can assist a legal system in safeguarding customary law as well as women's equality. The legal system can enhance women's ability to influence their communities' customary law by emphasising the necessity for questioning and discussion within the cultural community. Many nations' customary legal systems seriously jeopardise women's equality rights by approving and upholding laws that discriminate against women in relation to marriage, divorce, property, and a host of other matters (*Williams Susan H., 2011, p. 65*).

Although customary law is very old, it is impossible to date it precisely because some of its key components, such as legal equality, can be traced back to the Middle Ages. Blood feuds among the tribe functioned as equals' vengeance and as the true lawmaker in a society devoid of offices and the police (*Williams Susan H., 2011, p. 13*).

The woman was not equal to the man, according to the Albanian canon. She was first denied the ability to inherit from either her husband's or her parents' families. In addition, it had numerous other limitations and bans on the ability to engage in or establish legal relationships. For example, according to the legal

norms of Albanian customary law, she was not entitled to serve on juries or on councils of elders or the old age. On the other hand, the parties were required to quickly halt fire if it came between them in a direct armed battle. Also, if the honour of any woman was killed or violated, the author of these criminal acts would answer twice, to two families, both the husband's and the parent's (*Qerimi I., 2021*).There is a great deal of discrimination against women in the Mizo society of northeast India. Customary law norms give males and their rights a higher priority. Numerous rights are denied to women, including civil and family rights. Avoid discussing political rights. The woman's marital status and position are intimately connected (*Gangte M., 2016, p. 20*),

Communities that disagree with the legal culture of equality are not allowed to exist under the other strategy, which applies equality principles to all cultural activities. How can a system of constitutional law preserve and uphold women's equality rights while also accommodating and honouring customary law? It is important to consider the power dynamics that exist inside a group as well as the manner in which the legal system interacts with the cultural community to influence the resources, prestige, and power of its subgroups. A systemic result of certain legal cultural appropriation is the reinforcement of traditional community authority figures and their cultural interpretations, often at the expense of the authority and viewpoints of more marginalised groups, such as women. Cultures have always been internally diverse and have shaped and interacted with one another throughout history. Cultures are not primitive entities; rather, they are the result of specific and complex historical processes; (2) Members of a culture internally contest, negotiate, and re-imagine it; (3) Cultures are not isolated, but rather overlap and interact; and (4) Cultures are loose, meaning that the loss or alteration of one strand does not necessarily bring down the whole culture. It is important to consider the power dynamics that exist inside a group as well as the manner in which the legal system interacts with the cultural community to influence the resources, prestige, and power of its subgroups. A systematic result of some legal cultural appropriation practices is the reinforcement of traditional community authority figures and their cultural interpretations, often at the expense of the authority and viewpoints of more marginalised groups, such as women"*(Williams Susan H.,2011, p. 70*).

CONCLUSION

A community's recognised conventions, practices, and beliefs that serve as legally enforceable guidelines for behaviour are known as customary law. Customary law establishes norms that are applicable to all. One of the main sources of international law is custom, which also gave origin to many of the regulations governing interstate relations. States' implicit consent is what gives customary international law its binding force. Some customary law precepts have become prescriptive norms that can only be altered or violated by another

standard with a similar degree of power. Some norms, like the ones that forbid slavery and genocide, are said to have universal support, which gives them authority. Customary international law is distinct from treaty law, which is made up of formal agreements between countries to perform certain duties. Customary law frequently contains laws that discriminate against women based on their gender, which is against the equality provisions of the constitution. Many countries' customary legal systems seriously jeopardise women's equality rights by approving and upholding laws that discriminate against women in relation to marriage, divorce, property, and other matters. A systematic result of some legal cultural appropriation practices is the reinforcement of traditional community authority figures and their cultural viewpoints, often at the expense of the authority and perspectives of more marginalised groups, such as women.

BIBLIOGRAFIE

1. Iulia Boghirnea, *The Role of Customs in Codification of Diplomatic and Consular Law*, in International Journal of Legal and Social Order, nr. 1/2024, DOI: *https://doi.org/10.55516/ijlso.v4i1.213*
2. Calde, Nimrah,"C*ustomary Laws, Ancestral Land Titling and the NCIP's Quasi-Judicial Powers*", University of the Philippines Baguio, 2021;
3. Elezi, I., *"The Customary Law of Albanians*", Tirana, 1983;
4. Fon V., Parisi F., "*Stability and Change In International Customary Law*", Supreme Court Economic Review, Vol. 17, No. 1, The University of Chicago Press, 2009;
5. Gangte M., "*Gender and Customary Law: A Case Study of Mizo Tribe in North East India*", Indian Anthropologist, Vol. 46, No. 1/2016;
6. Hund, John,"*Customary law is what people say it*", ARSP Vol 84/ 1998;
7. J Comaroff and S Roberts ,"*Rules and Processes, The Cultural Logic of Dispute in an African Context* ", The University of Chicago·Chicago and London, 1981;
8. JM Henckaerts, "*Study on Customary International Humanitarian Law*", 2 volumes, Volume I. Rules, Volume II. Practice (2 Parts), Cambridge University Press, 2005;
9. Merlika Rexhina,*"The Canon of Bande, part of Albanian customary law"*, 2018
Merryman, John Henry, "*The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America* ", Stanford University Press, 2007;
10. S. James Anaya, "*Contemporary Conceptions of Customary International*", Proceedings of the Annual Meeting (American Society of International Law), Vol. 92, 1998;
11. Williams Susan H, "*Democracy, Gender Equality, and Customary Law: Constitutionalizing Internal Cultural Disruption*", Indiana Journal of Global Legal Studies, Vol. 18, No. 1/2011;

12. Islam Qerimi, for the First Scientific Conference of the Albanian Diaspora, at The Academy of Leadership Sciences Switzerland ALSS; *"Scientists of the Albanian Disapora serve the world and their roots!"*, 2021;
13. Statute of the International Court of Justice, Article 38 (1) (b)
14. Albanian Encyclopedic Dictionary 1985 ;
15. https://www.google.com/url?esrc=s&q=&rct=j&sa=U&url=https://www.kultplus.com/lajme/e-drejta-zakonore-dje-dhe-ot/&ved=2ahUKEwiwtfHsm9uIAxXw-AIHHax_Hn8QFnoECAYQAg&usg=AOvVaw0MCb_xA4barqZ9I3x-pk0H
In R. v. Secretary of State For Foreign and Commonwealth Affairs, 2 All ER 118, 1982.

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 479-486

THE ECOCIDE BETWEEN THE ETHICAL IDEAL AND THE LEGAL REALITY

N.-M. VLĂDOIU[1], A. MARIA[2]

Received 10.11.2025; accepted 16.12.2025
First online publication: 16.12.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.280

[1]**Nasty Marian VLADOIU**
Habil. PhD. Professor, Transilvania University of Brașov/"Dunărea de Jos" University of Galați, Doctoral School of Law; Bucharest Academy of Economic Studies, Faculty of Law
E-mail: vladoiu.nasty@gmail.com
ORCID ID: https://orcid.org/0000-0003-1327-4687
[2] **Amandalin MARIA**
PhD. Student, "Dunărea de Jos" University of Galați, Doctoral School of Social and Human Sciences (in Law)
ORCID ID: https://orcid.org/0009-0003-5371-0823

Abstract

Ecocide—the large-scale destruction of ecosystems by the human agent—has gained increasing prominence as an ethical and legal concern in the Anthropocene era. In this paper we explore ecocide at the intersection of moral philosophy and international law, examining how the ethical imperatives of environmental management have faced the limitations of codification and legal application. Drawing on conceptual and doctrinal analysis, in this paper we analyze the normative evolution of ecocide as an emerging international crime, tracing its roots in moral discourse, post-war humanitarian law, and contemporary climate governance. By integrating ethical theories – such as ecological justice, utilitarian environmental ethics, and deontological duty to non-human life – with legal developments from the Rome Statute to the amendments proposed by the Group of Independent Experts (2021), this study identifies a growing gap between ethical aspiration and legal achievement.

Comparative and policy analyses show that, despite the growing recognition of environmental damage as a cross-border moral error, international law remains hampered by sovereignty, evidence and political barriers. Through illustrative case studies, including deforestation in the Amazon, oil pollution in the Niger Delta, and environmental damage during the war in Ukraine, this paper elucidates how moral outrage often outweighs legal

responsibility. The conclusion calls for a more ethically grounded jurisprudence that reconciles human and ecological rights, transforming ecocide from an aspirational ideal into a concrete legal norm. The concept of ecocide — literally, "killing the house" (from Greek) — emerged in the 1970s amid debates about the environmental devastation of the Vietnam War. However, despite decades of moral support, ecocide remains largely absent from binding international law.

Key words: *ecocide, Ukraine, emerging international crime, ecology, environment.*

INTRODUCTION

The 21st century has witnessed unprecedented environmental degradation. From accelerating biodiversity loss to intensifying climate change, the Earth's ecological systems are under immense pressure. These developments have sparked moral and legal debates about whether deliberate or reckless acts that destroy ecosystems should be recognized as an international crime – an idea encapsulated by the term *ecocide*. We consider the ethical argument for criminalizing ecocide to be convincing: the intentional devastation of the natural world is an affront not only to nature itself, but also to the moral integrity of humanity. However, turning this ethical conviction into legal reality remains fraught with challenges in terms of definition, application and political will.

In this paper we explore ecocide as situated between the ethical ideal and legal reality. We examined the moral and philosophical imperatives underlying the call to criminalize ecocide, highlighting developments in environmental ethics and global justice theory. We then assessed the current international legal framework and efforts to recognize ecocide as the fifth international crime under the Rome Statute. Finally, we analyzed the tension between moral aspiration and legal coercion, concluding that while the ethical demand for ecocide law is urgent, its realization requires structural and political transformations. We argue that while moral philosophy has increasingly recognized nature as a carrier of intrinsic value, international law still treats environmental damage primarily as a collateral or secondary issue. By combining ethical and legal perspectives, we have tried, in this paper, to identify the structural and philosophical barriers that prevent the complete criminalization of ecocide and to explore viable ways to reduce this ethical-legal divide.

I. THE ETHICAL IDEAL: A MORAL IMPERATIVE FOR PLANETARY JUSTICE

The ethical foundation of the ecocide movement is based on humanity's collective responsibility to protect the Earth's life support systems. Ethical theories, from deep ecology to global justice, converge on the principle that the destruction of ecosystems is not only harmful to the environment, but also morally reprehensible.

Ecocide invokes deep moral questions about human responsibility to the Earth. From an ecocentric ethical point of view, ecosystems possess an intrinsic moral value beyond their instrumental value to humanity. Thinkers such as Arne Naess, Aldo Leopold, and Holmes Rolston III advocate an *ecological ethic* that views the biosphere as a community of interdependent beings. Ecocide, from this point of view, constitutes not only evil, but moral betrayal - a violation of intergenerational justice and ecological duty.

Utilitarian ethics, on the contrary, frames environmental protection in terms of collective well-being. The large-scale destruction of ecosystems undermines not only biodiversity but also human well-being, making ecocide a failure of rational moral calculation. Deontological and virtue ethics further reinforce the notion that humanity has a duty to respect non-human life and to act with restraint towards the natural world.

Arne Naess's *deep ecology* states that all life forms possess *intrinsic value,* independent of their usefulness to human beings (Naess, 1973). From this perspective, nature is not just a tool for human use, but a community of which people are a part. Thus, the large-scale destruction of ecosystems constitutes moral damage to the web of life itself. The recognition of ecocide as a crime would express a legal recognition of this intrinsic value, moving from anthropocentric ethics to ecocentric ethics.

Ecocide also involves the principles *of intergenerational justice*. Hans Jonas (1984) argues that modern technological power creates unprecedented responsibilities to future generations, as our actions today can irreversibly alter the habitability of the planet. Global environmental justice theories also highlight that the burden of ecological destruction falls disproportionately on vulnerable populations in the Global South, who contribute the least to environmental degradation (Shue, 2014). The criminalization of ecocide would thus reflect not only concern for the environment, but also moral commitments to fairness and equality in a globally interdependent world.

Jonas' Imperative of Responsibility *(1984)* calls for an ethics appropriate to humanity's new capacity to destroy the planets. The ethical ideal of the law of ecocide reflects this shift from voluntary stewardship to an obligatory moral duty. It frames environmental protection as an obligation based on justice, not just political preferences. In this sense, ecocide embodies a moral boundary – a recognition that deliberate or reckless destruction of the environment is incompatible with human dignity and planetary survival.

II. LEGAL REALITY: BETWEEN RECOGNITION AND RESISTANCE

We appreciate that while the ethical arguments for criminalizing ecocide are strong, international law remains hesitant. The legal framework provides only limited protection against widespread environmental destruction, mainly during armed conflicts.

The concept of ecocide first entered public discourse during the Vietnam War, when massive ecological damage caused by chemical defoliants such as Agent Orange spurred legal reform. Swedish Prime Minister Olof Palme used the term at the 1972 United Nations Conference on the Human Environment, describing *the outrage of ecocide* (Palme, 1972). Despite these appeals, ecocide has been excluded from *the Rome Statute of the International Criminal Court (ICC),* which recognizes only four basic crimes: genocide, crimes against humanity, war crimes, and the crime of aggression (Rome Statute, 1998).

Article 8(2)(b)(iv) of the Statute refers to damage to the environment in time of war, but requires that damage be 'widespread, long-term and severe', a high threshold that limits applicability. Consequently, most forms of peacetime environmental destruction – such as deforestation, oil pollution, or climate-related damage – do not fall under international criminal jurisdiction (Schneider, 2022). The absence of ecocide as a crime in its own right thus underlines the gap between ethical imperatives and legal practice.

In June 2021, a *group of independent experts for the legal definition of ecocide,* convened by the Stop Ecocide Foundation, proposed defining ecocide as: "Illegal or unjustified acts committed with the knowledge that there is a substantial likelihood of serious and large-scale or long-term damage to the environment caused by these acts" (Independent Expert Panel, 2021, p. 5).

This definition aimed to integrate environmental protection into international criminal law, while maintaining legal precision and consistency with existing principles. By invoking "gratuitous" behavior and a standard of "knowing," the definition captures both intentional and reckless acts. However, despite the growing support of civil society, adoption by the International Criminal Court requires the amendment of the Rome Statute – a process that requires consensus among two-thirds of the 124 states parties (Burke et al., 2022). Political and economic resistance remain significant obstacles.

State sovereignty and economic interests are the main barriers to the codification of ecocide. Many states fear potential liability for industrial or military activities, especially those dependent on fossil fuels or extractive industries (*Higgins, 2010*). Moreover, the questions of definition - what constitutes "illegal" or "gratuitous" damages - generate legal uncertainty. Developing nations have expressed concern that strict criminalization of the environment could limit their right to economic development. Thus, the legal criminalization of ecocide faces resistance rooted in the tension between environmental protection and global capitalism.

We consider that the conservative nature of international law aggravates this difficulty. As Sands (2021) argues, the evolution of international crimes has always been politically contested; Genocide and crimes against humanity also faced initial skepticism. However, the eventual codification of such norms demonstrates that moral transformation can precede legal reform.

III. BETWEEN IDEAL AND REALITY: THE LINK BETWEEN ETHICS AND LAW

The gap between ethical aspiration and legal recognition reveals the slow evolution of international norms. Ecocide, like previous advances in human rights, can gradually shift from moral support to codified law.

Even without formal recognition, the campaign for the ecocide law exerts normative influence. Jurists emphasize *the expressive function of law*: the designation of an act as "criminal" reshapes moral conscience and social expectations (*Feinberg, 1970*). Framing ecocide as a crime contributes to a broader moral vocabulary of responsibility, reinforcing the idea that environmental destruction is a form of violence against life. This discursive shift can influence national legislation, corporate behavior, and public perception, creating momentum for eventual legal codification (*Higgins et al., 2013*).

The link between ethics and law can involve strategies on several levels:

- *National legislation: Some* states, including Belgium and France, have proposed domestic ecocide laws (*Burke et al., 2022*). National adoption can create normative pressure for international alignment.
- *Corporate responsibility:* Extending corporate responsibility for environmental destruction through human rights due diligence frameworks can operationalize ecocide prevention.
- *International human rights law:* The United Nations Human Rights Council's (2021) recognition of the right *to a clean, healthy and sustainable environment* provides a complementary way to link environmental damage to human rights violations.

Through these paths, the moral aspiration of the ecocide law can gradually crystallize into applicable legal norms.

Civil society movements—led by organizations such as Stop Ecocide International—have been instrumental in advancing the discourse (Gray, 2023). Young climate activists, indigenous communities and non-governmental organizations are reframing environmental damage as a matter of justice and responsibility. This bottom-up mobilization mirrors the historical trajectories of other global justice movements, demonstrating that sustained advocacy can ultimately reshape international law.

IV. DOCTRINAL AND COMPARATIVE DIMENSIONS

From a doctrinal point of view, the incorporation of ecocide into international law faces definitional and jurisdictional barriers. The Rome Statute's focus on intentional acts limits its applicability to reckless or negligent environmental damage – despite the fact that most of the ecological destruction comes from cumulative industrial or political actions. Moreover, international criminal law traditionally prioritizes human victims, which makes the recognition of non-human entities as legal subjects still controversial.

Politically, ecocide represents an opportunity to redefine international responsibility in the Anthropocene. Criminalization could deter corporate abuses,

strengthen environmental treaties, and complement climate disputes. However, critics warn that criminal law could be too direct a tool that could politicize environmental governance or discourage development in poorer states. Balancing ethical idealism with pragmatic application thus remains the central political dilemma.

4.1 Examples of ecocides

a. *Amazon Basin (Brazil)*

Amazon exemplifies ecocide as both moral outrage and legal inertia. Large-scale deforestation, driven by agribusiness and state neglect, constitutes the deliberate destruction of ecosystems with cross-border impact. Despite international condemnation, enforcement remains weak, revealing the powerlessness of global law in limiting sovereign environmental degradation.

b. Niger Delta (Nigeria)

Decades of oil pollution by multinational corporations like Shell have devastated local ecosystems and livelihoods. Although national courts have awarded limited compensation, no actor has faced criminal liability for ecocidal damage. Ethical responsibility clashes with corporate immunity and weak governance structures.

c. Ukraine (2022–present)

The war in Ukraine has revived debates about environmental crimes during the war. Reports of scorched earth tactics, oil fires, and contamination underscore how armed conflicts cause long-term ecological trauma. However, without a specific ecocide framework, such acts remain legally marginal, reinforcing the gap between ethical condemnation and legal reparation. We believe that what could be found during Russia's war of aggression against Ukraine represents a cornerstone on which the criminalization of ecocide as the fifth international crime can be based.

CONCLUSION

Ecocide occupies a liminal space between moral necessity and legal hesitation. Ethically, it reflects humanity's growing recognition of its duty to protect the biosphere. From a legal point of view, it reveals the inertia of anthropocentric institutions related to sovereignty and political compromise. Bridging this divide requires a reorientation of international law towards environmental jurisprudence – one that recognizes nature as both a victim and a subject of rights. Codifying ecocide as an international crime would not only punish mistakes, but would affirm an ethical paradigm shift: from human domination to ecological coexistence. *Only by aligning the law with the moral conscience can the global community transform ecocide from a moral lament into a justiciable reality.*

Ecocide also represents a defining ethical and legal challenge of the Anthropocene. Ethically, it encapsulates humanity's duty to protect the integrity of

the natural world and uphold justice for future generations. From a legal point of view, it exposes the limitations of an international order still based on state sovereignty and economic pragmatism.

The gap between the ethical ideal and the legal reality underlines both the promise and the inertia of international law. However, history suggests that moral conviction can transform legal norms over time. The recognition of genocide, apartheid and crimes against humanity began as moral revolutions before they became legal realities. Similarly, criminalizing ecocide would mark a paradigm shift – from a human-centered conception of justice to a complementary one that also encompasses the protection of the environment, in particular and the planet in general.

Finally, we appreciate that while the legal recognition of ecocide faces formidable obstacles, its ethical imperative is undeniable. Bridging the gap will require global solidarity, institutional innovation, and a reimagining of the law as a tool of planetary stewardship. The journey from moral idealism to legal reality may be gradual, but it is essential for the survival of humanity and the living world in which it inhabits.

BIBLIOGRAFIE

1. Burke, J., Higgins, P., & Sands, P. (2022). *Ecocide: A new crime for the era of environmental collapse*. Cambridge University Press.
2. Feinberg, J. (1970). *To Do and To Deserve: Essays in Responsibility Theory*. Princeton University Press.
3. Gray, A. (2023). Civil Society and the Ecocide Criminalization Movement: Global Justice from Below. *Environmental Policy, 32*(4), 612–631. DOI: 10.1080/08870446.2023.2179084
4. Higgins, P. (2010). *Eradicating ecocide: laws and governance to prevent the destruction of our planet*. Shepheard-Walwyn.
5. Higgins, P., Short, D., & Sud, N. (2013). Protecting the planet: a proposal for an ecocide law. *Crime, Law, and Social Change, 59*(3), 251–266. https://doi.org/10.1007/s10611-013-9413-6
6. Group of independent experts on the legal definition of ecocide. (2021). *Proposed definition of ecocide*. Stop Ecocide Foundation. https://www.stopecocide.earth
7. Jonas, H. (1984). *The Imperative of Responsibility: In Search of an Ethic for the Technological Age*. University of Chicago Press.
8. Næss, A. (1973). The superficial and deep, long-distance ecological movement: a summary. *Inquiry, 16*(1-4), 95-100. https://doi.org/10.1080/00201747308601682
9. Palme, O. (1972, June). *Speech at the United Nations Conference on Human Environment*. Stockholm, Sweden.

10. Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90.
11. Sands, P. (2021). *The Origins of Ecocide: Environmental Destruction and the Rights of Nations*. Knopf.
12. Schneider, C. (2022). The limits of international criminal law for environmental protection. *Journal of International Criminal Justice, 20*(3), 563–585. https://doi.org/10.1093/jicj/mqac014
13. Shue, H. (2014). *Climate justice: vulnerability and protection*. Oxford University Press.
14. United Nations Human Rights Council. (2021). *Resolution 48/13: Human right to a clean, healthy and sustainable environment*. United Nations.
15. Group of independent experts on the legal definition of ecocide. (2021). Proposed definition of ecocide. Stop Ecocide Foundation. https://www.stopecocide.earth/legal-definition
16. Leopold, A. (1949). A Sand County almanac. Oxford University Press.
17. Naess, A. (1973). The superficial and deep, long-distance ecological movement. Inquiry, 16(1–4), 95–100.
18. Nicholson, M., & Higgins, P. (2021). Ecocide: A new moral crime for the Anthropocene. Cambridge University Press.
19. Schwöbel-Patel, C. (2023). Ecocide as a Moral Imagination: Between the Legal Form and the Ethical Ideal. Review of International Criminal Law, 23(1), 22–48.
20. Short, D. & Lin, L. (2022). Ecocide and genocide: a convergence of evil. International Journal of Human Rights, 26(3), 357–378.
21. Piatră, C. D. (2010). Should they have standing trees? Law, Morality and the Environment (3rd edition). Oxford University Press.

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 487-492

THE IMPACT OF TECHNOLOGY ON STRENGTHENING BASIC HUMAN RIGHTS: REASSESSING PROPERTY RIGHTS ENFORCEMENT IN ALBANIA

K. ZIU

Received 10.11.2025; accepted 07.12.2025
First online publication: 20.12.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.294

LL.M, MSc. & PhD c. Kejsi Ziu
University of Tirana, Faculty of Law
E-mail: kejsiziu93@gmail.com
ORCID: https://orcid.org/0009-0000-7233-4614

Abstract

Technology has emerged as a transformative force in reinforcing fundamental human rights, particularly the right to property as protected under Article 1 of Protocol No. 1 to the European Convention on Human Rights (ECHR). Albania's persistent challenges in enforcing property rights—rooted in post-communist restitution complexities, weak enforcement mechanisms, and administrative opacity—have led to repeated condemnations by the European Court of Human Rights (ECtHR). This paper reassesses Albania's property rights regime through a technological lens, exploring how digital innovation can enhance transparency, accountability, and access to justice. By analysing landmark ECtHR judgments and Albania's legal framework, it argues that digitisation of property registries and e-justice mechanisms can address the systemic deficiencies that have hindered effective enforcement. The study concludes that technology, if strategically integrated within Albania's justice and administrative systems, can serve as a catalyst for fulfilling ECHR obligations and advancing the rule of law as part of the European integration process.

Key words: *technology, human rights, property enforcement, Albania, ECtHR, digital governance.*

INTRODUCTION

TECHNOLOGY AS A DRIVER FOR HUMAN RIGHTS PROTECTION

In the digital era, technology is increasingly recognised as a driver of transparency, accountability, and human rights protection. The right to property,

long considered a cornerstone of individual freedom and socio-economic stability, depends on the reliability and accessibility of legal and administrative institutions. In Albania, the enforcement of property rights remains one of the most problematic human rights areas, with systemic violations identified by the European Court of Human Rights (ECtHR) over the past two decades.

Despite legislative reforms, property restitution and compensation processes in the country have often been marred by inefficiency, legal uncertainty, and lack of enforcement. However, technological tools, ranging from digitised land registries to e-governance systems—offer new avenues for addressing these systemic shortcomings. The aim of this paper is to re-examine Albania's property rights enforcement through the prism of technological progress and to propose how digital transformation can strengthen the protection of basic human rights in line with European standards.

1. PROPERTY RIGHTS IN ALBANIA: HISTORICAL AND LEGAL CONTEXT

Following the collapse of the communist regime in 1991, Albania inherited a legacy of confiscated properties and unresolved ownership disputes. The transition to democracy brought legislative efforts to restore property to former owners or provide compensation where restitution was impossible. The key framework—Law No. 133/2015 *"On the Treatment of Property and Conclusion of the Compensation Process"*—was adopted as a response to repeated ECtHR findings of systemic violations, notably in *Manushaqe Puto and Others v. Albania* (2012). The law sought to consolidate previous legislation and create a structured compensation mechanism through the Agency for the Treatment of Property (ATP).

Despite these efforts, implementation has remained inconsistent. As recent ECtHR judgments such as *Beshiri and Others v. Albania* (2020) and *Ramaj v. Albania* (2024) demonstrate, issues of non-enforcement, overlapping ownership claims, and administrative delays continue to persist. The *Sharxhi and Others v. Albania* (2018) judgment also revealed contemporary abuses of expropriation procedures, illustrating that problems are not merely historical but deeply institutional.

These failures undermine not only property rights but also broader democratic principles. The absence of efficient property registration, transparent compensation processes, and timely judicial enforcement weakens trust in the rule of law. Technology, however, offers mechanisms to address precisely these structural weaknesses.

2. DIGITAL TRANSFORMATION AND PROPERTY ENFORCEMENT

Digital transformation provides a pragmatic solution for enhancing the protection of property rights in Albania. Modern technologies can correct

inefficiencies that have long plagued the country's legal and administrative systems.

a. **Digital land registries and blockchain integration**

A core challenge in Albania's property regime has been the inaccuracy and fragmentation of cadastral data. Studies indicate that up to 80% of land records contain inaccuracies or overlaps. Establishing a fully digitised and blockchain-secured property registry could ensure immutable, transparent, and verifiable ownership records. Blockchain's distributed ledger structure prevents tampering and reduces the risk of corruption, while also simplifying verification for courts, notaries, and public institutions.

b. E-*justice and automated enforcement tracking*

The implementation of digital case management systems, within the current e- Albania platform, could significantly reduce procedural delays. Automated reminders, online case tracking, and AI-assisted prioritisation would ensure that property-related court judgments are executed within reasonable timeframes, in line with ECtHR standards. Integration with the *e-Albania* platform could also allow citizens to monitor enforcement progress and file complaints electronically, improving transparency and accessibility.

c. Data transparency and open governance

Digitalisation also enhances public oversight. Open data systems can make information about restitution cases, compensation payments, and administrative decisions publicly available. Transparency in decision-making is essential to restoring public trust and reducing opportunities for corruption. Moreover, digital auditing tools using artificial intelligence could detect patterns of administrative delay or discrimination, allowing real-time intervention by oversight bodies such as the Ombudsman or the High Inspectorate of Justice.

d. Lessons from several EU countries examples

The experience of Estonia and Lithuania demonstrates that fully digitalised land registries and interoperable e-justice platforms can dramatically improve human rights compliance. These models provide valuable insights for Albania's integration path, suggesting that technological reform is not simply an administrative upgrade, but a structural transformation aligned with European rule-of-law standards.

3. LESSONS FROM ECTHR JURISPRUDENCE

The ECtHR's jurisprudence on Albania has consistently identified recurring violations of the right to property, the right to a fair trial, and the right to an effective remedy (Articles 1, Protocol 1; Article 6, and Article 13 of the

ECHR). The Court's pilot judgment in "Manushaqe Puto and Others v. Albania"[1] (2012) required Albania to establish an effective compensation mechanism, while subsequent cases ("Luli and Others v. Albania"[2], "Sharxhi and Others v. Albania"[3], Beshiri and Others v. Albania"[4], "Ramaj v. Albania"[5]) have underscored persistent implementation failures.

A technological perspective reveals that many of these violations could have been mitigated through digital tools:

- Non-enforcement of judgments could have been prevented through e-enforcement tracking systems that automatically escalate delayed cases and notify responsible institutions.
- Legal uncertainty and overlapping property claims could be addressed through blockchain-based cadastral systems ensuring transparency and interoperability among government agencies.
- Ineffective remedies and prolonged delays could be mitigated through online complaint platforms and automated procedural monitoring, ensuring compliance with ECtHR time standards.

The ECtHR's emphasis on effective remedies, accessibility, and transparency aligns naturally with digital governance principles. Thus, integrating technology into property rights enforcement is not merely administrative innovation, it is a legal necessity for achieving compliance with the Convention's guarantees.

4. TECHNOLOGY, RULE OF LAW, AND EU INTEGRATION

Digital governance is now central to the European Union's understanding of rule of law and fundamental rights. Chapter 23 of the *EU acquis*, concerning the judiciary and fundamental rights—explicitly requires candidate states to demonstrate effective, transparent, and technology-enabled judicial systems.

In its 2022 and 2023 Progress Reports, the European Commission acknowledged Albania's digitalisation efforts but stressed that property rights

[1] See Applications nos. 604/07, 43628/07, 46684/07 and 34770/09, accessible at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-112529%22]}. See also Driza v. Albania, Application no. 33771/02, accessible at: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-83245%22]}

[2] See Applications nos. 64480/09, 64482/09, 12874/10, 56935/10, 3129/12 and 31355/09, accessible at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-142305%22]}

[3] See Application no. 10613/16), accessible at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-179867%22]}

[4] See Application no. 29026/06 , accessible at: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-202475%22]}

[5] See Application no. 17758/06, accessible at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-238315%22]}

enforcement remains a "systemic rule-of-law concern." The Commission recommended accelerated digitisation of the cadastre, improved transparency in expropriation procedures, and technological tools to prevent administrative delays.

Technology therefore functions as a bridge between human rights compliance and European integration. By adopting e-justice mechanisms, open registries, and data-based policy monitoring, Albania can both satisfy EU accession benchmarks and strengthen citizens' trust in state institutions. Moreover, the European Union's Digital Europe Programme and e-Justice Strategy (2023–2027) provide financial and technical frameworks that Albania can leverage to implement these reforms.

CONCLUSION

To align Albania's legal and institutional framework with European human rights and technological standards, several policy directions are recommended:

- ***Comprehensive digitalisation of property records:*** *Complete the digital transformation of cadastral and land registration systems, integrating blockchain and GIS technologies to prevent overlapping claims and manipulation of records.*
- ***Integration of e-enforcement tools:*** *Establish a unified online system connecting courts, enforcement offices, and the ATP to ensure timely execution of property judgments, with real-time tracking available to claimants.*
- ***Digital transparency and oversight:*** *Create a national open-data portal for property-related decisions, compensation statistics, and pending enforcement actions. Such transparency can deter corruption and strengthen accountability.*
- ***AI-assisted monitoring and early-warning mechanisms:*** *Employ artificial intelligence to detect systemic delays or potential human rights violations in the property compensation process, allowing for preventive interventions.*
- ***Strengthen legal frameworks for digital governance:*** *Introduce legislative safeguards ensuring that digital records, smart contracts, and electronic registries have clear evidentiary and legal standing under Albanian law.*

The persistent violations of property rights in Albania have exposed deep structural weaknesses in law enforcement, administration, and judicial efficiency. Yet, these same challenges create an opportunity: the digital transformation of governance. By integrating technology into every stage of property rights enforcement, registration, adjudication, compensation, and oversight—Albania

can achieve the transparency, speed, and accountability demanded by both the ECtHR and the European Union.

Technology, therefore, is not merely an instrument of modernization; it is an enabler of justice. It transforms the right to property from a legal abstraction into an enforceable, measurable, and publicly accountable reality. If implemented with commitment and foresight, digital reform can ensure that Albania's long-standing property disputes give way to a new era of legal certainty—where technology and human rights mutually reinforce one another, and where justice delayed is finally justice delivered..

BIBLIOGRAFIE

1. Driza v. Albania, no. 33771/02, ECtHR (2007);

2. Manushaqe Puto and Others v. Albania, nos. 604/07 et al., ECtHR (2012);

3. Sharxhi and Others v. Albania, no. 10613/16, ECtHR (2018);

4. Beshiri and Others v. Albania, no. 7352/16, ECtHR (2020);

5. Ramaj v. Albania, no. 52364/13, ECtHR (2024);

6. European Commission, *Albania 2022 Report* (Brussels, 2022);

7. European Commission, *Albania 2023 Report* (Brussels, 2023);

8. Council of Europe, *E-Justice and Human Rights: Digital Tools for Rule of Law* (2023).

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.

SARA Law **R**esearch **C**enter
International **J**ournal of **L**egal and **S**ocial **O**rder, https://www.ccdsara.ro/ijlso
ISSN 2821 – 4161 (Online), ISSN 2810-4188 (Print), ISSN-L 2810-4188
N°. 1 (2025), pp. 493-504

THE DECISION OF THE ROMANIAN CONSTITUTIONAL COURT (RCC) NO. 412 OF 24 SEPTEMBER 2025 – (IN)COMPATIBILITY WITH THE PRINCIPLE OF INDEPENDENCE OF REGULATORY AUTHORITIES PROVIDED FOR BY EUROPEAN LEGISLATION

I.-A. ZORZOANĂ

Received 06.11.2025; accepted 16.12.2025
First online publication: 20.12.2025
DOI: https://doi.org/10.55516/ijlso.v5i1.293

Ionela Alina ZORZOANĂ
Teaching Assistant, PhD
National School of Political and Administrative Studies, Faculty of Public Administration
ORCID iD: https://orcid.org/0009-0006-9213-287X

Abstract

The study examines the considerations of Decision no. 412/2025 of the Constitutional Court, relating them to the requirements of institutional independence of regulatory authorities, enshrined in the norms and case law of the European Union. The originality of the study lies in its comparative perspective on the Court's reasoning and the Romanian state's obligations under EU law, particularly regarding the protection of the functional, organizational, and financial autonomy of these entities.

The analysis highlights the fact that the pronounced solution allows for excessive political interference in the organization and exercise of regulatory powers, which may affect their impartiality and neutrality. It will be emphasized that the lack of adequate guarantees of independence contravenes the standards set out in the sectoral directives and the case law of the Court of Justice of the European Union, thereby creating grounds for possible non-conformity of domestic law.

The study draws attention to the risk of a conflict of norms, likely to lead to infringement procedures against Romania. The conclusion will support the need for a constitutional interpretation that integrates European standards, ensuring the effectiveness of the principle of autonomy of regulatory authorities and compliance with the commitments assumed by the Romanian state within the Union.

Key words: *regulatory, independence, political intervention, EU law, energy.*

INTRODUCTION

By Law No. 145 of October 3, 2025, on streamlining the activities of autonomous administrative authorities (the National Energy Regulatory Authority, the Financial Supervisory Authority, and the National Authority for Communications Administration and Regulation), by October 30, 2025, the management is required to present a new organizational chart to Parliament. This chart must include a 10% reduction in specialized positions and a 30% reduction in support positions. Additionally, it should outline a new salary scale that reduces basic salaries by 30%. We note that the three autonomous administrative authorities chosen by the legislator are genuine authorities established in accordance with European directives that enshrined the principle of their independence.

By Decision No. 412 of September 24, 2025, regarding the objection of unconstitutionality of the Law, the Constitutional Court of Romania held that the law complies with the requirements of constitutionality.

At the European level, national regulatory authorities have enjoyed increased protection from the outset in terms of ensuring independence, with the emphasis being placed on the fact that „*An independent and empowered regulator is better able to fulfil its duty of serving the public interest long term*" (*Regulatory Assistance Project*[1] *(RAP).* More than that, „*EU-made national agencies are formally part of national level administration, but created and functioning largely according to the rules and standards established by the EU legislation*" *(Szescilo, 2021, p. 192).*

To achieve the proposed goal, the paper is organized in two parts and *Conclusions and Proposals*: *Part I* analyzes the *efficiency* of the three autonomous administrative authorities, by reporting to the considerations retained by the Constitutional Court through Decision no. 412/24 September 2025, *Part II* presents the principle of independence of authorities as established at the level of European institutions, and conclusions presents our proposals, insisting on the importance of respecting the status of these autonomous administrative authorities. The documentary sources accessed for this scientific research, from national and comparative law, were analyzed and legally interpreted to formulate a conclusion. Using methods specific to legal research, the conclusion of the paper will be emphasized, namely that, although it is the right of each Member State of the European Union to organize the administration as it sees fit, however, about autonomous administrative authorities regulated at the level of European legislation, the national legislator has the duty to respect the limits drawn by the European regulatory framework.

[1] https://blueprint.raponline.org/effective-and-independent-nras/

THE DECISION OF THE ROMANIAN CONSTITUTIONAL COURT (RCC) NO. 412 OF 24 SEPTEMBER 2025 – (IN)COMPATIBILITY WITH THE PRINCIPLE OF INDEPENDENCE OF REGULATORY AUTHORITIES PROVIDED FOR BY EUROPEAN LEGISLATION

I. ANALYSIS OF THE *EFFICIENCY* MEASURES ESTABLISHED BY LAW NO. 145/2005 IN RELATION TO THE CONSIDERATIONS OF CCR DECISION NO. 412/2025.

According to the Explanatory Dictionary of the Romanian Language[2], the word *efficiency* shall mean: *The action to streamline and its result,* and the verb *to make efficient.* Also, *efficient* means *practical, useful.* By Law No. 145/2025, the legislator, in the absence of any analysis, established that the three authorities will be more efficient, that is, more useful, by reducing support staff by 20%, specialized staff by 10%, and the salary scale by 30%. In the context in which, at the European level, the independence of regulatory authorities is elevated to the rank of a principle, we cannot help but note the fine line between these measures and the violation of European norms requiring compliance with the special statutes governing these authorities.

From the analysis of Law No. 145/2025, it can be observed that, without support, the legislator established a series of percentages to streamline the activities of certain autonomous administrative authorities, supposedly. Such a streamlined approach, in the opinion of the European legislator, would be more appropriate under the authority of the head of each relevant authority, and the imposition of these measures through a regulatory act initiated by the government through the General Secretariat only demonstrates the latter's interference with the principle of independence.

The provisions of the Law affect the norms provided for in the art. 117 para. (3) and art. 147 para. (4) of the Romanian Constitution, given that this normative act:

(i) imposes a mandatory reduction in the number of positions within the National Energy Regulatory Authority (ANRE), the Financial Supervisory Authority (ASF), and the National Communications Administration and Regulation Authority (ANCOM), according to fixed percentage criteria.

(ii) establishes the limitation of support functions to a maximum of 20% of the total number of positions.

(iii) imposes a 30% reduction in the salaries and allowances of the staff and members of the management bodies

(v) establishes the obligation for the organization charts and salary scales of the indicated autonomous institutions to be presented to the Parliament and the Government of Romania for validation.

According to the provisions of art. 117 para. (3) of the Constitution of Romania, republished, „*Autonomous administrative authorities may be established by organic law*".

[2] https://dexonline.ro/definitie/eficientizare

As follows from the provisions of art. 1, paragraph (1) of the Government Emergency Ordinance no. 33/2007, art. 1, paragraph (2) of Government Emergency Ordinance no. 93/2012, and art. 1, paragraph (1) of Government Emergency Ordinance no. 22/2009, the three authorities covered by the Law on Efficiency were established as autonomous administrative authorities, thus giving substance to the constitutional provisions previously stated. At the same time, the provisions of the indicated normative acts enshrine the quality of legal subjects as autonomous administrative authorities by virtue of the role and powers that these authorities exercise in the fields of activity established by the legislator, acting independently from a decision-making perspective, in the regime of public power, and to satisfy a legitimate public interest.

According to the basic norm and the establishment's normative acts, the three authorities have the freedom to make decisions, carry out their duties, and organize their own agencies. Autonomy means being able to set their own rules for how they run their operations and make decisions about their organizational structure and human resources policies. It also means that the legislature or administration can't intervene excessively. It is important to note that the autonomy of autonomous administrative authorities is not absolute. It is not intended to separate the activities and functions of these entities from the legislative branch's regulatory power. However, this power must not be used in a way that undermines the unique and defining characteristics of autonomous administrative authorities.

Furthermore, regarding the organizational autonomy of these authorities, the legislator has established that the management of human resources, which is crucial for carrying out activities under optimal conditions, lies solely within their authority. In this context, Government Emergency Ordinance no. 33/2007, art. 7 para. (1) states that „The staff is hired and dismissed from office in accordance with the provisions of the ANRE organization and functioning regulations, the collective labor agreement, and the legal regulations in force". Art. 4 para. (17) of the same law states that „*ANRE establishes through its own regulation the rights and obligations of the members of the Regulatory Committee, of the ANRE management, and of the employed staff*". Additionally, according to art. 15 para. (1) and (2) of the Government Emergency Ordinance No. 93/2012, „*The organizational structure, the number of positions, the management and execution duties of the staff, the criteria for hiring and selecting staff to ensure the smooth operation of the activity shall be established by the ASF Council," and „The ASF Council will adopt the organizational chart, the rules for how the organization works, and the rules for how the members of the Council and the staff are paid. It will also set the rules and principles governing the payment of the Council's members and staff. The Council will decide how much to pay its members and employees based on how much equivalent jobs and responsibilities pay in the financial market*".

Last but not least, according to art. 13 para. (1) lit. f) and m) of the Government Emergency Ordinance no. 22/2009, „*The President of ANCOM (...) approves, by internal decision, the organizational structure, the list of positions and the number of positions of ANCOM" and „the employment, promotion, as well as the modification or termination of employment relationships of ANCOM staff*".

Therefore, the legal provisions implement the principle of autonomy established by the constitutional legislator in Article 117, paragraph (3), in the normative acts governing the organization and operation of the three administrative authorities.

The attribute of autonomy of the three authorities is an imperative requirement of the Union legislator, as follows from the provisions of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, of Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 concerning standard rules for the internal market in electricity and amending Directive 2012/27/EU and Directive (EU) 2018/1972 establishing the European Electronic Communications Code. The rules used state that the three authorities are independent because of the roles they play in the markets they oversee and regulate. These roles can only be carried out if there is no interference with how they are organized and run. But the Law on Efficiency contradicts this constitutional principle, which is meant to ensure that autonomous administrative authorities can perform their duties under the best possible conditions, without excessive interference from the legislative or executive branches. Even if, on a purely formal level, the normative act under constitutional review does not get rid of the legal tool used for managing human resources, which is the act that comes from the management of the administrative authority, by setting clear percentage-based indicators for cutting staff or setting up a The proportional relationship between specialized functions and those deemed supportive compromises the fundamental decision-making principle that should guide the management actions of the authority. The executive takes over the management of independent administrative bodies by imposing his own view on human resources and finances, which are essential to the idea of autonomy. At the same time, the Law on Efficiency appears to conflict with the constitutional provisions of Article. 117 paragraph (3) and the planned cuts in salaries, allowances, bonuses, or premiums for the staff of autonomous administrative authorities and the management bodies of these entities. By limiting or stopping the grant of these monetary rights, these authorities' ability to manage their finances is damaged, which could weaken the autonomy that the constitutional legislator sees in them. Thus, by imposing a generalized reduction of basic

salaries or allowances by a percentage of 30%, without this aspect resulting from a substantiated analysis carried out by the management of the autonomous administrative authorities regarding the efficiency and effectiveness of the existing human resources, a significant interference occurs in the capacity of the entities in question to manage their resources, the attribute established by the legislator within the provisions of art. Paragraph 117 (3) of the Constitution is being reduced to a form without content.

Moreover, even from reading the explanatory memorandum that accompanied the draft normative act, it can be observed that, although the executive recognizes and explicitly presents the autonomous character of these administrative authorities, it intends to suppress it indirectly, by altering the elements that define it, such as the independence and freedom to manage the resources held.

Last but not least, by establishing the obligation to present before the Parliamentary Committees convened by budget-finance and labor, from the Senate and the Chamber of Deputies, respectively before the Government, of reports and information notes regarding the modification of organizational charts and salary scales in accordance with the indicators established by the Law on efficiency, an interference is made in the right to autonomous management of resources by placing the authorities in question in a position of dependence on the Parliament and the Government, contrary to the norms of art. 117 paragraph (3) of the Constitution, which is aimed precisely at preventing any such interference in the autonomous functioning of the entities in question.

By Decision No. 412/2025, the Constitutional Court held that the law is in accordance with the constitutional provisions. In the motivation for rejecting the objection of unconstitutionality, the The Court explains that the independence of regulatory authorities includes decisional, organizational, and functional aspects. Decisional autonomy ensures impartiality in decision-making. Functional independence means no interference from the executive or accepting directives from outside entities. Organizational independence allows authorities to set their rules and structures. The Court notes that the law in question does not impact these authorities' obligation to establish organizational rules but sets criteria for reducing staff and salaries. This does not undermine their decision-making autonomy or organizational independence, as reductions are based on analyses of overlapping duties and efficiency. Therefore, the law’s measures to cut positions and salaries do not compromise their autonomy.

Such a justification is in contradiction with European norms, particularly the principle of the independence of autonomous administrative authorities. Moreover, it can be observed that the Constitutional Court omitted or, better said, avoided answering specifically how the organizational and functional independence of the authorities whose "efficiency" was regulated by Law No. 145/2025 was not affected.

II. THE PRINCIPLE OF INDEPENDENCE. CONCEPT AND REGULATION

Through a series of directives (including those retained by the Constitutional Court in the recitals of Decision no. 412/2025), the European legislator has established specific criteria that must be met for these authorities to be in line with European norms. *Jean-Marc Sauvé, Vice-President of the Council of State of France* mentioned that conditions for the successful creation of an independent administrative authority: first, to ensure that the establishment of this authority meets an absolute requirement, in relation to the status of independence; second, the mission assigned to this authority must be precisely defined; we must guarantee the statutory independence and administrative and financial autonomy of this authority and ensure that it will have sufficient means to carry out its missions. What these authorities have in common is that they enjoy functional and decision-making independence from other state authorities, an independence imposed by European law, the violation of which is severely sanctioned by the European Commission through infringement procedures.

Some authors indicate that the label of independence is somewhat misleading, as it creates excessive expectations about absolute autonomy (Sajo, 2007). Administrative independence is primarily curbed by the principle of legality (Szescilo, 2021, p. 195).

We can say that the principle of the independence of autonomous administrative authorities is a creation of European legal acts and of the case law of the Court of Justice of the European Union. Thus, by the Decision delivered in the Case C-424/15, the CJEU held that although Member States have institutional autonomy in organizing their regulatory authorities, but only within the objectives and obligations of the founding directives. During reform, a Member State can't delegate tasks of national authorities to a multi-sectoral body unless it meets the organizational and operational standards set by those directives[3].

Also, in another case, C-48/23 CJEU ruled that: as regards the concept of *independence*, it should be noted that it emerges from the case-law of the Court (…) this concept designates, in its usual sense, in relation to public bodies, a status which ensures that the body in question can act in complete freedom about the bodies from which the independence of that body must be ensured, protected from any instructions and from any external influence. This decision-making independence presupposes that, in the field of the powers and regulatory powers of the national regulatory authorities, they adopt decisions autonomously, exclusively on grounds of

3 https://curia.europa.eu/juris/document/document.jsf?mode=DOC&pageIndex=0&docid=184670&part=1&doclang=RO&text=&dir=&occ=first&cid=13304984

public interest, to ensure compliance with the objectives pursued without being subject to external instructions from other public or private bodies[4].

In a comprehensive analysis of a recent CJEU judgment, one author highlighted that the European Court has clarified the meaning of the institutional and functional independence of national regulatory authorities, circumscribing the autonomy of Member States as regards the organisational structure and functioning of regulatory and judicial dispute-resolution bodies. However, the CJEU does so by implicitly transposing several principles from the independence framework it has established to define the requirements of judicial independence (Rizzuto, 2021, pp. 64-75). The judgment has clarified the requirements of EU law as regards the independence of national regulatory authorities. In particular, the CJEU provides essential guidance on the operational and functional dimensions of the concept of independence. Furthermore, the Court recalled that it had already ruled that, as regards public bodies, the concept refers to a status which guarantees the body in question the possibility of acting freely in relation to the bodies from which its independence must be ensured, free from any instructions and pressures.

European Commission Communication of 2016 (Communication from the Commission — EU law: Better results through better application) emphasizes that independent administrative authorities or inspection services required by EU law (e.g., in fields such as data protection, equality, energy, transport, and financial services) play a crucial role in implementing and enforcing legislation. The Commission will therefore focus on ensuring it has sufficient and appropriate powers to carry out its responsibilities.

Subsequently, and in 2022 (*COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL First report on application and functioning of the Data Protection Law Enforcement Directive (EU) 2016/680 - LED)*, the Commission further highlighted the importance of regulatory authorities by designating them as key bodies with an essential role in ensuring compliance with Union law.

Organisation for Economic Cooperation and Development (OECD) in Recommendation *of the Council on Regulatory Policy and Governance, OECD Publishing, Paris, 2012,* mentioned that independent regulatory agencies should be considered in situations where:

1. It is necessary for the regulator to be seen as independent, to maintain public confidence in the objectivity and impartiality of its decisions.

2. governmental and non-governmental entities are regulated under the same framework, and therefore, competitive neutrality is required; or

[4] Judgment No 6 March 2025, https://curia.europa.eu/juris/document/document.jsf?text=&docid=296194&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=13311934

3. The decisions of the regulator may have a significant impact on specific interests, and it is necessary to protect its impartiality.

Also, OECD (*The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy,* OECD Publishing, Paris, 2014) has emphasized that a high degree of regulatory integrity contributes to achieving objectives, impartiality, coherence, and decision-making that avoids the risks of conflict, bias, or undue influence.

Moreover, at the OECD level, in 2017, the crucial importance of regulatory authority independence was addressed. In this regard, a guide was also drafted, called „*Creating a Culture of Independence - Practical guidance against undue influence*"[5] which highlights the key elements of this independence and how the state should position itself in relation to them. Also, it mentioned that „*The independence of regulators is thus constantly under stress*". The OECD Guide analyzes a series of factors that must be taken into account for a regulator to be considered independent, such as: (i) credible long-term commitments, (ii) stability, (iii) addressing potential conflicts of interest, and (iv) developing regulatory experience and capacity.

Regarding the financial independence of regulatory authorities, the OECD guide states that proper funding is crucial for a regulator to fulfil its mandate and act independently. How funding needs are set, how funds are allocated, and the regulator's autonomy in managing funds may be more important than the funding sources themselves. For fee-funded regulators, a proper cost-recovery mechanism is vital to set fees correctly and prevent underfunding, industry capture, or executive interference. Regulators funded through government revenues may be more easily influenced by resource reductions.

It must be remembered that, for example, regarding ANRE (one of the three authorities subject to the *efficiency* measures of Law no. 145/2025), an infringement procedure was launched against Romania in 2009. As part of the procedure, the European Commission expressly requested Romania to ensure that ANRE is a legally distinct and functionally independent entity from any other entity (…), with separate budgetary allocations, autonomy in the execution of the allocated budget, and to have the human and financial resources necessary to carry out its tasks. And as regards ANCOM, the Commission was concerned in another infringement procedure by two aspects: the absence of a stable legislative framework guaranteeing the independence of the national regulatory authority, and the fact that the position of the regulatory authority depends to a large extent on the Government, which can adopt and has adopted in the past various emergency ordinances restructuring the regulatory

[5] https://www.oecd.org/en/publications/creating-aculture-ofindependence_9789264274198en.html#:~:text=This%20report%20provides%20practical%20advice%20on%20how,regulators%20and%20how%20to%20interact%20with%20them

authority. The Commission expressed concern about the independence of the Romanian telecommunications regulatory authority. In fact, the infringement procedure launched in 2009 served as the basis for the adoption of the Government Emergency Ordinance no. 22/2009. Thus, the preamble of the normative act mentioned the following: Considering that in the letter of formal notice dated January 29, 2009 (Case no. 2008/2.366), the European Commission highlights that the provisions of Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (Framework Directive) have been violated, and considering that the Romanian Government is invited to respond to the formal notice by April 2, 2009, and that, under these circumstances, developing a normative act establishing the creation, organization, and functioning of the regulatory authority in the electronic communications sector under Parliament's oversight is a solution that will bring institutional stability to the national regulatory authority in this field. The adoption of this draft normative act could also help close the infringement procedure before moving to the next phase of this process, especially considering actions initiated by the European Commission to ensure the stability and independence of the regulatory authority in electronic communications. These principles are also driven by the need to ensure impartiality in the authority's regulatory decision-making. The only way to resolve the breach of Community law procedures is to urgently adopt a regulatory act that sets new principles for the statute, organization, and operation of the regulatory authority in this sector.

So, at least in the case of two of the three authorities subject to the "efficiency" action by Law no. 145/2025, Romania has already been subject to infringement actions by the European Commission. It remains to be seen whether the European Commission's reaction will be the same now.

CONCLUSION

Based on the scientific research conducted, we can draw some conclusions and offer some suggestions, given that the research objective has been achieved.

In general, national governments can decide on the organization of public administration and on the scope of the EU acquis, which has gradually expanded to support the effective implementation of EU legislation by national administrations. EU legislation aims to protect national authorities from undue influence and pressure from markets, interest groups, and elected politicians.

As regards regulatory authorities, Law no. 145/2025 is in contradiction with the independence criteria set out by European and international bodies, which refer to functional and decision-making independence, as well as to autonomy in the execution of the allocated budget.

According to them, as shown by our research, the authorities have autonomous control over the use of the budget, with no restrictions being allowed in this regard, as well as over the way in which the activity is organised, including

personnel policy, given that regulatory authorities must have the financial and human resources necessary to carry out their duties.

In our opinion, by imposing efficiency measures that aim to reduce the number of posts by a predetermined percentage, corresponding to a 30% reduction in salaries included in the salary scale, the premises for the legislator's interference in the functioning of the autonomous authorities are created. Thus, even in the conditions in which the Constitutional Court found that Law no. 145/2025 is in accordance with constitutional norms, we can speak of a (possible) violation of the principle of the independence of autonomous authorities, as it is implemented at the level of European legislation and jurisprudence. The European Commission can find such a violation; such an approach remains open at this time.

BIBLIOGRAFIE

1. Rizzuto, F. *The Independence of National Regulatory Authorities: Is There Now an Autonomous EU Law Concept of Independence of General Application*? (C-378/19 President of the Slovak Republic) CoRe; Berlin Vol. 5, Iss. 1, (2021): 64-75. DOI:10.21552/core/2021/1/12;

2. Szescilo, D., *Challenging Administrative Sovereignty: Dimensions of Independence of National Regulatory Authorities Under the EU Law*, EUROPEAN PUBLIC LAW 27(1), 2021, https://doi.org/10.54648/euro2021008
Sajo, A. *Independent Regulatory Authorities as Constitutional Actors: A Comparative Perspective.* Universitatis Scientiarum Budapestinensis de Rolando Eövös Nominatae - Sectio Iuridica. TOMUS XLVIII. 5-51, 2007;

3. Organisation for Economic Cooperation and Development (OECD) https://www.oecd.org/en/publications/creating-a-culture-of-independence_9789264274198-en.html#:~:text=This%20report%20provides%20practical%20advice%20on%20how,regulators%20and%20how%20to%20interact%20with%20them. https://www.oecd.org/

4. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Fit for Target 55": meeting the EU's 2030 climate target, the path towards climate neutrality (https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A52021DC0550).

5. Communication from the Commission — EU law: Better results through better application https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2017.018.01.0010.01.ENG&toc=OJ%3AC%3A2017%3A018%3AFULL

6. COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL First report on application and functioning

of the Data Protection Law Enforcement Directive (EU) 2016/680 ('LED') (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52022DC0364).
7. OECD (2014), The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, https://doi.org/10.1787/9789264209015-en.
8. OECD (2012), Recommendation of the Council on Regulatory Policy and Governance, OECD Publishing, Paris, https://doi.org/10.1787/9789264209022-en.
9. https://www.oecd.org/en/publications/creating-a-culture-of-independence_9789264274198-en.html.
10. DEX, https://dexonline.ro/
11. Judgment of the Court (Second Chamber) 19 October 2016 In Case C-424/15, REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Supremo (Supreme Court, Spain);
12. Judgment of the Court (Fifth Chamber) 6 March 2025 (*) In Case C-48/23, REQUEST for a preliminary ruling under Article 267 TFEU from the markkinaoikeus (Market Court, Finland), made by decision of 1 February 2023;
13. Judgment of the Court (Fifth Chamber) of 11 June 2020 (request for a preliminary ruling from the Ústavný súd Slovenskej republiky — Slovak Republic) — proceedings brought by Prezident Slovenskej republiky, Case C-378/19;
14. The Decision of he Romanian Constitutional Court (Rcc) No. 412 Of 24 September 2025.

This work is licensed under the Creative Commons Attribution-NonCommercial 4.0 International License.