THE 13TH EDITION OF THE INTERNATIONAL CONFERENCE
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REALITIES AND PERSPECTIVES

Miscellaneous

Et in Arcadia ego. A Semiotic Exercise regarding the Relation between Text and Image

Cristinel Munteanu[1]

Abstract: In this paper I aim at examining the way in which a famous Latin phrase, *Et in Arcadia ego*, modified its meaning due to a homonymous painting made by Nicolas Poussin (1594-1665), a French painter. Initially, the respective Latin phrase may have had the function of explaining or even generating Poussin's painting (in its both variants). However, those who interpreted the meaning of the painting also reinterpreted the inscription inserted in the image and gave it a new meaning. That is why, nowadays, the phrase *Et in Arcadia ego* is used and understood exclusively in its latter meaning, and not in its original meaning. In my analysis, I will start from both Roland Barthes' remarks concerning the relation between language and image, and Erwin Panofsky's commentaries regarding Poussin's painting, *Et in Arcadia ego*.

Keywords: semiotics; text and image; Nicolas Poussin; Latin phrase; meaning

1. In most of the bibliographical sources I consulted it is stated that the Latin phrase *Et in Arcadia ego* was used as an inscription for the painting *The Arcadian Shepherds*, made by the French painter Nicolas Poussin (1594-1665), signifying the regret of the lost happiness. Its meaning derives from the fact that Arcadia, a region in Ancient Greek (in the heart of Peloponnese) inhabited by an innocent people of shepherds, came to designate in the verses of the old poets (especially in Virgil's works) an imaginary country (therefore, a literary realm), a land of purity and joy, a heaven on Earth symbolizing the idyllic, patriarchal life. The phrase is also used as a reminder of the inconstancy of happiness.

1.1. As a matter of fact, Poussin painted *The Arcadian Shepherds* twice. The earlier variant (around 1630) differs from the latter (around 1640) by an important detail: on the tomb, a skull can be seen, a symbol of Death (both variants depict a group of people next to a tombstone engraved "*Et in Arcadia ego*"). According to many interpreters, the meaning of the Latin inscription is the same, regardless of the presence or absence of the skull: "Even in Arcady there am I [=Death]". The French anthropologist Claude Levi-Strauss shared the same opinion, stating that the woman in a yellow-bluish cloth (from the latter variant of the painting) personifies Death or at least Destiny.

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1.2. What is not mentioned, however, in any of the dictionaries and encyclopedias consulted by me, is, seemingly, that this phrase was already known in Poussin's epoch (a few years before, Giovanni Francesco Guercino, had already used the Latin formula in a similar painting which must have inspired the French painter). Irina Mavrodin believes that the phrase changed its meaning precisely due to Poussin's painting, the new meaning being caused by "the internal necessities of the visual text generated by it, in relation to which this literary formula only played the role of a «textual generator»" (Mavrodin, 1981, p. 254). Her hypothesis is based on the opinion of the reputed specialist Erwin Panofsky (1892-1968), that is why I find it appropriate, at this point, to resort to Panofsky's study, in order to better understand the way in which the *sui generis* relation between text and image was established.

The former version of Poussin's *The Arcadian Shepherds* (around 1630)

Source: public domain

The latter version of Poussin's *The Arcadian Shepherds* (around 1640)

Source: public domain

2. Erwin Panofsky devoted an extended study (*Et in Arcadia ego. Poussin and the Elegiac Tradition*) to this formula, showing what exactly motivated its initial meaning. He starts his analysis, narrating a happening when the British King George III decoded correctly the message of the Latin phrase: "In 1769 Sir Joshua Reynolds showed to his friend Dr. Johnson his latest picture: the double portrait of Mrs. Bouverie and Mrs. Crewe, still to be seen in Crewe Hall in England. It shows the two lovely ladies seated before a tombstone and sentimentalizing over its inscription: one points out the text to the other, who meditates thereon in the then fashionable pose of Tragic Muses and Melancholias. The text of the inscription reads: «*Et in Arcadia ego*». «What can this mean?» exclaimed Dr. Johnson. «It seems very nonsensical – I am in Arcadia.» «The King could have told you», replied Sir Joshua. «He saw it yesterday and said at once: 'Oh, there is a tombstone in the background. Ay, ay, death is even in Arcadia.'»" (Panofsky, 1955, p. 295).

2.1. J. Reynolds' painting was already part of a tradition in which the Latin formula was meant to help convey another meaning: "For us, the formula *Et in Arcadia ego* has come to be synonymous with such paraphrases as «Et tu in Arcadia vixisti», «I, too, was born in Arcadia», «Ego fui in Arcadia», «Auch ich war in Arkadien geboren», «Moi aussi je fus pasteur en Arcadie» [...]. They conjure up the retrospective vision of an unsurpassable happiness, enjoyed in the past, unattainable ever after, yet enduringly alive in the memory: a bygone happiness ended by death; and not, as George III's paraphrase implies, a present happiness menaced by death." (Panofsky, 1955, pp. 295-296).

2.2. Next, Panofsky intends "to show that this royal rendering – «Death is even in Arcadia» – represents a grammatically correct, in fact, the only grammatical correct, interpretation of the Latin phrase *Et in Arcadia ego,* and that our modern reading of its message – «I, too, was born, or lived, in

Arcady» – is in reality a mistranslation." (Panofsky, 1955, p. 296). In spite of breaking the rules of the Latin grammar, the current meaning of the formula is a correct one, generated by the change in artistic vision, by the different manner in which the French painter Nicolas Poussin chose to represent the shepherds of Arcadia.

2.3. Among other things, Panofsky reminds us that, actually, the region of Arcadia from Ancient Greece is a poor one, inhabited by people "famous for their utter ignorance and low standards of living" (Panofsky, 1955, p. 297).[1] Arcady (or Arcadia) would become a utopic land in the Latin poetry, thanks to Virgil who, unlike Ovid, "idealized it: not only did he emphasize the virtues that the real Arcady had (including the all-pervading sound of song and flutes not mentioned by Ovid); he also added charms which the real Arcady had never possessed: luxuriant vegetation, eternal spring, and inexhaustible leisure for love" (Panofsky, 1955, p. 299). Therefore, the distancing from reality should be attributed, in this case, to Virgil's imaginative force: "It was, then, in the imagination of Virgil, and of Virgil alone, that the concept of Arcady, as we know it, was born – that a bleak and chilly district of Greece came to be transfigured into an imaginary realm of perfect bliss." (Panofsky, 1955, p. 300).

2.4. After a period of oblivion, in the Renaissance, Virgil's Arcady "emerged from the past like an enchanting vision" (Panofsky, 1955, p. 303). Just that, this time, Arcady was envisaged by artists as a forever lost realm "seen through a veil of reminiscent melancholy" (Panofsky, 1955, p. 304). Giovanni Francesco Guercino (1591-1666) painted in Rome, between 1621 and 1623, his first painting in which "the Death in Arcady theme" was represented. One can first notice here the phrase *Et in Arcadia ego*, engraved on a piece of masonry (Panofsky, 1955, p. 304-305). Panofsky remarks that "we are now inclined to translate it as «I, too, was born, or lived, in Arcady»". What is more, "we assume that the *et* means «too» and refers to *ego*, and we further assume that the unexpressed verb stands in the past tense; we thus attribute the whole phrase to a defunct inhabitant of Arcady" (Panofsky, 1955, p. 306).

[1] Here is a relevant explanation: "Small wonder, then, that the Greek poets refrained from staging their pastorals in Arcady. The scene of the most famous of them, the *Idylls* of Theocritus, is laid in Sicily, then so richly endowed with all those flowery meadows, shadowy groves and mild breezes which the «desert ways» (William Lithgow) of the actual Arcady conspicuously lacked." (Panofsky, 1955, p. 298).

Guercino's *The Arcadian Shepherds* (1621-1623)

Source: public domain

2.5. In what follows, Panofsky demonstrates why such an interpretation does not obey the rules of the Latin grammar: "All these assumptions are incompatible with the rules of Latin grammar. The phrase *Et in Arcadia ego* is one of those elliptical sentences like *Summum jus summa iniuria*, *E pluribus unum*, *Nequid nimis* or *Sic semper tyrannis*, in which the verb has to be supplied by the reader. This unexpressed verb must therefore be unequivocally suggested by the words given, and this means that it can never be a preterite. [...] Even more important: the adverbial *et* variably refers to the noun or pronoun directly following it (as in *Et tu, Brute*), and this means that it belongs, in our case, not to *ego* but to *Arcadia*; it is amusing to observe that some modern writers accustomed to the now familiar interpretation but blessed with an inbred feeling for good Latin – for instance, Balzac, the German Romanticist C.J. Weber, and the excellent Miss Dorothy Sayers – instinctively misquote the *Et in Arcadia ego* into *Et ego in Arcadia*." (Panofsky, 1955, pp. 306-307).

Therefore, Panofsky's conclusion is: "The correct translation of the phrase in its orthodox form is, therefore, not «I, too, was born, or lived, in Arcady", but: «Even in Arcady there am I», from which we must conclude that the speaker is not a deceased Arcadian shepherd or shepherdess but Death in person." (Panofsky, 1955, p. 307).[1] In fact, in Guercino's painting, what really interests the two Arcadian shepherds is not the "funerary monument", but "a huge human skull that lies on a moldering piece of masonry" (Panofsky, 1955, p. 307). The words engraved under the skull (*Et in Arcadia ego*) belong to Death, symbolized by the respective skull. Thus, we do not deal with a "dead man's head",

[1] And, as Panofsky adds, "with reference to Guercino's painting, it is also absolutely right from a visual point of view" (Panofsky, 1955, p. 307).

but with a "death's head".[1] "In short, Guercino's picture turns out to be a medieval *memento mori* in humanistic disguise..." (Panofsky, 1955, p. 309).[2]

2.6. Around 1630 and almost a decade later, Poussin (established in Rome) painted the two versions of the painting *The Arcadian Shepherds*. In the later version, he changed the attitude of the shepherds, which became a serene one; therefore, completely different: "In short, Poussin's Louvre picture no longer shows a dramatic encounter with Death but a contemplative absorption in the idea of mortality. We are confronted with a change from thinly veiled moralism to undisguised elegiac sentiment." (Panofsky, 1955, p. 313).

As a result, there is distortion of the primary meaning meant to adapt the formula to its new appearance and to the new content of the image represented by the painting: "Thus Poussin himself, while making no verbal change in the inscription, invites, almost compels, the beholder to mistranslate it by relating the *ego* to a dead person instead of to the tomb, by connecting the *et* with *ego* instead of with *Arcadia*, and by supplying the missing verb in the form of a *vixi* or *fui* instead of a *sum*." (Panofsky, 1955, p. 316).[3]

3. In a study from 1964 (*Rhétorique de l'image*), devoted to images in advertising, Roland Barthes demonstrated that, in connection with image, the verbal language (in its written form) has two functions: either (1) *the function of anchorage*, or (2) *the function of relay*. The function of relay is activated when the verbal language is in complementarity with the image within a story (as in film dialogue, cartoons and comic strip balloon, etc.). The function of anchorage is more often encountered, mainly in the fixed images. The images taken as such are, frequently, polysemous, *i.e.* they can signify many things. In order to control the sense of an image, to convey the exact meaning, we need anchorage; this is possible thanks to the (written) verbal language. A few words added on the margin of an image (of a visual advertisement, for instance) help us immediately grasp the meaning (see Barthes, 1977, pp. 38-41).

4. It seems that, in the Middle Ages, the role of image was, most frequently, to illustrate the written text (as it happened in the Renaissance, as well[4]). Image would hold a peripheral position, unlike the text, which was central. Image would facilitate a better understanding of a text. However, there were still exceptions, even in those times (see Gherghel, 2012, pp. 179-183), as it is the case of the Tapestry of Bayeux, where the scenes/images of the Battle of Hastings (1066) are accompanied by explanatory words or sentences. Therefore, the function of anchorage of verbal language was present in that era, too.

5. The latter version (and the most famous one) of *The Arcadian Shepherds* made by Poussin demonstrates that the relation between text and image (or image and text) can be reversed while

[1] "The speaking death's head was thus a common feature in sixteenth- and seventeenth-century art and literature…" (Panofsky, 1955, p. 308).

[2] Thanks to J. Reynolds, who had accepted the correct interpretation given by George III, this very idea of *memento mori* was retained in the English cultural tradition (see Panofsky, 1955, p. 310).

[3] However, mention must be made that, in 1975, the historian Lawrence Steefel discovered in the shadow of the knelt shepherd's hand the shape of a scythe which replaces the skull from the former version (see Steefel, 1975, pp. 99-101).

[4] Even more in the case of illustrating religious texts: "Images too were enlisted in the religious struggle. Luther, unlike Calvin, did not disapprove them – he displayed a picture of the Virgin Mary in his study. What he opposed was what he called superstition or idolatry – the veneration of the signifier at the expense of what is signified. In Lutheran churches a few religious paintings continued to be displayed, mainly paintings of Christ, with the Resurrection as a particularly popular subject. Images in print as a form of communication with the illiterate were a still more important means for the diffusion of Protestant ideas, as Luther himself was well aware when he appealed to the 'simple folk', as he called them. His friend Lucas Cranach (1472-1553) produced not only paintings of Luther and his wife, but also many polemical prints, like the famous *Passional Christi und Antichristi*, which contrasted the simple life of Christ with the magnificence and pride of his 'Vicar', the Pope." (Briggs & Burke, 2009, p. 65).

treating the same theme. Inspired by a Latin formula already known in that epoch, Poussin's painting becomes autonomous and constructs its own meaning. The phrase *Et in Arcadia ego* should have fulfilled in this case at least the function of anchorage. On the contrary, the force of the painting and of its further interpretation led, exceptionally, to the alteration of the meaning of the linguistic expression previously taken as a generator.

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REALITIES AND PERSPECTIVES

Modern Consumer and CRM - Customer Relationship Management Platforms

Manuela Panaitescu[1]

Abstract: Customer Relationship Management is a technology for managing company relationships and interactions with current and potential customers. The goal is simple: improving business relationships. CRM helps companies stay connected permanently with consumers, streamlines processes and improves business profitability. An intelligent company can use its CRM system to attract new segments of consumers and also to predict whether current customers would still buy from them in the future and what products / services they would need to meet their needs. A CRM system centralizes all the information in a company, and when requested to access, it will be possible to do so from any department of the company, as the content will be stored on a single database. Over the past 20 years, global markets have focused their interest from sellers to customers. Today, customers are more important and stronger than sellers, taking into account market leadership. Different kinds of CRM platforms can be identified depending on: changes in customer portfolios, business operations speed, the need to manage important data, and the need to share information, resources and efforts.

Keywords: business operations; market leadership; consumer

JEL Classification: D12

1. Introduction

The importance of implementing Customer Relationship Management (CRM) is that it allows the registration of existing customers and potential customers, tracking all interactions with customers from all departments of the company, the database remains even if an employee leaves.

An intelligent company can use its CRM system to attract new segments of consumers and also to predict whether current customers would still buy from them in the near future and what products / services they would need to meet their needs.

A CRM system centralizes all information in a company, and when it comes to access, it will be possible to do so from any department of the company, as the content will be stored on a single database.

You never know when a potential customer wants to buy from you. Probably not today, maybe tomorrow, who knows. Thus, it emerges the need to organize contacts. There rae necessary some basic categories to make data efficient so that the CRM strategy can be implemented in order to meet the needs of both the company and its customers.

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The categories can be as follows: Clients, Lost Clients, Possible Customers, and Inactive Clients. Also it can be taken into consideration dividing customers into customers A, B, and C depending on the different retention programs for each segment. Thus, the use of outdated accounting methods - complex spreadsheets, files, or even a notebook in which there is a tendency to write different information - can be avoided.

Consumers appreciate the small details. For example, based on the data recorded in the system, different discounts, vouchers, symbolic gifts or just the simple message with specific cheers can be sent on the client's birthday. Also, the same can be done at holidays.

2. Types of CRM Systems

Over the past 20 years, global markets have focused their interest from sellers towards customers. Today, customers are more important and stronger than sellers taking into account market leadership factors. Various types of CRM platforms can be identified by taking into account: changes in customer portfolios, business operations speed, the need to manage important data, and the need to share information, resources and efforts.

CRM systems are ranked on the basis of their prominent features, with four types: Strategic CRM, Operational CRM, Analytical CRM, and Collaborative CRM.

Table 1. Classification of CRM Systems

Strategic CRM	Customer-oriented, based on attracting and maintaining loyal and profitable customers.
Operational CRM	Based on client-centric processes, such as sales, marketing, and customer service.
Analytical CRM	Based on smart client data extraction and tactical use for future strategies.
Collaborative CRM	Based on the application of technology within the organization's borders, in order to optimize it and its customers.

Source: Processed according to: https://www.tutorialspoint.com/customer_relationship_management/crm_types.htm

2.1. Strategic CRM

The company focuses its attention on customers, placing them first. For business success, customers' voice is considered to be important for survival. Unlike product-centered CRM platforms (where the company focused first on product development, which was then aimed at all customer categories), the company continues to learn about and adapt to customer requirements.

These companies know how to buy consumers and know that a satisfied customer tends to buy more frequently and in larger quantities. If a business does not consider this type of CRM, then it risks losing market share.

2.2. Operational CRM

It focuses on client-centered business processes such as marketing, sales and services. It includes the following automation: Sales Force Automation, Marketing Automation and Service Automation.

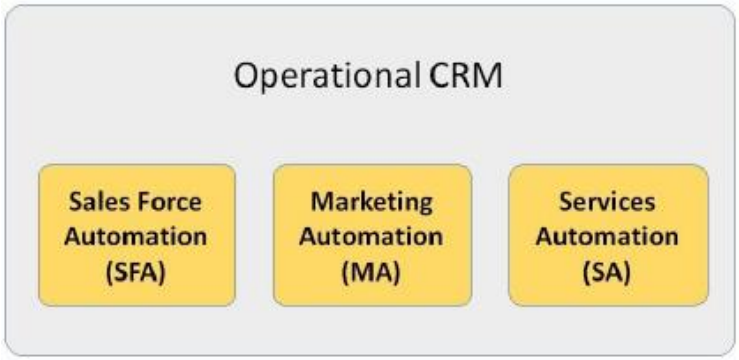

Figure 1.1. CRM Automation of Operational CRM

Source: Processed according to:
https://www.tutorialspoint.com/customer_relationship_management/crm_types.htm

Sales Force Automation

SFA helps the organization to automate its sales process. The main goal of sales automation is to get new customers and deal with the existing customers. It centralizes and organizes the information in such a way that the business can meet the needs of consumers and increase sales in a more efficient way.

Marketing Automation

The main purpose of marketing automation is to find the best way to offer products and address customers and potential customers. One of the most important things is campaign management, which allows the company to decide on effective communication channels to reach potential customers (such as e-mail, phone call, face-to-face meetings, social media ads).

Service Automation

Allows businesses to retain their customers by providing top quality services and building strong relationships. This includes managing issues to solve customer complaints, managing customer calls in handling input / output streams, and monitoring the quality of the provided services based on performance indicators.

Advantages of CRM Operational:

Operational costs are reduced by automating the management of important marketing, sales and customer service activities.

Potential customers are attracted by personalized campaigns targeting specific people or segments.

2.3. Analytical CRM

It uses BI (Bussiness Intelligence) to analyze and interpret customer data and obtain relevant information about these data. Unlike Operational CRM and Collaborative CRM, analytics does not directly involve the client but uses data mining and data warehousing to extract and store valuable information from different sources. By analyzing the information, some patterns and trends are emerging, allowing for better creation of long-term strategies for customer management and sales.

Advantages of Analytical CRM:

• Interpret customer behavior and preferences to reveal sales opportunities.

• Evaluates customer relationships and customer satisfaction to predict the probability of their retention.

• Improves the accuracy and speed of decision-making through predictive modeling and scenarios such as: What if?

2.4. Collaborative CRM

Sometimes called Strategic CRM, it allows an organization to share customer information between various business units such as sales team, marketing team, technical team, and assistants. Feedback from a particular support team might be useful for the marketing team to target customers with specific products or services.

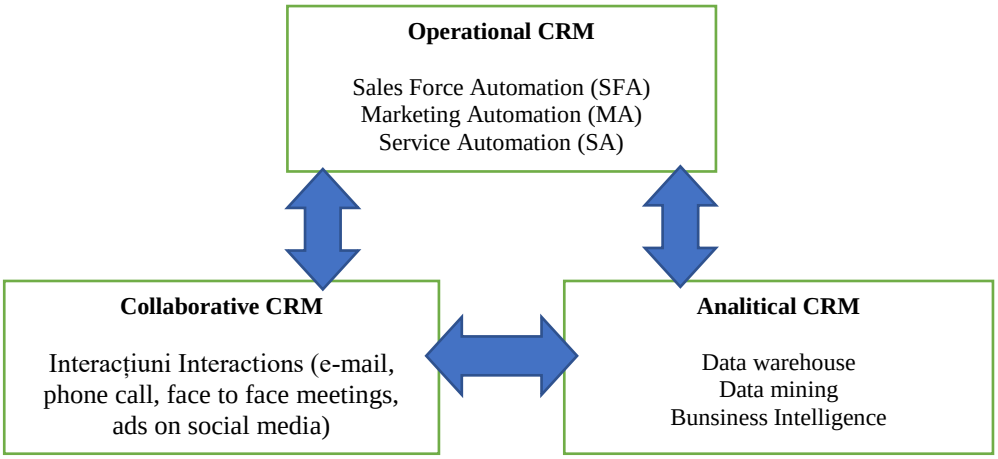

Figure 1.2. The relationship between types of CRM systems

Different types of CRMs offer different benefits to the company, it depends on how they are exploited. Before buying and implementing a system, it is important to look at the long-term strategy for the company and the services that can be delivered to customers. This is important to make sure that selected CRM software solutions are the best option for maximizing sales volume and boosting business.

3. Success Indicators

A CRM system is based on the following elements:

Customer needs - an organization can never know exactly what the consumer wants. It is therefore extremely important to find out and analyze all his desires, because without this basic information it is difficult to serve the client and maintain a long-term relationship.

Customer Response - is the positive or negative feedback the organization receives on its products, services, or business ethics. The consumer's response can be initiated by the customer or requested by the company.

Customer Satisfaction - includes a person's feelings of joy or disappointment resulting from the use of a product or service based on their experience. One of the many reasons a company needs to satisfy their customers is to increase their market share, which may increase the profit margin.

Customer loyalty - is the customer's tendency to regularly buy products from a particular vendor, being very satisfied with the quality of the products or the firm's ethics. To keep a customer always close, the most important aspect an organization must rely on is to maintain customer satisfaction. Therefore, loyalty is an aspect that influences CRM and is always crucial to business success.

Loyalty in turn is stimulated by: *satisfaction, involvement and affinity*. Affinity is the way the customer is emotionally attached to the brand.

Loyalty = Affinity x Satisfaction x Involvement

Customer retention - is a strategic process of keeping or retaining existing customers and not letting them choose other providers or organizations. Usually a loyal customer tends to use a particular brand or product to the extent that its needs and desires are properly satisfied. The higher the mass of current customers, the higher the company's turnover is.

Customer complaints - is the act of customer dissatisfaction, in many situations due to misunderstandings in analyzing and interpreting the conditions imposed by suppliers on the product or service. Complaints can be interpreted positively, analyzed and manipulated until customer satisfaction is achieved. It is essential for an organization to have a predefined set of processes in the CRM in order to deal with discontent and to solve them as quickly as possible.

Customer Service - consists of activities that target customer needs by providing and delivering professional services and support before, during and after the customer's requirements.

4. Conclusions

The digital consumer is in most cases an intelligent man who knows not to miss the various traps found on the Internet today. That is why companies have to use some "tricks" to try to capture the customer's attention and influence his behavior in buying different products and services.

The reality is that people spend twice as much online as they did 20 years ago. The way people buy has changed dramatically, which means offline marketing is no longer as effective as it used to be in the past.

Marketing management has always been linked to connecting with people at the right place and at the right time, that means they have to meet the new type of consumers where they spend most of their time, and that is on the Internet.

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Public Procurement Management – Solutions to Minimize the Risk of Irregularities

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Abstract: The implementation of projects funded by structural funds must be carried out in compliance with the legal provisions in the field of public procurement or specific procedures, depending on the nature of the beneficiary and the quality of the contracting authority. The good progress of the public procurement process also depends on the coherence with which it is approached by the grant beneficiary. In order to verify the correctness of compliance with the procurement procedures carried out by the control bodies in the projects, there may be situations when some deficiencies are identified, according to E.G.O. no. 66/2011, which are considered deviations / irregularities from compliance with procurement rules, and percentage reductions / financial corrections can be applied. The paper aims at analyzing some situations identified in the practice of some beneficiaries.

Keywords: implementation of projects; structural funds; public procurement; contracting authority

1. Introduction

Financing contracts establish the managerial framework for organizing implementation, as well as the actual implementation of those assumed in the application for funding submitted in advance for analysis, evaluation and approval.

In case where the financing beneficiaries are contracting authorities as defined by the legislation in the field of public procurement (Law no 98/2016), they are obliged during the implementation of the object of the financing contract to comply with the rules laid down for attributing public procurement contracts. The same implementation regime also applies to the private beneficiaries of the funding, in the case where the procurement in the financing contract exceeds a minimum threshold set by the law. For purchases below the minimum threshold, private beneficiaries are encouraged to comply with the procedural rules established by the funding authority, which may be a management authority or an intermediary body.

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2. Ways to carry out the Prevention Activity

The prevention of irregularities is carried out at institutional level by the development and implementation of management and control procedures ensuring the correct use of these funds as well as in compliance with the principles of good financial management as defined in the EU legislation.

The prevention rules and selection and approval procedures of financial support requests must ensure the compliance with the following principles:

a) good financial management based on the principles of economy, efficiency and effectiveness;

b) respecting the principles of free competition and equal and non-discriminatory treatment;

c) transparency - making available to all interested parties the information on the application of the procedure for granting European funds;

d) preventing conflicts of interest occurring during the entire selection process of the projects to be funded;

k) exclusion of accumulation - the activity that is the subject of the application for financing from European funds can not benefit from financial support from other sources of non-reimbursable financing, except for the amounts that constitute state aid granted under the law.

The obligation to comply with the above principles also rests with the beneficiary of the funding, whether is public or private. As an exception, the ultimate exclusion principle should only be respected by the financing authority of the grant agreement, since the means of prevention in this respect lies only at its level.

Also for preventive purposes, the public entities having the capacity to manage European funds or beneficiaries of programs fully or partly funded by European funds and / or national public funds must also fulfill the following obligations:

a) organizing and exercising the internal control, preventive control and risk identification and management functions;

b) to perform the internal audit activity in accordance with the provisions of the national and European Union legislation in force, as well as with the International Auditing Standards.

Prevention is also provided by authorities with competence in managing European funds and by:

a) the continuous professional training and evaluation of the personnel;

b) take all necessary measures to prevent irregularities and fraud, including through activities which involve the right and timely information of beneficiaries on the risk of irregularities and fraud, in particular as regards the evidence of fraud;

c) adequate and timely implementation of the recommendations made by the internal and external, national and European control and audit bodies;

d) to take the necessary measures to ensure the reasonableness of the values contained in the indicative budgets of the financing contracts / agreements / orders / decisions, the reality and regularity of the offers submitted in the procurement procedures used and the reasonableness of the prices included in the contracts procurement of works, supplies and services. An analysis of the reasonableness of the values contained in the indicative budgets underlying the contracts / financing agreements / orders / decisions applies only if the project has not been explicitly approved by the European Commission.

In order to prevent irregularities, authorities responsible for managing European funds have the obligation to exclude all or part of those expenses from the verification of payment requests that do not comply with the conditions of legality, regularity or compliance established by national and Community legislation in force.

If it finds **deviations from the application of the procurement provisions**, either in relation to the national regulations in force in the field of public procurement or the specific procurement procedures applicable to the private beneficiaries, the exclusion of the expenditure concerned is effected by applying percentage reductions - of the amounts requested for payment by the beneficiaries. It is also a precautionary measure, as the exclusion from payment of the amounts affected by the deviations will not result in the obligation of the party at fault to pay any financial burden of ancillary nature. Acts issued by the authorities with competence in the management of European funds to exclude ineligible expenditure from financing are not expressly defined by the legislator. In such a context, a reference to the contractual provisions found in the present case would be sufficient to justify the decision to exclude payment costs. The failure to state a legal basis on the basis of which the decision to reduce the percentage of claimed expenditure is repaid is the basis for an administrative litigation seeking recognition of the alleged right. The recognition of the alleged right is exercised only after a prior conciliation procedure, where the parties have proved their full availability for amicable settlement of the dispute arising from the binding relationships conducted in the financing contract.

The application of percentage reductions is excluded when the penalties provided for in national public procurement law require for the corrections to be higher than those provided for in G.E.O. no. 66/2011 regarding the prevention, detection and sanctioning of irregularities in obtaining and using the European funds and / or the national public funds related thereto.

Percentage reductions of the amounts submitted for payment or reimbursement also apply in case of non-fulfillment or partial fulfillment of the result indicators or of the objectives of the projects funded by European funds for which the beneficiaries have committed their achievement through contracts / agreements / decisions / non-repayable financing order or other types of multi-annual contracts, except the cases where the rules laid down by the international public donor provide otherwise.

The administrative and on-site checks by the contract manager within the authority responsible for the management of European funds are also a preventive element. These may be followed by further investigations carried out this time by the control structure set up within the European funds management authority. Primary on-the-spot checks are intended to determine the eligibility of expenditure claimed by a beneficiary before reimbursement or payment thereof. The organization and conduct of primary preventive checks is governed by its own procedures and is a distinct activity of referral control which is expressly regulated in G.E.O. no. 66/2011 regarding the prevention, detection and sanctioning of irregularities in obtaining and using the European funds and / or the national public funds related thereto. In this respect, the act attesting the outcome of the additional investigation is recorded in a control note, which is a separate act from those established by the legislator as effective control acts of a legal nature of an administrative act.

In the case where the authorities with competence in the management of European funds find in the prevention activity indications of fraud or attempted fraud, they are obliged to immediately notify the Anti-Fraud Department. Referral to the Anti-Fraud Department will entail the suspension of the application of the contract / decision / order / grant agreement and, subsequently, the payment / reimbursement of the amounts claimed by the beneficiary suspected of being at fault will be suspended. Suspension shall take effect from the transmission of the referral to the competent

authorities and / or where the case is brought before the courts and ends in obtaining the final and irrevocable sentence of the court as to whether or not the offense is incriminated.

A prevention measure also applies to expenditure included in applications / payment requests of beneficiaries who do not comply with the conditions of legality, regularity or compliance established by national and Community legislation identified by authorities responsible for managing European funds prior to payment. This eliminates the obligation to resort to:

a) the ordinary procedure for finding the irregularity;

b) the procedure for reporting irregularities to the Anti-Fraud Office or any other entity provided for in the international agreements, except for cases where the Anti-Fraud Department reports to the European Fund Management Authority that has notified the Prosecutor's Office to carry out the criminal investigation as a result of a notification of fraud or attempted fraud before requesting a refund / payment.

In the case where there are irregularities in the application by the beneficiaries of the provisions on procurement procedures, either in relation to the national regulations in force in the field of public procurement or in relation to the specific procurement procedures applicable to private beneficiaries, there are issued control documents whose purpose is to apply a financial correction.

Financial Corrections

Financial corrections are those administrative measures taken by competent authorities in accordance with G.E.O. no. 66/2011, which consists of excluding from the financing of European funds and / or national public funds related to them of the expenditures for which an irregularity has been found;

Financial corrections result in a budgetary claim, the value of which is calculated according to a set of express indicators set by the legislation in force, except the cases when:

a) the penalties provided for in the national law in the field of public procurement require for the corrections to be higher than those provided for under the legislation specific to legal liability;

b) the authorities with competence in the management of the European funds financing the projects shall apply the measures included in the regulations of this program.

Applying financial corrections is an activity of a special nature specifically defined in the legislation. The activity in question consists of those administrative measures taken by the competent authorities in accordance with the legal provisions relating to the specific legal liability in the use of European funds, which consist of excluding from the European funds and / or national public funds related to them, of the expenditure for which an irregularity was found.

Therefore, in order to apply a financial correction, it is necessary to find an irregularity justifying the ineligible nature of the funding, irrespective of its origin. The correction implies a reduction in an obligation to pay a sum of money that an entity with competences in managing European funds owes to a beneficiary.

The corrections are differentiated according to the value of the contract, i.e. if it is equal to or higher than the limit/threshold set in the national public procurement legislation for which publication is mandatory in the OJEU.

The financial corrections or reductions applicable to the expenditure on projects funded by European funds and / or national public funds for non-compliance with procurement regulations are as follows:

a1) for contracts the value of which is equal to or greater than the limit/threshold laid down in national public procurement legislation for which publication is required in the OJEU.

a2) 100% of the value of the contract in question for non-compliance of the advertising procedures. Failure to comply with the advertising procedures means that the contract was awarded without complying with advertising requirements governed by national and Community public procurement legislation except in the cases referred to in point a.2. This deviation is a flagrant violation of one of the conditions for funding from European funds. Appraisal of adherence to advertising rules will only need to be reported to the relevant legal provisions. In the case of negotiations without prior publication of a contract notice this correction is inapplicable.

b) 25% of the value of the contract in question for failure to comply with advertising procedures, if there was a certain degree of publicity.

The contract was awarded without complying with the advertising requirements governed by the national and Community public procurement legislation, but there was an advertisement that allowed economic operators in the territory of another State to have access to the procurement procedure in question. In the case of this correction, the demonstration of the cross-border nature of the public procurement by the evaluation body is essential from a probationary point of view.

c) 100% of the total amount of additional contracts (additional acts) in question, if the total value of additional contracts (additional acts) exceeds the percentage of the initial contract amount set as a limit by national and Community public procurement legislation. The correction / reduction rate may be reduced - in accordance with the proportionality principle - to 25% of the cumulative value of additional contracts (additional acts) if the total value of additional contracts (additional acts) awarded without respecting the national procurement legislation exceeds the percentage of the value of the initial contract, set as a limit by the national and Community public procurement legislation.

In this case of the correction, the initial contract was awarded in compliance with the national and Community legislation on public procurement, but was followed by one or more additional contracts (acts) awarded without complying with national and Community legislation on (including the condition of extreme urgency caused by unforeseeable events or the condition of unforeseen circumstances requiring additional works, services or supplies) allowing the use of the negotiated procedure without publication of a contract notice.

d) 100% of the cumulative amount exceeding the percentage of the initial contract amount set as a limit by the national and Community public procurement legislation or 100% of the cumulative value of the additional contracts (additional acts) concerned or 25% of the cumulative value of the additional contracts (s) concerned for the acquisition of additional / supplementary works or services which, due to unforeseen circumstances, have become necessary by exceeding the percentage of the initial contract amount set as a limit by the national and Community public procurement legislation.

In this case of the correction, the initial contract was awarded in compliance with the national and Community legislation on public procurement, but was followed by one or more additional contracts (additional acts). The cumulative value of additional acts exceeds the percentage of the initial contract amount set as a limit by the national and Community public procurement legislation and the additional / supplementary works or services do not constitute distinct activities within the meaning of European regulations (directives). The original contract was awarded in compliance with public procurement legislation, but was followed by one or more additional contracts (additional acts), and additional / supplementary works or services are distinct activities within the meaning of European regulations (directives). In the case where the cumulative value of additional contracts (additional acts) exceeds

the percentage of the value of the initial contract set as a limit by public procurement legislation, a 100% correction of the additional value applies if the cumulative value of the additional contracts (additional acts) does not exceed the percentage of the value of the initial contract, set as a limit by the public procurement legislation, a 25% correction is applied to the additional amount.

e) 25% of the value of the contract in question, which may be reduced to 10% or 5% depending on the severity of the failure to declare all the qualification and selection criteria and the assessment factors in the granting documentation or the participation notice.

In the case of the correction, the contract was awarded in compliance with the advertising requirements governed by the national and Community public procurement legislation, the award documentation or the participation notice did not show all the qualification and selection criteria and / or assessment factors or were not sufficiently detailed.

This case of correction is impossible in practice since the National Authority for Regulating and Monitoring Public Procurement checks all the awarding procedures published in the electronic procurement system, except for negotiation procedures without the publication of a participation notice.

f) 25% of the value of the contract in question, which may be reduced to 10% or 5%, in this case of the appliance of correction, the contract was awarded by applying the unlawful awarding criteria (assessment factors) (e.g. using a qualification and selection criterion as an evaluation factor of offers, use of a evaluation factor inconsistent with the assessment factors established by the contracting authority in the awarding documentation and the notice of participation, the incorrect and / or discriminatory application of the assessment factors, the non-compliance with the award criterion set out by the contracting authority in the participation notice and the awarding documentation).

g) 25% of the value of the contract in question (a reduction / financial correction of 100% of the value of the contract may be applied in the most serious cases, where there is an intention to deliberately exclude certain bidders) in the case of the establishment in the awarding documentation or in the participation notification of some selection criteria or of some illegal assessment factors. Cases where certain potential bidders have been prevented from participating in an awarding procedure due to restrictive criteria set out in the participation notice or in the awarding documentation (e.g. the obligation to have a representative office in the country or region or the establishment of some overly specific technical standards favoring a single operator or experience requirements in the region).

Applying the correction in question can be justified only if the following conditions are met cumulatively:

- there have been reactions of economic operators to substantiate such a hypothesis;

- the reactions did not result in the settlement (amicable or judicial) of the issues favoring a single economic operator.

h) 25% of the value of the contract in question, which may be reduced to 10% or 5%, depending on the seriousness of the insufficient or discriminatory definition of the subject-matter of the contract.

In this respect, the description of the contract object in the awarding documentation or in the contract notice must not be discriminatory or insufficient to enable offerors to identify the subject of the contract or the contracting authorities to award the contract.

In order to obtain sufficient evidence justifying the correction, it is necessary to meet the conditions for a reaction on the part of the economic operators to base such a hypothesis, and for the reactions to

not have as a result the settlement (amicably or in court) of the issues favoring a single economic operator. At the same time, in substantiating the application of the correction percentage it must be demonstrated the actual materialized damage resulting from insufficient or discriminatory definition of the subject-matter of the contract.

3. Case Study

Appeal against a financial correction note applied under Government Emergency Ordinance no. 66/2011

Through the appeal filed on 16.04.2015 to the National Council for Solving Complaints (CNSC), the administrative-territorial unit Commune N. criticizes, citing art. 255, par. (1), art. 256^1, par. (2) and (5) of the Ordinance, the note of non-compliance issued by the Public Procurement and Conflict of Interests Service no. [...] / 30.03.2015, through which it established a financial correction of 100% of the value of the financing contract, note issued after the direct purchase verification procedure for the works contract no. [...] / 17.04.2014 regarding the project "Rehabilitation, modernization and extension of school in Commune N., district D.", taking into consideration address no. 27203 / 31.03.2015 for the refund of payment application no. 1, and requests "the annulment of this administrative act and, as a consequence, the issuance of an administrative act for the recognition of the alleged right of the administrative-judicial way".

Notice of non-compliance no. [...] / 30.03.2015 was issued based on the provisions of art. 6 and 9 of Government Emergency Ordinance no. 66/2011 regarding the prevention, detection and sanctioning of irregularities in obtaining and using the European funds and / or the national public funds related to them, as a result of the reverification of the public procurement procedure, on the basis of which the administrative-territorial unit of Commune N. concluded the contract no. [, ..] / 17.04.2014 for the implementation of the project "Rehabilitation, modernization and extension of school in Commune N., District D.", applying to the beneficiary the 100% correction of the value of the contract, being repaid the request for payment no. 1, related to the financing contract.

Against the note of nonconformity, the contestant could only address the Ministry of Regional Development and Public Administration, with an appeal filed under Government Emergency Ordinance no. 66/2011, which in the procedure provided by this normative act shall be settled through a decision for resolution of the appeal, which may be appealed to the competent court on the basis of Law on administrative contentious no. 554/2004, in which case the law does not foresee a special administrative jurisdiction.

Therefore, the CNSC has correctly found that to the Non-Compliance Note no. [...] / 30.03.2015 is not applicable the administrative-judicial procedure provided by the Government Emergency Ordinance no. 34/2006, so that, in relation to the provisions of art. 1,255 par. (1) and (2), art. 266 par. (1) and art. 297 of that ordinance, dismissed the appeal as being inadmissible.

The fact that the irregularities concerned the legality of the procedure for the awarding contract no. [...] / 17.04.2014, in the procedure of implementing the financing contract no. [...] / 29.10.2014, and that the petitioner was charged by the Ministry of Regional Development and Public Administration with violations of art. 19 and 26 of Government Emergency Ordinance no. 34/2006, that is to say, it was charged with the fact that it purchased works over the amount of EUR 100,000, excluding VAT, did not attract the competence of the CNSC, since those irregularities were found under the

Government Emergency Ordinance no. 66/2011, which provides for a special verification procedure, at which point all the phases of the awarding procedure are exhausted.

The petitioner was considered injured by an act issued under Government Emergency Ordinance no. 66/2011, and the procedural route to follow was the one stipulated by this normative act, and not the one stipulated by the Government Emergency Ordinance no. 34/2006. Therefore, by finding that the CNSC lawfully and thoroughly rejected the appeal as inadmissible, the Court of Appeal in the town A. dismisses the appeal as being unfounded.

The control of the legality of the non-conformity note cannot be achieved through the procedural path chosen by the petitioner (Government Emergency Ordinance No. 34/2006), the Court cannot rule on the applications for annulment of the note, the suspension of the execution of the decision 18.05.2015 issued by the Ministry of Regional Development and Public Administration - the Managing Authority for the Regional Operational Program, respectively the annulment of that decision, these acts being contestable on the way stipulated by the Government Emergency Ordinance no. 66/2011.

4. Conclusions

The management of public procurement is the stage without which a contractual relationship with a public entity cannot exist. The specific stage, even if it is separate and self-regulated, prepares the conclusion of the bilateral legal act called the public procurement contract.

G.E.O. no. 66/2011 regulates the activities of prevention, detection of irregularities, establishment and recovery of budgetary receivables resulting from irregularities in the obtaining and use of European funds and / or national public funds related to them, as well as reporting irregularities to the European Commission or to other international donors. It is therefore necessary to take into account the fact that there are administrative measures that may affect the budget of the contracting authority by applying financial corrections to the financing entity in the event of deviations from the legal framework in force in public procurement.

The legislator incorporated in the body of the same normative act both norms of a sanctioning nature and procedural norms which are in turn detailed by other lower-level legal norms regarding the organization of the execution. Procedural rules establish the prevention and detection mechanism for obtaining and using European funds and / or national public funds related to them.

Procurement management needs to be managed with great care since public procurement can also help address two of the main challenges facing the European economy today: the need to maximize the efficiency of public spending in the context of budget constraints and the need to find new sources of economic growth.

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THE 13TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

Organizational and Operational Management in Mass Control

Petronela-Adelina Renea[1]

Abstract: The nature, complexity and scale of crisis situations, as well as the organization of crisis response interventions or associated responsibilities, require the planning and deployment of prevention actions and, in particular, post-event in all environments, in a unique management and coordination system. In order for the intervention structures to perform their missions, they must have a common, simple planning and execution framework capable of synchronizing the actions of the entities within each category of intervention forces into standard multifunctional operating procedures. The modernization and efficiency of the intervention structures for the control of the behavior of persons, groups and multitudes is achieved by harmonizing the internal legislation with Community and international humanitarian law, improving the independent preventive-action and managerial forms, and procedures in cooperation with other state institutions and the improvement of international police cooperation. Social situations exert significant control over human behavior. The actions and reactions of the individual to the stimuli in a particular social environment are determined by the forces and constraints specific to that environment to a much greater extent than would be expected if only the intimate personality of the person concerned were to be considered. Even aspects that seem trite, insignificant, can cause major changes in the behavior of people in a particular social situation.

Keywords: behavior; crisis situations; operational management

1. Introduction

The management of the company has been and continues to generate specific managerial features and complexities, depending on the type of society. From the earliest times, people, groups and communities have been concerned with fulfilling the necessary functions of life and social development, for which the leaders of the peoples and representatives of the state authorities passed orders, directives, provisions, etc. The science management promoter highlights the interdependence of management between science and art, saying that "*science* is formed with the help of precise knowledge, and the application of knowledge into practice for the achievement of a certain purpose represents the *art*" (Frederick, 1967, p. 43). The management science represents all the management techniques of organizations / institutions or the issues of the general and synthetic management laws of their composition. According to the Romanian specialists in the field, "the management designates the science of leadership of socio-economic organizations" (Rusu, 1994, p. 31).

Internally, management is highlighted by concepts such as "current information, systems, objectives, resources, processes, optimization, autonomy, generation, adaptability, operationalization,

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organization, plan, verification, control and guidance, info - decisions, docimology." (Vlasceanu, 2004, p. 110)

The art of management is the use of the talent of the manager / managerial team "in conducting the managerial process, in order to train future managers of abilities, skills and attitudes that ensure the transition from theory to practice, action in context, respect of people's opinions" (Voicu, 2007, p. 29) so that the organization / institution performs efficient and competitive activities.

Taking into account the novelties and dynamics with which certain events, crisis situations or antisocial facts may arise or evolve in various public assemblies, the prediction of the actions in the managerial decision-making of the decision-makers in the specialized structures does not completely eliminate the unforeseen actions, but can predict actions of people with deviant, criminal behavior, and can significantly diminish the dysfunctions that may occur in crowd management.

The features of the managerial process are "*social responsibility, interdependence, continuity, contextuality, and the orientation of managers towards leadership*."

Manipulating and Controlling the Crowd

"Social situations exert significant control over human behavior. The actions and reactions of the individual to the stimuli in a particular social environment are determined by forces and constraints specific to that environment, to a much greater extent than would be expected if only the intimate personality of the person concerned were to be considered. Even aspects that seem trivial, insignificant, can cause major changes in the behavior of people in a particular social situation. Words, labels, slogans, signs, regulations, laws, and, to a large extent, the presence of others are factors with a great influence on the individual, directing his reactions and behavior sometimes even without realizing that." (Ficeac, 1997, p. 16)

Throughout his social existence, "man has been manipulated, with or without techniques of technology, sociology, psychology, or advertising. When these appeared, manipulation existed long ago, and its principles were accepted by the manipulated and the manipulators." (Teodorescu, 2007, p. 7) The art of manipulating the masses and crowds has been used since ancient times in all states, by political leaders, army leaders, religious leaders or others, through messages, images, behavior, slogans, media, informational warfare, radio-electronic or other objects.

Manipulation, clusters, masses and crowds have been carried out continuously and are carried out more than ever in the contemporary society, due to the high technology, techniques and methods developed by persuasive leaders and various organizations pursuing their goals. In the constitution phase and during public gatherings in which some leaders pursue specific goals or public order disorder, the crowds can be manipulated and directed to carry out turbulent acts with the help of hostile messages transmitted by leaders or members of propaganda structures, verbal, through various means of the media or in other ways.

From a psychological point of view, *manipulation* occurs when a particular social situation is created premeditated in order to influence the reactions and behavior *of the manipulated* in the desired sense of the *manipulator*.

"Being directly related to the idea of political communication, propaganda and publicity, manipulation of opinions is a component and a limit form that can be reached within those activities. The notion of

manipulation always has a negative moral connotation, since it impinges on free-will and personal dignity."

Manipulation is understood as "an action to determine a social actor (person, group, organization, real or virtual crowd) to think and act in accordance with the wishes and interests of the influence factor, sometimes even against their own interests." In other words, manipulation can be understood as a form of deception, a social relationship that abuses the good faith of a person and attacks the person's right of free choice.

2. Leadership and Leading styles of the Crowds

The need to lead certain groups, crowds or human masses, as well as the inability of the masses to lead themselves, determines the people in their composition, to choose some leaders who direct their actions, experiences, feelings, ideals, or defending their claims and interests. The most important components of group life are represented by planning, coordination and control of activities. The theoretical and experimental research of social groups of psych-sociology focused on the issue of leadership, leader and leading style.

In contemporary society, the concept of leadership is frequently used, characterized by the existence of behavioral patterns and personality traits that make certain managers more effective in achieving the goals of the organization or structures they lead.

"Leadership is understood as the set of intra- and intergroup relationships through which a person or group of people influences group behavior, conducts, supervises and controls activities, ensuring that the group is maintained as an organized system." (Cristea, 2005, p. 231) Leadership is also the leader's action based on a certain set of skills, to influence the members of a group so that their work pursues a common goal. In general, "the leader can exercise within the crowd the role of *organizer*, which inspires, allows participation in the protest actions of the crowds and maintains the order within it; the role of *clarifier* defines, formulates, summarizes, synthesizes or explains, and the role of *planner*, which ensures the achievement of the objectives by creating the desired climate." (Pierre, 2001, p. 589) Leadership is a reciprocal process in which an individual has the ability to influence and motivate other individuals to determine them to achieve group goals and thus inducing group satisfaction. The definition emphasizes some key features: leadership is a reciprocal relationship involving the leader - who determines, directs and facilitates group behavior - and subordinates - who accepts suggestions from the leader; leading is a process of legitimate influence rather than the quality of a person; leadership involves motivating group members to spend more energy to achieve group goals.

The leading style adopted by the leader reflects in a synthetic way both the external determinations and the peculiarities of the leader's personality and those of the group structure as such. Without reducing leadership in leading style, many research highlights the great operational value of this concept, which reflects synthetically a central dimension of group life.

The leading style "synthetically represents the relatively stable and specific way of a leader to exercise his / her organizing attributions, coordinating and controlling the internal activities, of representing the group in exterior, as well as the characteristic ways of reporting on the different aspects of group's life. The leading style is structured in the interference area of several categories of factors: sociocultural, organizational, group psychosocial, psycho-individual and circumstantial - situational." (Cristea, 2005, p. 232)

3. Integrated National Crisis Management System

"There is a National Crisis Management System but which has not been set up with very clear attributions and functions and a coherent intervention plan depending on the emerging crisis events. Also, this system is more virtual than practical, lacking the necessary infrastructure and resources to carry out the tasks provided by the legislation in force. In order to put into practice the intervention actions, this system must resort to the infrastructure and logistics of other ministries (IGSU within the Ministry of Business, Ministry of National Defense), public or local agencies or authorities.

The present legislation does not cover the entire territory and does not regulate all the aspects that a crisis situation or a crisis situation created as a result of another previous or simultaneous crisis situation." (Jurcău, p. 7)

"**The National Integrated Crisis Management System** is set up, organized and operated for the prevention and management of emergency situations, ensuring and coordinating the human, material, financial and other resources needed to restore the normal state of affairs.

A key role in the Integrated National Crisis Management System is the institution of the Prime Minister and the General Inspectorate for Emergency Situations. At the level of each ministry and government agencies, prefectures and mayors there are structured crisis cells that are alarmed and activated by the Unique Alarm Center (112) and the General Inspectorate for Emergency Situations. An important role in crisis situations is the Ministry of Internal Affairs, the Ministry of National Defense, the Ministry of Health and the local public authorities.

The principles of crisis management are:

foreseeing and preventing;
the priority of protecting and saving people's lives;
respect for human rights and fundamental freedoms;
taking responsibility for managing emergency situations by public administration authorities;
cooperation at national, regional and international level with similar bodies and organizations;
the transparency of the emergency management activities so that they do not lead to worsening of the produced effects;
the continuity and graduality of the emergency management activities, from the level of the local public administration authorities to the level of the central public administration authorities, depending on their magnitude and intensity;
operativeness, active co-operation and hierarchical subordination of the components of the National System." (Niculae, 2005, p. 7)
During the crisis situations or the potentially emerging states of crisis situations, according to the law, actions and measures shall be taken for:

warning the population, institutions and economic agents in the danger zones;
statement of a state of alert in the event of imminent threat or emergency situation occurrence;
the implementation of prevention and protection measures specific to the types of risk and, where appropriate, the decision to evacuate from the affected or partially affected area;
operative intervention with forces and means specially designed, depending on the situation, for limiting and removing the negative effects;
granting emergency aid;
establishment of the state of emergency, under the conditions stipulated by art. 93 of the Romanian Constitution, republished;

requesting or providing international assistance;
granting compensation to legal and physical persons;
other measures provided by law.
The authorities and bodies of the National System cooperate, in the exercise of their specific tasks, both with themselves and with other institutions and bodies outside it, from the country or from abroad, governmental or non-governmental.

4. Methods and Techniques of Management-Specificities Specific to Professional Emergency Services

The management functions and relationships at the level of each organization are carried out through the management system. Defined as "*all elements of decisional, organizational, informational, motivational, etc. feature within the organization, through which all the processes and management relationships are exercised in order to obtain the greatest efficiency and effectiveness* ", the management system of the modern organization is based on a complex of principles, rules and requirements that ensure its modeling according to the precepts management science.

The managerial method is defined as "*a coherent and rigorous managerial construction, incorporating phases, components, rules, etc. precisely highlighted, through which a small segment of managerial processes or relationships in an organization is exerted, with effects typically located at the level of a small number of managers and departments within the organization*." A more pragmatic definition presents management methods as "*practical ways of allocating in time and space of the material, human, financial and informational resources of the company*".

These methods are used to solve as efficiently as possible some problems specific to the various management functions, in order to ensure the knowledge of the current operational events and facts that take place in an organization. With their help, managers positively influence the evolution of processes as they unfold.

5. Intervention Management System (SCI), Component of Emergency Situations (Events) Management

The Emergency Event Management System (NIMS) is a systematic approach that integrates best practices and methods into a single national emergency management framework defined as all prevention, protection, response, risk mitigation and recurrence. This framework forms the basis for interoperability and compatibility that ensure the integration of response operations of public and private organizations in an efficient manner. Within NIMS, the Intervention Management System (IBS) is a flexible inter-institutional management mechanism for emergency events involving governmental, non-governmental institutions and private sector organizations.

SCI is a generally valid management system designed to provide effective and efficient management of emergency events by integrating equipment, personnel, procedures and means of communication within a unitary organizational structure. It is designed in a standard format to enable managers to identify the tactical goals associated with the emergency event without being forced to directly manage all types of response activities such as resource records or reporting activities.

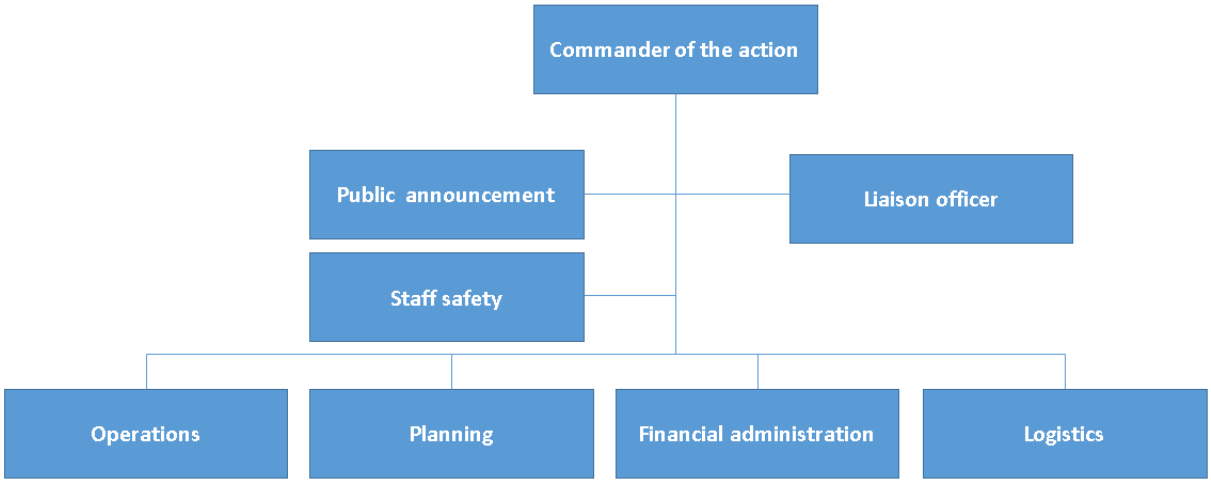

Figure 1. Structure of S.C.I.

Source: Processing www.dhs.gov

SCI is used to organize field response actions for all types of emergency, routine or large-scale emergencies of natural or anthropogenic origin. On the field, operative personnel carry out tactical decisions through operative response actions under the authority of the action commander.

6. Conclusions

The nature, complexity and scale of crisis situations, as well as the organization of crisis response interventions or associated responsibilities, require the planning and deployment of prevention actions and, in particular, post-event in all environments, in a unique management and coordination system. In order for the intervention structures to perform their missions, they must have a common, simple planning and execution framework capable of synchronizing the actions of the entities within each category of intervention forces into standard multifunctional operating procedures.

Efforts to prevent hazards and mitigate their impact on society are imperative and are an integral part of sustainable development and global, regional, national, community policies, and even individual security. Knowing and managing these sources of risk allows for preventive measures and efficient planning of intervention and rehabilitation measures to limit and reduce suffering, loss and destruction, and return to normality when hazards occur or social-human activity generates them.

Accumulation of difficulties and the conflicting outbreak of tensions make the normal functioning of the social system difficult and trigger strong pressure towards change. It is the moment when the crisis occurs as a manifestation of some temporary or chronic difficulties in how to organize a system, expressing its inability to function in the current way. The exit from the crisis is done either through the structural change of the system or through important adaptive modifications of its structure.

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THE 13TH EDITION OF THE INTERNATIONAL CONFERENCE
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REALITIES AND PERSPECTIVES

Antitrust Actions in IT Domain

Georgeta Modiga[1], Andreea Miclea[2], Gabriel Avramescu[3]

Abstract: Antitrust actions must aim at bringing an infringement of competition or the distortion of free markets to an end, prevent the recurrence of such behavior, and prevent the defendant the benefits of its statutory violation. The Information Technology sector, a vital one for the world economy, offered and continues to offer numerous cases of antitrust actions. In this paper, cue outline characteristics of the Information Technology sector that can raise serious concerns about monopolization, and identify a number of important recent antitrust cases involving Information Technology firms.

Keywords: antitrust; IT; software; microprocessor; intellectual property rights

1. Introduction

"Antitrust" refers to a field of economic policies and legislation aimed the monopolistic practices[4]. Antitrust regulations address issues arising from the actions of firms operating under certain market structure conditions and their effects on economic performance; they also have as their primary objective the retention of markets to a standard defined by a set of theoretical characteristics that suggest the status of "perfect competition." These features include the presence of multiple buyers and sellers, perfect information, homogeneous products and the inability of a offerer to significantly influence the price of the products or services.[5]

Laws that govern economic competition can be detected from antiquity; so we can talk about *Lex dulia de Annorta* (in effect during the Roman Empire, protected the grain trade, imposing great fines on those who directly, deliberately and insidiously stopped the ships that ensured the supply), the *Edict* of 301 of Emperor Diocletian (who punished with the death of those who violated the tariff system), etc.[6]

The law on competition in the modern era begins with the *Sherman Act* of 1890 and the *Clayton Act* of 1914, both adopted by the US, which targeted the major monopolies perceived as a threat to democracy and the market economy.

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[4] See (Kaplow & Shapiro, 2007).
[5] In 2009, in the US, the Department of Justice collected over $ 1 billion in fines from antitrust, while the international total for the same year was $ 3.6 billion - see details at http: // www. mainjustice.com/2010/01/06/antitrust-division-collected-more-than-l-billion-in-fines-last-year/.
[6] See http://www.wikipedia.org, on *Competition Law.*

In the European Union, Article 7 of Regulation 1/2003 sets out the European Commission's competence in the field of infringement of European antitrust law: to impose proportionate behavioral or structural remedies to complete the infringement action in the field.

The information technology sector is a very important one in the world economy, as it is but also for its contribution and effects in other economic sectors. Among the most common monopolistic practices in the field of information technology are horizontal or vertical mergers (which aim at holding a single firm at different stages of a production process), pricing policies aiming at removing competitors from the market predatory pricing, exclusive contracts (for example, Original Equipment Manufacturer[1] contracts), interoperability or computerization actions (with earlier versions, with software produced by the same firm, or with software produced by different firms, blocking compatibility, or expanding control by manipulating interfaces), manipulating user expectations on software features, influencing market performance, providing software as a "package."

The information technology sector is an important component of intellectual property, with a number of practices that may fall under the competition laws: acquisition of intellectual property rights through mergers, technology licensing arrangements, cooperative arrangements (including patent associations) and refusal to technology licensing. Moreover, there have been cases in which firms have concealed the existence of intellectual property rights until proprietary technologies have been embedded in standard formats.[2]

Monopolistic practices in the field of information technology can have negative consequences on markets and competitors, due to the network effect and wide spread of these technologies (inter alia) in virtually all areas of activity. In order to remove and prevent the undesirable effects of anticompetitive practices, over the years there have been many antitrust actions in this area.

In the past, in cases in this area, IBM was at the forefront (accused, among other things, of sabotaging Fortran standards, the installation of functional products in the central unit that reduced the value of peripheral equipment, manipulation of interfaces and the refusal to do so available to competitors, etc.) (Kaplow & Shapiro, 2007, p. 29); Nowadays, other corporations, such as Microsoft and Intel, attract the most attention, even if IBM remains a subject of antitrust action.

In the following section, we propose to present some of the very recent antitrust actions involving IT firms that have revealed a number of essential issues specific to the field.

2. Antitrust Actions

2.1. Datel vs. Microsoft

On November 20, 2009, in the Northern District of California, Datel Holdings Ltd. and Datel Design & Development, Inc. have launched an action against Microsoft Corporation, the allegations concerned the Xbox Video Game Accessory Market for violation of Sections 1 and 2 of the Sherman Act (15 USC §§1-2) and Section 3 of the Clayton Act (15 USC §14) unfair and deliberate interference with prospective economic benefits (Microsoft's actions being described as oppressive, malicious and / or fraudulent, justifying punitive damages).

[1] See details on contracts OEM in (Ioana Vasiu & Vasiu, 2009)

[2] Among the most prominent cases in this regard are Dell Computer, in conjunction with the main standard VI (a mechanism for transferring computer data between the central computer unit and peripherals such as the hard drive or monitor) and Motorola, in conjunction with the modem standard V.34, adopted by the International Communication Union - see details in (Kaplow & Shapiro, 2007, pp. 60-62).

Datel is a company that produces products that improve video games and develops and commercializes products for Microsoft's Xbox video game. One of the main Datel products is an Xbox memory card called XMAX Memory (the only company that still supplies Xbox memory cards to Microsoft).

In October 2009, Microsoft released an updated code Xbox 360. Datel sustains that trough this code Microsoft has disabled retroactive memory cards Datel for Xbox 360, in order to protect their own sales, with no benefit to consumers. Such actions lead to the impossibility of the 50000 consumers who chose Datel to use them. These technological barriers are not product enhancements, but only a mechanism by which Microsoft wants to perpetuate market control.

2.2 European Commission *vs*. Microsoft Corporation

Among the incriminated Microsoft's actions anticompetitive restrictions are included in the OEM contracts, the integration of Internet Explorer browser with Windows, integration with Windows Media Player, misleading developers in Java programs, threats to Intel Corporation etc.

In the US, Microsoft Corporation has been the subject of several antitrust actions for violating §§ 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2.

The European Commission has also initiated antitrust investigations against Microsoft Corporation. One of the investigations concerns the interoperability of computer programs and it was initiated following a complaint from the European Committee for Interoperable Systems (ECIS).

According ECIS, Microsoft has refused illegally to provide interoperability information for a range of products, including information on the Office suite (including new format Office Open XML, to see if it is interoperable with competitors' products), a number of server products and the so-called *NET Framework*. due

The second investigation relates “linking” separate software programs, due to a complaint from Opera *inter alia* (selling a browser competing with Microsoft's offer in this area, the Internet Explorer browser). Opera has argued that such actions by Microsoft, especially considering the new proprietary technologies introduced by Microsoft in its browser, reduce compatibility with Internet standards and therefore affect competition. Additionally, Microsoft was accused of linking other software (such as Desktop search and Windows Live) to its operating system, being dominant on the market.

The legal basis for these actions of the European Commission can be found in Article 11 (6) of Council Regulation No. 1/2003 and Article 2 (1) of Commission Regulation No. 773/2004.

According to the IP / 09/1941 (Brussels, December 16, 2009), the Commission found that Microsoft distorted competition by tying Internet Explorer and Windows, which gives Microsoft an artificial advantage in terms of distribution, regardless of the merits of this product, installed on more than 90% of personal computers.

In line with the commitments approved by the Commission for five years, starting in March 2010, Microsoft has created a “window of selection” in the European Economic Area (through a Windows update mechanism) to enable users of Windows XP, Windows Vista and Windows 7 to choose the browser (s) they want to install (in addition to or in place of Microsoft's Internet Explorer browser), configure them as default web browsers, and to disable Internet Explorer. In addition to Internet Explorer, Mozilla Firefox, Apple Safari, Google Chrome, Opera, AOL, Maxthon, K-Meleon, Flock, Avant Browser, Sleipnir, and Slim-1 are also available.

Also, in July 2009, Microsoft made proposals to disclose interoperability information that could improve interoperability between third party products and certain Microsoft products such as Windows, Windows Server, Office, Exchange and SharePoint (see MEMO / 09/352).

3. Conclusion

The information technology sector is a very important one in the world economy and has a very important component of intellectual property. A competitive situation allows consumers multiple options, lower prices and better or more functions.

Cases in this area show that certain features of IT make it difficult and subtle to apply antitrust policies. Analysts and practitioners continue to debate how we need to determine whether we are in the presence of monopolistic behavior or whether we only have a competitive situation. Unfortunately, antitrust seldom really remedies the situation that has triggered such actions (for example, the case of Microsoft Corporation).

We believe that approaches in this area need to be flexible, dynamic, tailored to the concrete situation and to pursue effective remedies. Remedies are effective only if they stop any behavior or action that affects competition in a particular economic sector, remove the benefits obtained by the accused after a monopolist behavior, and try to ensure that similar practices will not be possible in the near future.

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Protection of Trade Secrets in the Field of Information Technology

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Abstract: "Trade secret" can be a formula, compilation, program, method, technique, or process that derives independent economic value, actual or potential, from not being generally known to the public. While the economic value of a trade secret is usually difficult to determine, it can provide an important competitive advantage for the owner. In this article, we emphasize the importance of trade secrets for firms and the economy and the risks to trade secrets posed by computerization and by departing employees. Next, we present an outline of the legal framework for the protection of trade secrets and summarize a number of trade secret cases. Finally, we draw our conclusion.

Keywords: trade secret; information technology; confidentiality; non-competition clause

1. Introduction

"Trade secret" means, in general, valuable or potentially valuable information that the holder is attempting to keep secret through contracts of confidentiality with employees, contractors or partners and / or through physical security measures and / or (such as encryption, authentication, access control, confidential or "secret" marking of documents, etc.) so that the only way commercial secrecy can be disclosed (disclosed to third parties) is through a breach of contract or of security measures, in other words, by means of a criminal act.

According to WIPO[4], the categories that can be considered as trade secrets include:

Compilations of data (for example, customer lists);

Drawings, architectural plans or maps;

Computer programs;

Algorithms and processes that are implemented in other programs;

Instructional methods;

Processes, techniques and know-how of production or repair;

Document tracking processes;

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[4] See April (2002). Trade secrets are gold nuggets: Protect them. *WIPO Magazine.*

Formulas or ingredients for making products[1];

Plans or business strategies or marketing;

Financial information;

Employee Information;

Planning;

Manuals;

Information on research or development activities.

The area of trade secrets is an important component in the protection of investment in intellectual property. There is no accurate data on the value of trade secrets, yet economists estimate that they represent a significant and growing percentage of intellectual property (estimated at 5 trillion US $) (Almeling, Snyder, Sapoznicow, McCollum, & Weader, 2010)

Researchers estimate that business secrets cover over 90% of new technologies, and that over 80% of licenses and technology transfer agreements involve trade secrets or constitute a hybrid understanding of patents and trade secrets. (Mazzone & Moore, 2008) Trade secrets can represent a significant percentage of a company's assets, in some cases being theft of $ 1 billion trade secrets[2].

In the US there are hundreds of decisions in federal courts every year on trade secrets, and the number of these cases continues to grow[3]. Increasing digitization and the ability to access and disseminate quickly and globally by the Internet poses new threats to trade secrets.[4]

The field of information technology presents numerous cases of commercial infringement and it is an important subject in the field of research, particular attention being paid to the way in which disclosure of trade secrets can be prevented or limited in the case of employees leaving. According to a recent study, in over 85% of trade secret cases, a person who has undoubtedly obtained a trade secret was either an employee or a business partner (Almeling, Snyder, Sapoznicow, McCollum, & Weader, 2010).

2. The Legal Framework

Unlike patents or copyrights that require a high degree of novelty, trade secrets must present a "minimal" innovation; moreover, a trade secret may include elements that are in the public domain if trade secret itself constitutes a unique, effective and valuable integration of public domain elements. Patents and trade secrets are not incompatible, but complementary, the latter protecting the collateral know-how associated with patents.[5]

[1] For example, the Coca-Cola recipe, known only by two people whose names are kept secret (the only written recipe description is kept in a bank vault which can be opened only by a resolution of the Board of Directors) but also recipes for pizza, for example - see Magistro v. J. Lou, Inc., 703 NW 2nd 887, 890-91 (2005).

[2] For example, the case where Biswamohan Pani was accused of having stolen $ 1 billion in business secrets from Intel in November 2008 - see details at http://www.networkworld.com/news/2008/110608- intel-trade-secrets-theft-indictment.html? tsohb & story = ts_whsp *and* http://spectrum.ieee.org/semiconductors/precessors/lessons-from-the-1-billion-intel-tradesecret-theft.

[3] See (Almeling, Snyder, Sapoznicow, McCollum, & Weader, 2010) A search for "trade secret" on Loislaw of authors for October 2010 showed 153 cases; for 2010 (by the end of October), 924 cases were reported, and for 2005, 695 cases were reported.

[4] View discussions on this topic in (Cundiff, 2009; Beckerman-Rodau, 2002; Rowe, 2007).

[5] See for more details: (Jorda, 2008).

In the US, trade secret laws are state-owned, with each state individually determining how to protect them. Within States, trade secrets originate in *common law*.[1] The most widely accepted and quoted definition of trade secrets can be found in *Restatement (First) of Torts*. Thus, a "trade secret" may consist of any formula, pattern, device or compilation of information that is used in commercial activities of a form and which gives it the opportunity to gain an advantage over competitors who do not know it or do not use it.

Very important in the United States is the *Uniform Trade Secrets Act (UTSA),* adopted by 46 states, District of Columbia and the U.S. Virgin Islands. According to UTSA, a "trade secret" is information, including a formula, pattern, compilation, program, device, method, technique, or process that:

Provides actual or potential economic value from being unaware of others and cannot be obtained by acceptable means from other entities that can obtain economic value from its disclosure or use,

It is subject to reasonable efforts to maintain its secrecy.

Another Essential Act in the Legal Protection of Trade secrets is the Economic Espionage Act (EEA). According to EEA, a "trade secret" means all forms and types of financial, business, scientific, technical, economic or engineering information, including forms, plans, compilations, devices, formulas, drawings, prototypes, methods, techniques, processes, procedures, programs, tangible or intangible, stored, compiled, stored physically, electronically, geographically or in writing or not, if:

The Holder has taken reasonable steps to keep secret the information and

The information allows us to obtain an independent, actual or potential economic value from the fact that it is not known or easily retrieved by legal means of public.

In Romania[2], trade secret is the information that, in its entirety or in the exact connection of its elements, is not generally known or is not readily accessible to those in the environment normally dealing with this type of information and which acquires commercial value through the fact that it is secret and the holder took reasonable steps, taking into account the circumstances, to be kept secret; the protection of commercial secrecy operates as long as the above conditions are met. It is considered contrary to honest commercial practices to use the trade secrets of a trader improperly through practices such as the unilateral non-performance of the contract or the use of unfair procedures, abuse of trust, incitement to the offense and acquisition of trade secrets by third parties who know that that acquisition involves such practices as may affect the position of competing traders on the market. Breach of this obligation entails civil, contraventional or criminal liability.

[1] See (Mazzone & Moore, 2008).

[2] See Law on Combating Unfair Competition no. 11/1991, supplemented and modified by G.O. no.12 / 2014 and Law no. 117/2015 regarding the approval of Government Ordinance no. 12/2014 for amending and completing the Law no. 11/1991 on combating unfair competition and other acts in the field of competition protection).

3. Case Studies

Hewlett-Packard Company v. Mark V. Hurd

Hewlett-Packard is one of the largest and most important companies in the field of information technology, providing leading products in the field of personal systems, printers and Enterprise Business.

Being dismissed by Hewlett-Packard on August 6, 2010 (Hurd received several million dollars after the contract was terminated and the parties reaffirmed the need to protect business secrets), Mark Hurd agreed to work for Oracle Corporation, a direct competitor of HP.

Mark Hurd had top positions at Hewlett-Packard (Chairman of the Board, Chief Executive Officer and President) and was responsible for creating company strategic plans and business plans against rival companies including Oracle, the firm who hired Hurd after being dismissed by Hewlett-Packard (Oracle is a corporation that Hewlett-Packard is collaborating with about 14,000 joint customers). To preserve the confidentiality of the information he had access to, Hurd was paid a few million dollars in cash, shares and options to buy shares.

In the civil complaint, Hewlett-Packard argued that Mark Hurd cannot work for Oracle without disclosing Hewlett-Packard's trade secrets and confidential information and that he violates legal and contractual obligations by accepting his position at Oracle.

Mark Hurd's confidentiality agreement concerned trade secrets, confidential and technical information and know-how unknown to the public, obtained or produced by him during the Hewlett-Packard contract. Confidential information referred to in the Agreement may include, without limitation, information about the organization, structure and finance of the company, employee performance, research, development, manufacture, marketing, certificates, keys, passwords and other IT information, as well as information which Hewlett-Packard receives from other parties with the obligation to keep them confidential. This information could be used by Mark Hurd only as a Hewlett-Packard employee, confidential and taking steps to ensure that such information is not disclosed to unauthorized persons or used in an unauthorized manner, both during and after the termination of the contract between parts.

Therefore, in the complaint, Mark Hurd was asked not to be left in a position where he could use trade secrets. The parties came to a deal after two weeks, when it was announced that Hurd would give up $ 14 million in shares to work for Oracle.

International Business Machines Corporation v. Mark D. Papermaster[1]

In 2008, Mark Papermaster, IBM's Blade Development Unit Vice-President, became the subject of a legal action to obtain trade secrets and breach of the non-compete clause (unfair competition clause) when he announced that he would work for Apple as Senior Vice President of Devices Hardware Engineering. IBM argued in the complaint that Papermaster had access to trade secrets and that there was a high risk that it would disclose them as an employee of Apple at the expense of IBM.

The United States District Court in the Southern District of New York granted the IBM motion for preliminary injunctive relief. Additionally, the judge in this case has decided that IBM has to pay a $ 3 million bond for costs or damages that Papermaster might require while he was unable to work for Apple.

[1] See details at: http://finance.yahoo.com/news/HP-Hurd-reach-settlement-over-apf-162022018.html?x=o.

In January 2009, it was announced that the parties reached an agreement in which Papermaster will certify within a legal framework that he is protecting IBM's business secrets.

United States of America v. William P. Genovese, Jr.

In February 2004, portions of source code from Microsoft's Windows NT 4.0 and Windows 2000 operating systems were offered for sale on the Internet (via an FTP server). Microsoft alerted the FBI and in July 2004 an undercover agent contacted Genovese and bought source code.

In January 2005, William P. Genovese, Jr. was convicted of downloading and selling trade secrets, violating the provisions of 18 U.S.C. Section 1832 (a) (2).

In his defense, Genovese argued that the definition of "trade secret is very vague, even unconstitutional, applied to the facts of his case and that the Economic Espionage Act violates the First Amendment (even if it does not protect actions seeking to obtain economic benefits through exploitation a trade secret). Genovese also claimed that he could not have known that the code was not known to the public or that Microsoft had taken reasonable steps to protect it. In this case, the court argued that a trade secret does not lose its protection when it is temporarily, accidentally or unlawfully made public.[1]

4. Conclusion

Trade secrets are an important component of economic and intellectual property, protecting them by encouraging innovation and ethical commercial practices. The value of trade secrets is difficult to estimate, depending on a number of factors, including their ability to maintain their economic value. However, it can be said without hesitation that trade secrets can represent a significant part of a company's assets.

The field of information technology offers a large number of cases where trade secrets have been disclosed or used without right.

The protection of trade secrets depends on the protection measures that the holders take and the existing legal framework.

Knowing the value of trade secrets and the increased ability to obtain and divulge them due to information technologies, we believe that a global, uniform approach to this issue is needed. We also believe that a clearer economic and doctrinal approach is needed on how confidentiality and non-compete contracts (unfair competition) can prevent the use or disclosure of trade secrets in the case where employees leave.

[1] It should be noted in this context that if the information posted on the Internet causes its entrance into the public domain, a person republishing that information is not guilty of obtaining a trade secret, even if he knew that information was obtained through illegal means (see, in this regard, the case of DVD Copy Control Inc. v. Bunner, 2004).

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REALITIES AND PERSPECTIVES

Violence, on Element of Aggravation of Some Categories of Crime

Alexandru Drăgănescu[1]

Abstract: Violent crime or crime of violence are illicit antisocial actions involving the use of force or constraint in order to obtain the illicit result, respectively, in order to suppress the life of the person, damage his integrity, or create material or moral damages (murder, battery or injuries resulting in death, bodily injury, robbery, etc.). The paper focuses on presenting multiple ways of influencing the severity of some crimes committed through various forms of violence.

Keywords: violence; crime; robbery; Criminal Code

1. General Point on Violence

1.1. Violence as a Concept

Eric Debarbieux (1996, pp. 45-46) believes that "violence is the brutal or continuous disorganization of a personal, collective or social system that translates into a loss of integrity, which may be physical, mental or material. This disorganization can operate through aggression, using force, consciously or unconsciously, but there can be violence only from the point of view of the victim, without the aggressor having the intent of doing harm."

A necessary delimitation is between the instrumental and the emotional aspect of violence. The instrumental form differs from the emotional one by planning aggressive action. The primary goal is not to do harm, but to achieve certain results, to maintain or enforce its power or status. Emotional (or hostile) violence is done with the intent of harming someone, causing him or her sufferance, and to reduce the psychic tension of the aggressor. This delimitation penetrates deep, up to the motivational constellation of the aggressive act. To these forms is added the violence as symbolic aggression, which means "to aggress the sign or object that materializes the identity of the other detested"[2], the signs of power or what is defined as such. They are assaulted and destroyed to signify an opposition to the values these symbols imply.

Violent crime is characterized by the high degree of social danger, a factor considered to be of great importance by researchers in the field. Thus, when we remember the social danger, we refer to the damage to social values that pertain to the existence and physical security of the person (Dongoroz, 2012, p. 175). This touch may result in the most serious consequence, that

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[2] Amirou R., *Consideraţi psihosociologice asupra noţiunilor de agresivitate şi frustrare comparative/ Psychosociological considerations on the notions of aggressiveness and comparative frustration*. In (Ferréol & Neculau (eds.), 2003, p. 43)

is to say the extinction of life, that is, the physical dismantling of the person, but it may also have less serious consequences, that is damage to bodily integrity or health. The Criminal Code incriminates the facts relating to life and bodily integrity in relation to the quality of the subject, the severity of the consequences, the scope and the way in which it was committed.

In the works of the Conference of Directors of Criminological Research Institutes organized by the Council of Europe in 1975, E. Harremo (1975, pp. 327-342) came to the following conclusions:

1. There is no formal evidence of a worldwide increase in social violence with the general proportion of the increase in crime. The objection manifested in public opinion on the grounds that violence is growing may be partly attributable to media coverage of spectacular events such as organized crime, sexual offenses, hijacking, and hostage-taking.

2. It is very difficult to analyze the multiple and complex issues that generate acts of violence (the role of instinct, the importance of the environment, social conditioning, frustration) in the absence of concrete essential data.

As a phenomenon, violent crime is extremely heterogeneous. The relationship between the increasing violence on the one hand and the industrialization and urbanization and the resulting anomy on the other hand is complex and indirect. Obviously, industrialization and urbanization are not, the causes of violence per se. The increase in the number of violent behaviors must be considered in the more general context of the social issues that contemporary societies face.

Violence must be seen in the broader context of social issues (unemployment, discrimination of various social groups, barriers forbidding access to a particular social situation, etc.); certain violent behaviors are the expression of social crises generated by contemporary social infrastructure. Thus, some individuals who see closing the ways of social success conclude that the legal means are ineffective, admitting violence as a quick solution and justifying both violent reactions and aggression through its own conception of social justice.

Violence is often generated by alcohol consumption, especially among young people, who, with the effect of alcohol, commit some antisocial deeds; drinking is actually one of the main causes of violent behaviors.

Mass media can play a conditioned role, so in the front of violence in its most brutal and sadistic forms, some individuals, especially young people, are tempted to accept more easily the use of violence in a conflict situation;

Violence as a phenomenon is present in all contemporary societies, concerning, due to its harmful effects, both state organizations, institutions for the maintenance and restoration of public order, as well as researchers from various fields of activity. In order to control and reduce this phenomenon, sociological violence research has a determining role in knowing this social phenomenon. In a sociological sense, violence can be seen as "the use of force and constraint by an individual, group or social class for the purpose of imposing will on others." (Rădulescu, 1993, p. 670)

1.2. Forms of Violence

For Jean-Claude Chesnais, violence is "a direct or indirect action, massaged or distributed, intended to harm a person or destroy it, either in her physical or mental integrity, in her possessions or in her symbolic participations."[1]. The French specialist, trying to establish the

[1] Chesnais, Jean-Claude, *Histoire de la violence*, apud (Păunescu, 1994, p. 18)

semantic areas included in the definition of violence, exposes, in a geometric view, three circles": **physical violence, economic violence and moral violence**.

Finally, we will stop at the typology of violence proposed by the World Health Organization and Interpol (Neamţu; Câmpeanu & Ungureanu, 1998, pp. 205 – 205)

A. Private Violence

1. Criminal violence: a. deadly (homicides, murders, poisonings, capital executions); b. bodily (battery and other acts of violence); c. sexual (rape).

2. Non-criminal violence: a. suicidal (suicides and attempts); b. accidental (traffic accidents).

B. Collective Violence

1. Citizens' violence against power: a. terrorism; b. strikes and revolutions.

2. Power's violence against citizens: a. state terrorism; b. industrial violence.

3. Paroxysmal violence − war.

These typologies cover a tough reality, revealed by the various statistics released to the publicity. Thus, FBI statistics showed, for the US in the 1980s, a serious crime every three seconds and a violent crime every 25 seconds. In 1987, there were 19.000 homicides and 87.000 rapes, 500.000 people were involved in robberies and 725.000 in maltreatment or rape[1]. As far as Romania is concerned, the crime rate has increased from 414 in 1990 to 1.039 in 1994 and to 1.765 in 1998. Although for the first time since 1990 the number of crimes committed has been decreasing in 1998, daily were committed an average of: 3 murders or attempted murders; 3.8 serious body injuries; 8 robberies; 3.2 rapes. The Criminal Police's scoreboard, for 1998, is edifying: murders - 559; attempted murder - 501; deadly blows - 203; rapes - 1,267; robberies - 3,548[2].

1.3. Factors Generating Violence

As factors generating violence (criminal), three categories of factors can be distinguished: a) internal factors - temperament, character, heredity, intelligence, passions, mental state, person's education

b) external (exogenous) factors, including the objective conditions of life, the degree of civilization, the deficiencies of socio-professional integration, the conflicting situations, etc.

c) trigger factors (immediate) - those who connect the motivation of the phenomenon as a whole and the individual (Mircea, Borcan, & Poenaru, 1996, p. 7).

From the studies conducted by the judicial police units on the cases solved, it was found that the most frequent triggering factors are:

excessive consumption of alcohol;

spontaneous conflicts, arising in the face of the momentary challenge;

exacerbating feelings of hatred or revenge;

[1] Heslin, James M, *Social Problems*. apud (Rădulescu, 1999, p. 184)
[2] Adevărul, nr. 2699, 8 February1999.

fighting between groups;

extra conjugal relationships;

the location of bars and restaurants in crowded areas;

the consumption of alcoholic beverages outside specially organized places;

high flow of persons during certain periods of time (passengers in train stations), especially on religious and secular holidays, school start or finish, summer season, sporting events;

low number of law enforcement officers acting at a given moment in a delimited area.[1]

2. Violence in the Acceptance of the Romanian Law System

Considering the complexity of the violent manifestations, the theoreticians of the Romanian criminal law appreciate as a generic legal object of the crimes committed with violence against the person "The general assembly of social relations that is constituted and unfolds in connection with the defense of the person, viewed as a whole of its attributes (life, bodily integrity, sexual inviolability, freedom, dignity) (Dobrinoiu & Neagu, 2014, p. 9)."

Criminal law has the main purpose of defending the social values represented by the life, health and integrity of persons, as well as the protection of their patrimony. In this respect, certain levers, ways and means are in place in the criminal law systems to ensure both the coercion of the criminals and the criminal repression towards them, as well as identifying and diminishing the causes of crime.

2.1. Incrimination of Violence in Crimes against the Person under the New Criminal Law

Murder is provided by art. 188 of the Criminal Code and the incrimination of murder is done in the same way as in the previous regulation. The degree of social danger that the murder poses is particularly high, affecting the most important attribute of the person, life. Endangering or suppressing a person's life concerns not only the victim's person, but the person in general, because without respecting the person's life, neither the peaceful existence of the community nor the coexistence of its members can be conceived.

Aggravated murder

Aggravated first degree murder [art. 189 letter a)].

In the common sense of the word, a premeditated act means an action based on a previous deliberation, anticipated thinking. Premeditated action involves a criminal resolution and a prior decision, followed by material acts to enforce the judgment. These acts which precede the commitment of the crime, such as the purchase or adaptation of instruments to commit murder (for example, procurement of the weapon, adaptation of the instrument or even its manufacture) or the creation of conditions necessary to commit the deed (such as attracting the victim in a trap or catching it). In the terminology of some authors and criminal laws (the

[1] Plan of Measures to Prevent and Combat Violence at the level of S.R.P.T. Galați, 2016.

French Criminal Code, the Spanish Criminal Code), homicide committed intentionally is called "assassination." The murder committed on two or more persons (art. 189 letter f)] There is this circumstance whenever the intentional killing activity has resulted in - consciously pursued or accepted - the death of at least two persons (multiple passive subjects). This plurality of victims gives the murderer an increased gravity and characterizes the author as particularly dangerous. c) Murder committed by cruelties [art. 189 letter h)] "Cruelty" means brutal, violent procedures, acts of violence that, over time, cause extreme torments or physical suffering, which denotes sadism, a barbarous manner of committing murder, such as: crushing of bones, peeling off skin, whiplash, lack of food or drink, prolonged burning, hair or nail extraction, total or partial cut of non-vital areas of the body.

C. Bodily injury. The offense of bodily injury is a variant of the offence of battery or other acts of violence, which has been given its own name (nomen juris); with the exception of the more serious result, the structure and legal content of the offense of bodily injury are similar to those of the offense of battery or other acts of violence. The criterion for distinguishing between the various variants of violent crimes is in this case the nature of the consequences produced. Thus, if the deed only caused physical suffering or caused injuries requiring for healing up to 90 days of medical care, will fall within the provisions of Article 193 of the Penal Code, and if it had a more serious consequence, from those shown in Article 194, will fall within according to this text.

D. Injuries or death-causing injuries - the offense of injuries or death-causing injuries, although located in the section on offenses against bodily integrity and health, resembles the result produced, the death of the victim, the crime of murder. Therefore, the sanction for this offense approaches the legal limits of punishment for murder. The offense is regulated in the same way as in the previous legislation, with the only differences in sanctioning. The offense is provided in one type variant, there being an offense, according to Article 195 of the Criminal Code, if any of the facts provided in Article 193 and Article 194 resulted in the death of the victim.

2.2. Incrimination of Violence in Crimes against Sexual Freedom and Sexual Integrity

E. Rape is incriminated in Article 218 of the Criminal Code as part of Chapter 8, which is devoted to crimes against sexual freedom and sexual integrity. The offense provided in Article 218 of the Criminal Code has a standard version, an assimilated variant, an aggravated variant with six alternative ways of committing, and an aggravated variant common to all previous variants. The type variant is provided in paragraph 1 and consists in the sexual intercourse, oral or anal intercourse with a person, committed by coercion, impossibility of defending or expressing the will or taking advantage of this state. The assimilated variant referred to in paragraph 2 shall consist of any other vaginal or anal penetration perpetrated under paragraph 1. The aggravated variant provided in paragraph 3 is made when: the victim is in the care, protection, education, guard or treatment of the perpetrator (letter a), the victim is a direct relative, brother or sister (letter b), the victim has not reached the age of 16 (letter c), the act was committed in the purpose of producing pornographic material (letter d), the act resulted in bodily injury (letter e), the act was committed by two or more people together (letter f). Paragraph 4 provides for a common aggravation of all the above-mentioned committal variants, namely when the deed results in the victim's death.

2.3. Incrimination of Violence in Crimes against Patrimony

F. Robbery - The offense provided by Article 211 of the old Criminal Code consisting of the theft committed through the use of violence or threats or by putting the victim in a state of unconsciousness or impossibility to defend himself, as well as the theft followed by the use of such means to preserve the stolen good or to remove the traces of the crime or for the perpetrator to secure his escape.

The aggravated forms of the robbery offense are the deeds committed in the following circumstances:

• by a masked, disguised or transvestite person;

• during the night;

• in a public place or in a means of transport;

• by two or more people together;

• by a person with a weapon, a narcotic or paralyzing substance;

• in a dwelling or its dependencies;

• during a calamity;

• when it has caused particularly serious consequences or has resulted in the death of the victim.

In the new Criminal Code, Article 234 lists "qualified robbery":

(1) Robbery committed in the following circumstances:

a) using an explosive, narcotic or paralyzing weapon or substance;

b) by simulating official qualities;

c) by a masked, disguised or transvestite person;

d) during the night;

e) in a means of transport or against a means of transport;

f) by violation of a domicile or professional placement, shall be punished by imprisonment from 3 to 10 years and the prohibition of exercising certain rights.

(2) The robbery committed under the conditions of Article 229 paragraph (3) shall be punished by imprisonment from 5 to 12 years and the prohibition of exercising certain rights.

(3) The same punishment shall be punished the robbery which resulted in bodily injury.

The New Criminal Code updated by:

Law 187/2012 - for the implementation of Law no. 286/2009 on the Criminal Code of 24 October 2012, Official Gazette 757/2012; (https://legeaz.net/noul-cod-penal/art-234).

Being a complex crime, the robbery has as its material object, first of all, a mobile good. The main legal object, which is identical to that of the theft, is the social relations regarding possession and detention on movable goods. The secondary legal object is the social relations related to life, bodily integrity or the freedom of the person. Because acts of violence, threats, or other means of annihilating the will of the person are being used, robbery may have as its material object, secondly, its body. If robbery always has as material object a movable good, instead, the body of the person does not appear as a material object of the offense except in those cases where the secondary activity is carried out by an action directly exercised on a

person's body. The robbery offence is committed with direct intention; the perpetrator realizes and wants to commit theft through violence or threat or by putting the victim in a state of unconsciousness or the inability to defend himself.

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THE 13TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

Restorative Justice between Aspiration and Reality

Constantin Tănase[1]

Abstract: Emerging during the second half of the twentieth century, the concept of restorative justice is insufficiently studied and practiced in the Romanian social and judicial area. The legislation and logistics required to conduct programs of restorative justice are scarce and weak. Despite some projects initiated by the Ministry of Justice in 2003 and 2004, with some encouraging results, the studies did not carry on and experience was not brought any further. This study aims to present some essential features of restorative justice in the current status of the concept, as well as some proposals competent institutions have made. Also, we aim to state some views, mentalities and visions which the concept of restorative justice must face in Romania. Finally, a synthesis of the international forums which Romania is part of (the E.U. and U.N) will be presented, together with the actions taken in that respect.

Keywords: restorative justice in the contemporary world and in Romania

1. Introduction

Sometime during the 1980's, specialists in prevention and fight against crime noticed that, for some crimes of certain categories of offenders, the classical criminal system – so-called *retributive* – became insufficient and, at times, harmful. Included here are low-risk offences, minor offenders, young people or first time offenders.

It was noticed that crimes to which the pursuit is subject to prior complaint by the injured party, or to which the penal action ceases by agreement of parties or to which there are no serious consequences, take a long time to handle by the judicial police, the prosecutor's office and courts of law, and the judgment issued is not always the most adequate. On the other hand, the penal sentences issued by the courts do not have the desired consequences on the aforementioned offenders.

Overcrowded prisons cannot lead to more responsible convicted felons, as most of the times they leave the establishments gaining more experience in committing crime. It was also thought that the victims had a marginal role in the actual trial of the offenders and their interests were treated as marginal, while the state had a prime role as the performer of the public action. It was concluded that the main objective should be to make the guilty responsible for their crimes by meeting the requests of the victims who have endured physical, psychological or material damage.

Under these circumstances, alternative solutions were sought to provide real efficiency to the solutions which give accountability to offenders, making them face the consequences of their actions, their victims and the community in which they live and commit the criminal acts.

2. General Principles on Restorative Justice

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In 1977, Albert Eglash, an American psychologist, considered that criminal justice can be provided in three forms: *retributive*, *distributive* and *restorative justice*. The *retributive* justice has as main objective punishing the offender in relation to real and personal circumstances. The distributive justice aims at the rehabilitation of the offender, while restorative justice handles essentially the repairing of the prejudice brought on the victim.

Subsequently, the concept of restorative justice was redefined to comprise some new elements. This is shown to be the effect of various situations emerging.

Thus, most authors emphasized the following causes for the emergence and imposition of the concept:

The decline of the classic, traditional criminal system which became clumsy and inefficient in certain circumstances;

Failure of imprisonment sentences and, generally, of the criminal punitive sentencing;

High costs of managing crime;

Crowding courts of law with criminal files, some regarding minor offences;

Emerging and development of the crime victim support movement (Cușmir & Balica, 2005, p. 6).

At the same time, two different tendencies were identified in judicial practice of most countries. On one side, increasing stringency regarding criminal punitive sentences, which led to an increased number of trials, and an increased number of sanctioned offenders, and on the other hand the use of alternative procedures having as scope involving the victim and culprit for the solution of the case, named restorative practices.

Close analysis of these practices reveal that their inspiration sources can be identified in traditional practices for solving conflicts specific to certain ancient cultures or in religious precepts, such as forgiveness and redemption, accepted and practiced within particular confessional communities.

From this perspective, some authors stated that in the respective ancient cultures and religious communities emerged and were developed the first restorative justice programs (Latimer & Kleinknecht – apud Cușmir & Balica, 2005, p. 7).

In attempting to differentiate as precisely as possible between the restorative and the classic justice system, these authors started by explaining how the two systems regard the notion of offence. The classic penal justice system considers crime is an action or lack thereof affecting the state and system of laws. Restorative justice considers that offence is a conflict between persons which brings prejudice to the victim, to the community and even to the offender.

This results in a repositioning of parties in the penal proceedings. The victim is placed on an active status with regard to conflict settlement and obtaining material and moral compensation. The new model of justice proposes that the offender undertakes responsibility for this action, in order to repair damage and prevent repeating offences. At the same time, restorative justice gives the community a chance to state their opinion regarding a social phenomenon such as criminality.

As such, it was thought that restorative justice starts from a simple idea, that a conflict of criminal law can be resolved by repairing the material and moral damage caused. By “damage repair” it is evidently meant both material and moral damage. This kind of settlement leads to rebalancing the relationship between the victim and the community, restoring and strengthening peaceful coexistence.

The great advantage of restorative justice compared to the traditional or, more precisely, to the retributive system, is that the parties involved in a legal relationship agree together on the solution and

on any future implications. In other words, restorative justice attempts "to cure and make right the harm inflicted, by cooperation of the parties", as alternative to state intervention (Howard & Mika, apud Cușmir & Balica, 2005, p. 9).

The damage caused to the victim must be repaired without overlooking the offender, who will be supported and encouraged by the community to undertake responsibility for his crime and make every effort to reintegrate into society. These aspects are barely taken into account in the traditional trial, in which the main objective is determining and applying punishment. This is the main distinction between restorative and retributive justice.

3. International Documents on Restorative Justice

The interest international organizations have shown for restorative justice is expressed in a series of documents belonging to the U.N. and E.U., stating some principles of the new dispute resolutions in the criminal justice system.

Some examples in this respect: *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly resolution 1985*; *Council of Europe Recommendation 18/1987 concerning the simplification of criminal justice; Council of Europe Recommendation 16/1992 on Community sanctions and measures; U.N. Economic and Social Council Resolution 33/1997 regarding "Elements of responsible crime prevention: standards and norms"; U.N. Economic and Social Council Resolution 23/1998 regarding "International cooperation aimed at the* reduction *of prison overcrowding and the promotion of alternative sentencing"; Council of Europe Recommendation 19/1999 concerning mediation in penal matters; U.N. Economic and Social Council Resolution 26/1999 on the Development and implementation of mediation and restorative justice measures in criminal justice; U.N. Economic and Social Council Resolution 14/2000 regarding Basic principles on the use of restorative justice programmes in criminal matters; E.U. Council Framework Decision 220/2001 on the standing of victims in criminal proceedings; U.N. Resolution 12/2002 regarding Basic principles on the use of restorative justice programmes in criminal matters; U.N. Economic and Social Council Resolution 15/2002 regarding Basic principles on the use of restorative justice programmes in criminal matters; U.N. General Assembly Resolution 56/261/2002 entitled "Revised draft plans of action for the implementation of the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century"; E.U. Ministry of Justice Resolution 2/2005 on the social mission of the criminal justice system; Council of Europe Recommendation 8/2006 on the assistance of victims.*

Out of all the above, we emphasize U.N. Resolution 12/2002 on the *Basic principles on the use of restorative justice programmes in criminal matters*. This document is important because it recommends member states of the international community to initiate and develop strategies to implement restorative justice programmes and to bring these programmes into practice. It also recommends, as means to evaluate and expand these programmes, periodical meetings of magistrates with the representatives of organizations and institutions conducting restorative justice programmes, in order to identify best practice solutions with regard to the criminal justice system.

Restorative justice was one of the main subjects of the eleventh and twelfth U.N. Congresses in 2005 and 2010. The eleventh U.N. Congress was held on April 18-22 2005 in Bangkok, on the subject of *Preventing Crime and Criminal Law*. It emphasized the importance of reforming the criminal system by promoting restorative justice, whilst respecting local practices

(http://www.un.org/french/events/11thcongress/). The final statement of the participants includes the acknowledgement of restorative justice for promoting the interests of victims and social reintegration of offenders. It also asserted the importance of restorative justice programmes and procedures, as alternative to negative effects of imprisonment and as an opportunity to reduce the volume of work in courts of law.

The twelfth U.N. Congress in 2010 (Salvador – Brazil) continued the debate on implementing the restorative justice system, underlining crime prevention and protection of the victim, particularly with regards to minor offences.

4. Restorative Justice in Europe and around the World

Although deriving from *common law* systems, restorative justice extended to European states, as proven by E.U. recommendations and resolutions and the legislation of member states and those outside the Union. Cultural diversity was not an obstacle in the development of the new justice system, therefore most member states prefer mediation in criminal law as a means of restorative justice. Council of Europe Recommendation 19/1999 decided that mediation is synonym to restorative justice.

Analysis on the implementation and results of the new model in some European states has revealed that these are far from meeting expectations. The reasons are diverse and complex, mainly of a social and economic nature, routed on a certain spiritual attitude, tradition and mentalities.

E.U. institutions' recommendations and resolutions led to adopting internal norms in agreement with their principles, with the main purpose to optimize procedures for minor offenders, relieve courts of low risk cases and reduce prison overcrowding. According to most norms and in compliance to European regulations, specific restorative justice procedures may intervene during any stage of the proceedings, but are mostly used in the initial stages of the criminal trial.

European and national norms were extensively criticized and some issues have not yet been cleared. As such, it is evident that the premise for any mediation is the acknowledgement of the crime by the offender, a requirement included in most European state legislations. Critics to this rule consider that it brings great harm to the principle of the presumption of innocence, present in all constitutional and procedural legislations. The restorative justice supporters claim that without acknowledgement of the deed, true mediation cannot occur, anything contrary is fictitious. This last expression (fiction) determined contesters to view the procedure as indeed fictive, when the offender's interest dictates acknowledgement of the offense, even if they did not commit it.

As mediation regards to minor offenders, it is thought that bringing the minor offender to-face the overage victim creates inequality of opportunity, even if the underage person would be assisted by the lawful persons.

Finally, as the European Community recommendations and resolutions provide the possibility to make use of restorative justice means at any stage of the proceedings, even prior to criminal pursuit, and many states have taken over this provision, a debate rises on the legal basis to initiate such proceedings before opening a criminal case.

Worldwide, restorative justice gained ground in the U.S.A., Canada, New Zealand and Australia. Here, this system takes up the main role in the justice system. Procedures such as *family conferences* have acquired a primordial role in solving underage crimes. These conferences are gaining ground also in causes with overage offenders. They offer both victim and offender a chance to answer questions

such as why the deed was committed, why on that particular victim etc., and also what was the motivation of the offender and what punishment they will receive.

Studies have revealed a high level of satisfaction of the attendants – offenders, victims, their families, and also a low level of recidivism, compared to persons punished within the traditional criminal justice system.

5. Experimenting Restorative justice in Romania

Restorative justice is thought to have emerged in Romania in the year 2002, by means of the Minister of Justice Order 1075/C/10.05.2002 setting up two experimental Centers for restorative justice in Bucharest and Craiova.

It is only fair to remind of two norms issued prior to 1990, promoting elements of restorative justice in the current sense of the notion: Law 69/1968 on trial committees[1] and Decree 2018/1977 on the transition measures for sanctioning and labor reeducation of some offenders, as provisioned by criminal law.[2] By means of Law 59/1968 were created the trial committees as sub-common bodies having the scope of increasing the importance of public opinion and that of the community in ensuring law is respected and in fighting against antisocial activities. Basically, these committees solved, among other issues, criminal causes regarding low risk crimes by determining offenders' responsibility and compensating the victims' prejudice. They did not apply penal punishment.

Decree 218/1977 aimed to increase the role of socialist units and public organizations in law enforcement, punishment and reeducating by labor the persons committing violations of the social coexistence norms and country legislation. It mainly stipulated that underage people, aged between 14 and 18, committing criminal offences, shall not be sentences to prison and shall be trialed and punished by the communities in which they live or study.

Both norms were repealed by Law 104/1992 for changing and amending the Criminal code, Criminal proceedings code and other laws, as well as to repeal Law 59/1968 and Decree 218/1977.[3] Thus, all practices accumulated for this model of alternative justice were abandoned, for purely political reasons that had nothing to do with knowledge in fighting crime.

Creating the two experimental restorative justice centers and expanding their activity in 2003 led to the management of various projects, such as *Restorative Justice – Possible Solution to Juvenile Crime* and *Improving the Juvenile Crime and Crime Victims Protection System*.

These projects also used elements of restorative justice (mainly mediation) having as "target group" underage and young people aged 14 to 21, who committed crimes which require a formal complaint from the victim in order to start the criminal action, and for which the agreement between parties exempts from criminal liability. Several services were initiated and activated to support victims and offenders, such as: informing, assistance, guidance. Local Coordination Committees were set up, constituted of court, prosecutors, police and social integration services representatives.

At the end, a study was performed, which mainly underlined the following:

- Weak and insufficient legislation (since then, Law 192/2006 was adopted, on mediation and organizing the profession of mediator, which ignored the results of the experiments conducted);

[1] Republished in the Official Gazette no. 27/09.03.1973.
[2] Published in the Official Gazette no. 71/17.07.1977.
[3] Published in the Official Gazette no. 244/01.10.1992.

- Weak level of cooperation between institutions involved in the projects;

- No coordination of the activities, as each involved party acted upon their own concept which most of the times was different than that of the others;

- Local Coordination Committees only met sporadically and did not take decisions to eliminate issues and to impose clear directions;

- The bureaucracy and didacticism component of all activities;

- Team work was strictly formal, which determined restraint from the people likely to become subjects to the restorative justice activities;

- Lack of involvement from communities in the projects.

These and other factors make restorative justice in Romania an aspiration far from becoming reality.

6. Conclusions

The model of restorative justice should be a goal for Romanian society to reach. This is not difficult to accomplish, but requires a solid and rigorous legislation. Current Law 192/2006 on mediation and management of the mediator profession, sought as "a real progress and judicial innovation useful for the Romanian justice system, opening a series of opportunities on the introduction and ruling of restorative principles and practices…" (Rădulescu, Banciu & Dâmboianu, 2006) cannot fulfill this role (at least not on its own), especially after Constitutional Court decisions regarding the constitutionality of certain texts within its contents.

On the other hand, legal norms on restorative justice must be elaborated taking into account the experience gained so far and using people who have activated in such projects. Even though criminal law politics reflects the views of the governing parties, it should have nothing in common with *politician's* politics (Cioclei, 1994, p. 2). In other words, in this matter, specialists must have priority; otherwise, the objective of Romanian society will be hard to reach.

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THE 13TH EDITION OF THE INTERNATIONAL CONFERENCE
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Aspects Concerning the Offense of Theft or Destruction of Writings in Romanian Law

Bogdan Bîrzu[1]

Abstract: This paper analyses the offense of theft or destruction of writings, as it is included in the Romanian legislation in force. In order to focus on a new perspective of judicial practice, I made a comparative analysis that took into consideration the provisions of the both the previous and the current law. The novelty is represented by the examination of the elements before the offense, of the constitutive content, according to the provisions of the new law, as well as the legislative precedents in Romanian law. This paper is part of a complex work that will be published in the future at a recognized publishing house in this field. The paper can be useful both to theoreticians, as well as practitioners of criminal law.

Keywords: preexisting elements; constitutive content; legislative precedents

1. Introduction

The offense of theft or destruction of writings is part of Title III of the Romanian Criminal Code, Special part, with the marginal title of "Offenses regarding state authority and border".

According to the provisions of art. 259 par. (1) Criminal Code, the offense consists in the deed of a person that steals or destroys a writing that is in conservation or custody of a person mentioned at art. 176 or art. 175 par. (2) Criminal Code

We mention that at art. 176 Criminal Code, the meaning of the term public in the criminal law sense, consists of *"everything regarding public authorities, public institutions or other legal entities that manage or exploit goods that are public property."*

Art. 175 par. (2) gives the second interpretation of the expression *"public servant"* in the sense of the criminal law, this being the "*person that performs the public interest services for which he was invested by public authorities or that is submitted to their surveillance regarding the performance of that particular public service".*

From the interpretation of the provisions that we referred to, it results that, for the existence of the offense, it is necessary that the respective writings are in conservation or custody of a public authority, public institution or another legal entity that manages or exploits goods that are public property or in conservation or custody of a public servant.

The offense is considered to be aggravated being sanctioned as such, if it is committed by a public servant.

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Art. 259 par. (3) Criminal Code provides that the attempt is punished.

2. Some Similarities and Differences between the Regulation in Force and the Provisions of the 1969 Criminal Code

The comparison between the incriminations in the law in force and the previous law show both the existence of similarities, as well as of differences.

The first differentiating element consists in the definition of the material object, a writing that is in conservation or custody of an authority or of a public institution or of a legal entity that manages or exploits goods that are public property.

In these circumstances, we notice that the material object no longer consists in a file, registry, document, that is in conservation of an organization of those mentioned at art. 145 of the 1969 Criminal Code, as it was provided in the previous law.

At the same time, we notice that the new law replaces the notions of file, registry, document with the term writing, which has a larger meaning referring to any type of document, including files, registries, as well as other documents that are in conservation of public institutions.

Another difference from the provisions of the previous law consists in the fact that the law maker of the new Criminal Code eliminates the sanctioning of the destruction by fault of writings with scientific, historic, archive value or any other value of the kind.

Also, there are some differences between the two regulations concerning the sanctioning regime.

The similarities refer to the marginal name of the offense that is also maintained in the new law, in the actions through which the material object of the objective aspect is fulfilled (theft or destruction), as well as in the keeping of the aggravated normative modality if the deed is committed by a public servant.

3. Pre-existing Elements

3.1. Legal Matter

The special legal matter is made up of the social relations whose formation and development cannot take place in the absence of the ensuring of a proper criminal protection against some deeds that may affect the conservation in normal conditions of some documents that are in conservation or legal custody of a person mentioned at art. 176 and art. 175 par. (2) Criminal Code

3.2. Material Object

The material object is made up of any writing (file, registry etc.) that is in conservation or custody of a public authority or institution or of a legal entity that manages or exploits goods that are public property, „or of a person performing a public interest service for which he was invested by public authorities or that is submitted to their control or supervision concerning the fulfilling of that public service if the stolen documents are connected to a judicial procedure, the offense mentioned at art. 275 NCP can be retained" (Udroiu, 2016, pp. 320-321).

According to the same author, „The following cannot constitute the material object of the offense: titles issued to make payments, credit instruments, currencies and, in general, any writing that has economic value; in reference to these goods, the theft is equivalent to committing the theft offense, and the destruction is mentioned at art. 253 NCP; consequently, in relation to the nature of the material

object, we cannot consider that the offense of theft or destruction of writings is a complex offense that absorbs theft or destruction" (Udroiu, 2016, p. 321).

3.3. Offense Subjects

The active subject of this offense may be any person that fulfills the general terms required by the law to have this quality (criminal capacity).

In the case of the aggravated normative modality the active subject is qualified, having the quality of public servant that commits the deed in the process of performing his service duties.

Criminal participation is possible in all its forms (co authorship, instigation, complicity), even in the form of improper criminal participation.

In the case of the aggravated modality, for the existence of co authorship it is necessary to bring evidence that certifies that all participants have the quality of public servants, and the incriminated actions have been committed in the performance of service duties.

The passive subject is the „ public authority, public institution or any other legal entity that manages or exploits goods that are public property or the person that performs a public interest service for which he was invested by public authorities or that is submitted to control or supervision regarding the performance of that public service" (Udroiu, 2016, p. 321).

4. Judicial Structure and Content of the Offense

4.1. Prerequisite

The prerequisite consists in the pre-existence of some writings, that are in conservation or custody of one of the legal or natural entities provided by the law (public authority, public institution or another legal entity that manages or exploits goods that are public property, or the person performing a public interest service for which he was invested by a public authority or that is submitted to control or supervision regarding the fulfilment of that particular public service).

4. 2. Constitutive Content

4.2.1. Objective Aspect

The material element of the objective aspect is fulfilled through two alternative actions, that may consist in the stealing or destruction of a writing of those that constitute the material object of the existing offense.

The theft „means the existence of a dispossession that consists in the removal of the good from the factual control of the possessor or of the detainer without his consent and of an entry in possession, consisting in the actual passing of the good under the control of the perpetrator" (Udroiu, 2016, p. 321).

The destruction means that the writing ceases to exist totally or partially.

In the older doctrine it was appreciated that by destruction "we understand – as in current speech – any action that results in the total or partial obliteration of an object, so that it becomes totally or partially unusable for its initial destination. To destroy a writing, of those mentioned at art. 242, means to perform any activity meant to totally or partially liquidate the object: breaking, cutting, burning etc." (Rămureanu and col., 1977, p. 39).

In the judicial doctrine and practice from the middle of the second half of the past century, the issue of the difference between the theft and the stealing of some documents, on one hand and, on the other hand, between the destruction of documents and destruction to damage community goods was raised.

Thus, related to this topic, the doctrine of that time claimed that, the "law maker did not understand to give the offense a complex character, so that the content of the offense of theft or destruction of writings becomes constitutive element, the offense of theft to damage community goods (art. 231 c. pen.). Indeed, the two offense categories exclude each other, their material object being different: while the offenses of theft and destruction to the damage of community goods refer to those writings that constitute value titles (paper, coin, bonds etc.), the offense of theft or destruction of writings refers to other types of writings. In fact, it would be hard to admit that the assimilating offense– theft of writings – should be sanctioned *more lightly* (prison from 3 months to 3 years) than the assimilated offense – theft to the damage of community goods (prison from 6 months to 4 years), or that the assimilating offense - theft of writings– should be sanctioned *identically* with the assimilated offense– destruction to the damage of community goods (prison from 3 months to 3 years). Consequently, the actual deed will constitute one or the other of the two offense categories, in relation to the nature of the writing on which the theft or destruction was exerted. In case the same action of theft or destruction is exerted on different types of writings – including value titles– we will have an ideal conjuncture of offenses" (Rămureanu and col., 1977, p. 39).

Besides these elements of resemblance and difference, between the offenses mentioned above, we must also examine the resemblances between the offenses provided at art. 242 of the 1969 Criminal Code and the offense provided at art. 272 of the same code (retaining or destroying writings), by referring them to the provisions of the criminal law in force.

In this sense, legal practice prior to the entry into force of the current Criminal Code decided that "the offense mentioned at art. 242 Criminal Code is an offense against authority, whose material object is constituted by any writing that is in conservation or in custody of a state institution or of another unit mentioned at art. 145, except for the writings issued by a criminal investigation institution, a court or another jurisdiction organ, or destined to those.

The destruction of the latter writings, or preventing, in any way, one of the above mentioned institutions from obtaining the writings, when these are necessary for solving a case, constitutes the offense mentioned at art. 272 Criminal Code and constitutes an offense that prevents the achievement of justice.

As such, the destruction of some records of findings of a traffic accident and of the biological samples taken for analysis falls within the provisions of art. 272 Criminal Code" (Vasile and col., 2016, p. 745).

In the same sense, in another case, it was decided that "the legal framing mentioned at art. 242 par. (1) of the1969 Criminal Code is not in accordance with the evidence administered in the case and the actual situation that was retained. Thus, the statement given by the respondent to the police and, then, the retention of that statement to be destroyed fulfils the constitutive elements of the offense mentioned at art. 272 C. of the 1969 Criminal Code, the respondent, through his deed, not doing other than preventing, in any way, that the writing destined for the police reaches this institution as long as such writings are necessary for solving the case. Consequently, the Court retained that the case fulfils the constitutive elements mentioned at art. 272 Criminal Code and order the modification of the juridical framing." (Vasile and col., 2016, pp. 745-746).

Even in the context of the new incrimination, this issue is still important, the difference between the offenses of theft or destruction of writings, on one hand, and the stealing and destruction of some writings, on the other hand, consisting in a different material object, in the active subject (which in the aggravated modality is qualified), as well as the passive subject, which is also, different.

To complete the material element of the objective aspect, it is necessary to fulfill the *essential requirement* which is that the writing that is the object of the action of destruction or theft is in conservation or custody of one of the persons mentioned at art. 175 par. (2) and 176 Criminal Code

The expression *to be in conservation or in custody* "does not involve that the good belongs to that institution, public authority or legal entity. The writing may belong to another institution, public authority or legal entity that manages or exploits goods that are public property.

The place where the writing was at the moment of the action of theft or destruction (in the office or headquarters, in the archive or the file of a public servant of that institution, public authority or legal entity is not relevant" (Griga și col., 2016, p. 40).

The immediate consequence consists in the creation of a state of danger for the passive subject, due to the theft or destruction of the writing.

The causality does not need to be proven by judicial institutions, this results from the materiality of the deed (it results *ex re).*

In legal practice it was decided that "in the framework of the privatization contract, the removal of some documents from the headquarters of the seller of stocks by a delegate of the buyer that, according to the agreement of the parties, had the right to consult the documents only at the headquarters of the seller, committed after the cancelation of the sales and purchase agreement, constitutes the offense of theft or destruction of writings" (Udroiu, 2016, p. 322).

In order for a document to be assimilated to a writing in the sense of the criminal law, it is necessary to have a certain value and to bear the signatures of the persons mentioned by the law.

In this sense, in legal practice it was decided that "the deed of the respondent which, upon being heard by a prosecutor in relation to committing a robbery offense, when presented with the declaration to be signed, crumpled and tore it apart, saying that it is not in accordance with the facts, does not constitute the constitutive elements of the offense of theft and destruction of writings. The declaration that constitutes the object of the accusation of the respondent does not fit into the category of writings, because, not being signed by him, presents no value and it cannot be assimilated to a writing. On the other hand, the offense of theft or destruction of writings is committed only with intention or, in this case, it cannot be considered that the respondent intended or accepted such consequences; he tore the declaration saying that it *was not in accordance with the facts* (Udroiu, 2016, pp. 321-322).

4.2.2. Subjective Aspect

The guilt form with which the active subject acts is *intention* that may be *direct* or *indirect.*

The mobile and the purpose have no relevance for the existence of the offense, these being important in the activity of individualizing the criminal law sanction.

5. Legal Precedents

The first mentions of the analyzed offense in the typical modality (simple) can be found in the 1864 Criminal Code, in Title III (Crimes and offenses against public interests), Chapter IV (Resistance, non-compliance and other misbehaviors against public authority) Section V with the marginal name "On breaking seals and stealing acts or objects in public deposits", art. 198- 205.

Regarding the aggravated modality, this was mentioned in the same title, Chapter II with the marginal name "Crimes and offenses committed by public servants in the performance of their duties", Section 1 under the name "Thefts committed by public depositaries", art. 140 (amended and completed by the law no. 17 of February 1874 and by the Law no. 21 of February 1882).

We mention that in the typical modality, among the active subjects the following are mentioned: "any preceptor, any public servant responsible for tax collection, any public accountant or depositary".

The incriminated actions consist in: "peculation or theft of public or private funds,, or effects replacing money or acts, titles and other moving things that are in his hands, under his responsibility.

In the aggravated modality the active subject were "any judge, administrator, public servant or public officer", while the material element of the objective aspect was fulfilled through actions such as: breaking, destroying, stealing or peculating acts or titles whose depositary he was or that had been entrusted to him in virtue of his duty" (Băulescu & Ionescu, 1911, p. 191).

An especially important element concerns the applicable sanction that, besides maximum imprisonment also mentioned the loss of the right to occupy a public function for the entire period of one's life, as well as the loss of the right to "pension".

In the Carol the Second Criminal Code the examined offense was mentioned in a similar mode in the provisions of art. 562, under the name of "destruction of acts" where the deed of the person that "to the purpose of causing another person damage, destroys an authentic act under private signature, that does not belong to him or that does not belong to him exclusively, or hides an act that does not belong to him" (Rătescu and col., 1937, p. 620).

6. Conclusions

The incriminating text at art. 259 Criminal Code is included in the previous law, but its content has numerous changes, including regarding the minimal and maximal limits of the sanction.

As emphasized, these modifications present major importance if we discuss the application of the criminal law more favorable in the case of the succession of criminal laws in time.

The evolution of criminality in the field amended by the necessity of defending through specific criminal law means the particular social value, recommends the maintenance and even the perfecting of the incrimination of this deed.

As a general conclusion we appreciate that, at the time being, the incrimination of this deed is necessary, the text could be perfected in relation to the evolution of criminality in the field.

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The Break of Seals in the New Romanian Criminal Code

Ioana-Minodora Rusu[1]

Abstract: In the present study, we have investigated the sealing breaking in the light of the new regulations brought in with the entry into force of the new Criminal Code. Thus, we have examined the elements of the offense, the constitutive content, with direct reference to the judicial practice in the field and the recent doctrine. The novelties consist in examining the pre-existing elements of the offense, its constitutive content, as well as the legislative precedents in the Romanian law, which we have insisted on highlighting, the consistency of the Romanian legislator over time for the incrimination of this deed. The present work is part of a complex work to be published at a publishing house recognized in the field. The work may be useful to both theoreticians (academics***, PhD students, master students, and students) as well as to the practitioners of criminal law.***

Keywords: offense; constitutive content; legal precedent

1. Introduction

Included at art. 260 of Title III Special part of the Criminal Code in force, with the marginal name "Offenses regarding state frontier and state authority", the break of seal offense consists in the action of a person that removes or destroys a legally applied seal.

The offense is considered to be more severe, being penalized consequently, if the incriminated action is committed by the custodian.

In the older doctrine it was appreciated that the "seal is the instrument that state or community organizations use to ensure the preservation or the identification of certain movables or immovables. The seal applied on these constitutes evidence and warranty concerning the measure imposed by an organ exerting authority and it symbolically expresses authority so that its removal or destruction represents an attack against a measure imposed by the authorities.

The action of breaking seals is, thus, a great danger for the maintenance of prestige and authority owed to authorities and to social relations whose protection is insured by the defense of this prestige against manifestations that breach this respect owed to authorities" (R.M. Stănoiu, 1972, p. 54).

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2. The Criminal Code in Force in Relation to Prior Legislation

The new incrimination text fully reproduces the text of art. 242 of the 1969 Criminal Code (including the marginal title), the only difference consisting in the modification of the minimal limits of the sanctions mentioned in the law.

Thus, in the case of the typical modality the minimal limit is increased from 1 month to 3 months imprisonment, and in the case of the aggravated normative modality the minimal limit is increased from 3 to 6 months imprisonment, while the maximal limits and the alternative sanction with fine in the case of both modalities remain the same.

3. Pre-existing Elements

3.1. Legal Object

The special legal object consists in the social relations that regard the respect that must be owed to authority, relations that also involve the respect owed by every person to the integrity of the legally applied seal.

3.2. Material Object

The material object consists in the legally applied seal, "that is, more precisely, the imprint applied of a seal of the state authority on a certain material susceptible to preserve the trace, such as lead, wax etc. etc." (Griga, 2016, p. 43).

The material object will only exist if the respective seal has been legally applied, which means in compliance with the provisions of the law.

If the seal has not been legally applied, meaning that it has been abusively applied by a public servant, the action of breaking or destroying such a seal cannot constitute an action through which the material object of the objective aspect is fulfilled, so the deed does not comply with the constitutive elements of the break of seals.

In this sense, older legal practice, but that is still up to date decided that "the breaking of a legally applied seal does not constitute an offense, since it lacks this particular requirement that the seal is legally applied." (Griga, 2016, p. 43).

3.3. Offense Subjects

The active subject of the offense in the typical modality is not qualified, as it can be any person that fulfills the general criteria required by the law to have this quality.

In the aggravated modality, the active subject is qualified, his quality being that of custodian over the good on which the seal has been applied.

4. Judicial Structure and Content of the Offense

4.1. Prerequisite

The existence of the offense of break of seals is conditioned by the preexistence of a legally applied seal.

According to older legal practice, but that is still up to date, "committing the offense involves not only the preexistence of the instrument called seal belonging to a state or community organization (see art. 286 Criminal Code), but also its application in the conditions of the law as means of preservation and identification of goods.

In the category of official instruments called seals we do not include other official instruments (such as: stamp, marking instruments, embossing stamps), whose existence does not comply with the prerequisite.

If it is legally acknowledged that the seal has not been legally applied, and so the prerequisite is not fulfilled, the deed loses its criminal character.

The conformation, the functioning and the usage modality of the seal are regulated through different normative acts." (Stănoiu and col., 1972, p. 55).

4.2. Constitutive Content

4.2.1. Objective Aspect

The material element of the objective aspect is fulfilled through two alternative actions, that is, the removal or the destruction of a legally applied seal.

Through *removal* we understand any deed through which the legally applied seal is removed from its place.

The removal can be made through any means or procedures (taking, detaching and throwing, hiding)" (Stănoiu and col., 1972, p. 56).

By *destruction* "we mean the material liquidation of the applied seal through any means (shattering, burning, filing)" (Stănoiu și col., 1972, p. 56).

Both actions (removal or destruction) must be inflicted only against the legally applied seal, not on the good that the seal has been applied to.

In case, along with or after the removal or the destruction of the seal, the good on which the seal was applied is stolen or destroyed, we are in the presence of a conjuncture of offenses.

Thus, in legal practice, as well as in the specialty doctrine, the issue of the legal classification of the deeds of stealing freight from the CFR wagons through the break of seals was raised and of the deeds of stealing electric power by removing the seals from the electricity meters.

It was correctly claimed that the seal applied by the SNCFR organs do not have the meaning and the purpose of a closing system for the wagon and of a means of preventing access in the wagons, so that the action of removing such a seal and stealing freight from the wagon fulfills the constitutive elements of the break of seals and of simple theft, being in conjuncture. (Griga, 2016, p. 45).

We also appreciate that, in the case of the legally applied seals from the closing systems of freight wagons, deed followed by the stealing of goods that were transported, fulfills the constitutive elements of two offenses, theft and break of seals, in real conjuncture.

This opinion expressed in the doctrine has been agreed by most Romanian courts.

Regarding the seals applied to closing systems of freight wagons, we mention that these are not applied only by the commercial departments of the freight transport company, but also by customs institutions and by legal persons owners of the transported freight.

The purpose of these seals is to ensure the integrity of the transported goods. However, the ascertainment of the offense is not conditioned by the possibility that the seal ensure the closure of the wagon or the prevention of access in the wagon, as expressed in the Romanian doctrine, but by the fulfillment of the conditions required by the law for the existence of the offense of break of seals.

We support this opinion, because in legal practice, the seals are applied to all wagon closing systems, and their role is also to prevent access inside the wagon of unauthorized persons.

To round up the material element of the objective aspect it is also necessary to fulfill the *essential requirement* that means the action of removing or destroying has the object of a *legally applied seal.*

In Romanian doctrine, as well as in legal practice, the interpretation of the expression "legally applied seal" was only partial, meaning that the institutions that have the right to apply a seal, when it is considered to be legally applied etc. have not been the object of focus.

Thus, both doctrine and legal practice suggested that a seal is legally applied only when it is applied by a state institution or organ, such as: prosecutor's office, police, fiscal institutions, judicial executor, specialty departments of railways, customs institutions etc.

We appreciate that this interpretation is wrong, since a seal can be legally applied even if it is applied by another legal or natural person than the legal persons acting under state authority.

In this sense, we consider that, in order to establish the existence of this essential requirement in the content of the objective aspect, it is necessary to establish the following elements:

- the legal or natural person that applied the seal and if that person had the competency of applying that seal;

- the provisions of the law that allows the application of the seal by the natural or legal person in that particular case;

- the document drafted when applying the seal.

Thus, if we refer to the legal practice in the field of railway transport, also taking into consideration the legislation ruling over the activity of freight transport, we notice that a freight wagon is ensured with seals on all its closing systems (lateral doors and shutters). In practice, these closing systems are ensured with seals, as follows: the seal of the person handing over the freight and the seal of the commercial departments of the freight transport company from the site where the freight was loaded in the wagon. If the freight is for exportation, a seal of customs authority will also be applied.

In these circumstances, if only the seal of the institution handing over the freight is removed, which can be a private or state company, while the seal of the freight transport company is intact, the issue of whether or not the offense of break of seal was committed is raised.

The seal of the natural or legal person can be considered, in the sense of the criminal law, a legally applied seal?

We appreciate that, in such a case, the seal of the legal person owner of the transported freight is legally applied and, in consequence, the constitutive elements of the offense of break of seals are fulfilled. Moreover, we appreciate that the offense can also exist if the transported freight belongs to a natural person that applied its own seal.

It is important to retain that, for the existence of the committed offense in this modality, it is necessary to make explicit mentions about the application of these seals in the bill of lading. The lack of this mention leads to the inexistence of the offense.

We consider that, in all situations, the judicial institutions must acknowledge also the existence of a new *essential requirement that* consists in the mentioning of the application of the seal in a special document, mention that is made immediately after applying the seal.

This interpretation is incidental and in the case of the seal applied by the institutions that measure the electricity or gas consumption.

The immediate consequence is the creation of a state of danger for the authority that applied the seal in compliance with the provisions of the law.

The causal connection results from the material of the deed *(ex re)*, thus it is not necessary that the judicial institutions prove it.

In legal practice it was acknowledged that, most of the times, the offense of break of seals was accompanied by other offenses, such as theft, destruction, breaking and entering or disturbance of possession, case in which the real conjuncture of offenses was retained.

Thus, „the criminal offenses the defendant is held responsible for are destruction, break of seals and disturbance of possession. The defendant is held responsible for the fact that, being on trial with different persons to whom she owed money, in 2008 the court decided to organize a bid for the apartment of the defendant. On 14.04.2011, the defendant was notified by the judicial executor that the apartment had to be evacuated and that he could live in it until 10.05.2011. Since on 10.05.2011 the defendant had not left the apartment, the judicial executor applied the legal seal and notified the defendant that, in order to take the sealed goods, he had to notify the judicial executor. However, claiming that he had nowhere to live, on 10.05.2011, after approximately one hour since the judicial executor had left, the defendant broke the door and entered the apartment, broke the seals that were on the door and the goods and continued to live in the apartment until 12.05.2011. The defendant was held responsible for the offense of destruction because the judicial executor changed the locks before applying the seals, and the defendant forced the new locks to enter the apartment. ” (C. Rotaru și col., 2016, p. 28).

Also, “The deed of the defendant of stealing freight from a wagon, after previously destroying the seal, constitutes the aggravated theft offense in conjuncture with the break of seals offense; since the seal applied on the wagon does not the character of a lock, it is wrong to retain, concerning the same deed, theft through break-in” (Toader, Stoica, Cristuș, 2007, p. 390)

4.2.2. Subjective Aspect

The guilt form with which the active subject acts is the intent that can be direct or indirect.

For the existence of the offense, the mobile or the purpose has no relevance, but the acknowledgement of their existence is important to individualize the criminal code penalty.

5. Forms, Modalities, Sanctions

5.1. Forms

Although possible, *preparation actions,* like the attempt, are not sanctioned by the law.

The consummation of the offense takes place when the incriminated action is performed, moment in which the immediate consequence was produced.

In theory (very rarely in practice), there can be a moment of *depletion,* in case the applied seals are removed or destroyed one at a time (when goods are ensured with several seals, such as in the case of a freight wagon). This moment coincides with the moment of the removal of the last seal.

5.2. Modalities

The analyzed offense presents a typical normative modality (simple) and an aggravated normative modality.

Mentioned in the provisions of art. 260 par. (1) Criminal Code, the typical normative modality consists in the removal or the destruction of a legally applied seal.

The aggravated normative modality is mentioned in the provisions of art. 260 par. (2) Criminal Code and it consists in the removal or destruction of a legally applied seal committed by the custodian.

The most important aspect of this modality consists in the existence of a qualified active subject, that is its quality of custodian of the goods ensured by sealing.

5.3. Sanctions

In the case of the typical modality, the sanction provided by the law is imprisonment from 3 months to one year or fine, and in the case of the aggravated normative modality the sanction is imprisonment from 6 months to 2 years or a fine.

6. Complementary Explanations

6.1. Connection to other offenses

The examined offense presets some similarities and also differences with the offense of destruction.

6.2. Some adjective law aspects

The competency of performing criminal prosecution belongs to criminal prosecution institutions of the judiciary police, under the supervision of the prosecutor from the court in the area of which the offense was committed.

Criminal prosecution starts ex officio, and the first instance trial competency belongs to the District Court.

Depending on the quality of the active subject at the time the offense was committed or sometimes on the case trial, the trial competency may belong to superior courts.

7. Legislative Precedents and Transitory Situations

7.1. Legislative Precedents

The examined offense was mentioned at art. 198 and 199 of the Criminal Code of 1864, as well as at art. 263 and art. 265 of the Criminal Code of Carol the Second.

Thus, at art. 198 of the Criminal Code of 1864, as modified by the Law of the 17th of February 1874 the following incrimination is mentioned: *"When the seals, applied by the order of an administrative institution or court, will be broken through the recklessness of the custodians, these custodians will be punished by prison from 15 days to 4 months"* (Bădulescu, Ionescu, 1911, p. 270).

Art. 199 of the same code mentioned the aggravated modality of the offense mentioned in the previous art. for which the defendant was held responsible: *"If the break of the seals will be made for documents or goods of another person that, either will be reported and punished with forced labor or punished himself with this punishment, the reckeless custodian will be punished with imprisonment from 3 months to one year."* (Bădulescu, Ionescu, 1911, p. 271).

At art. 263 of the Carol the Second Criminal Code the offense was mentioned marginally *"The Break of seals and the stealing from seizure of goods",* having the following legal content:

"The person removing or destroying legally applied seals commits the offense of break of seals and is punished with correctional imprisonment from 2 months to one year and fine from 2.000 to 4.000 lei.

The same punishment is applied for the custodian too, when the break of seals was committed by his fault.

If the deed is committed by the custodian, the punishment is correctional imprisonment from 6 months to 2 years, fine from 2.000 to 4.000 lei and correctional interdiction from one to 3 years" (Rătescu & col., 1937, p. 167).

Art. 265 mentions the offense of *theft from seals,* whose legal content is the following:

"The person stealing, completely or partially, goods that have been legally seized by the application of seals, commits the offense of theft from seals and is punished with correctional imprisonment from 6 months to 2 years and fine from 2.000 to 5.000 lei.

If the deed was committed through one of the means shown at art. 263, the punishment is correctional prison from one to 2 years and fine from 2.000 to 6.000 lei.

If the deeds mentioned in the previous paragraphs are committed by the custodian of the seizure, or the owner who was responsible for keeping the seized goods or, with their knowledge, another person, the punishment is correctional prison from one to 3 years and fine from 2.000 to 8.000 lei" (Rătescu and col., 1937, p. 171).

In a vast analysis, past doctrine retained that: *"At art. 263-265, the Criminal Code deals with three offenses that are often committed in performing the same criminal intention; the offense of break of seals, the offense of theft from seizure and the offense of theft from seals of seized goods.*

The illicit activity for committing these offenses is directed against the authority of public administration and a penalty is applied in order to ensure the respect for it.

Indeed, the seal applied on goods that are seized are signs of public administration and those not complying with these signs or measures of the administration, by deteriorating or stealing the goods are directed against the authority of the public administration and lack the respect owed to authorities.

Garraud considers that this measure taken by the administration for certain goods analogous to that of placing people in prison and, since one cannot facilitate escaping from arrest without sanction, one cannot steal goods under seizure or seal.[1].

It is obvious that for the existence of the offense the seal or the seizure must be legally applied. If the seals would have been applied by private persons, their breaking does not fall under the sanction of the law.

As material element of the offenses in art. 263-265, the lawmaker asks that the breaking or destruction of the seal is effective; that the theft of goods has effectively taken place, totally or partially (…)

The attempt to commit these offenses is not incriminated by the law maker, but the culpable form is incriminated, when the break of seals or the theft from seals was committed by the recklessness of the custodian, he shall be punished for it.

The law aggravates punishment when the break of the seal or the theft was committed by the custodian, because he breaches the trust he was given; also when the theft of seized goods is committed by the owners when he was custodian, or it was stolen with his knowledge or that of the custodian" (Ionescu-Dolj, 1937, p. 168).

We have to notice the consistency of the Romanian law maker in incriminating these deeds, as well as the evolution of the Romanian legislative system from the 1864 Criminal Code to the Carol the Second Criminal Code.

7.2. Transitory Situations. Application of the more Favorable Criminal Law

Taking into consideration the penalty limits more reduced in the previous law, most of the times, the more favorable criminal law will be the old one.

The same law will be more favorable also if the case presents mitigating circumstances or in the case of conjuncture of offenses.

8. Conclusions

The research on the offense of break of seals revealed, first of all, the consistency of the Romanian law maker in incriminating offenses of the kind.

On the other hand, there has been an evolution of the incrimination from the 1864 Criminal Code to the present one.

At the same time, the analysis also focused on the necessity of maintaining the offense within the limits of the criminal law, since criminality is maintaining at quite a high level.

As a general conclusion, we appreciate the necessity of incriminating this deed, and, at the same time, the necessity of maintaining it within the limits of the rightful sanctions of the current criminal law.

[1] Traité théorique et practique de droit pénal vol. IV, edit. II/Theoretical and Practical Treaty of Criminal Law vol. IV, 2 Ed. II, p. 311.

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REALITIES AND PERSPECTIVES

Forms of Influencing Young People through Media Discourse

Oana Drăgănescu[1]

Abstract: In the modern age, conquered by the phenomena of globalization, mass media have become more and more significant for the lives of individuals who are building their horizons of representation under different influences, both internal and external. In accordance with their individuality, with the specificity of their social group or with the dominant features of the reference group, with the help of information and messages promoted by the media, individuals relate to the society in which they live.

Keywords: media discourse; mass-media; agenda-setting theory; social representations

Media products create and sensitize audiences, form and change opinions, attitudes and behaviors. People act and react by virtue of what is relevant and important to them by the media, acting *as an agenda*[2], satisfying their social and spiritual needs. Media or mass media messages considered as "products" are carriers (and not just simple supports) of social representations[3], socio-cultural trends, ways and lifestyles so that we can conclude that the media influence opinions, behaviors, attitudes, social practices, and young people are a social category for which media messages and products come to have ever more consistent values and meanings. Social representations give the elements of the world a precise form, locate them in a given category and gradually impose them on a certain type, distinct and shared by a group of people. All new elements adhere to the model and merge with it. The representation is social insofar as it contributes to the formation of conduct and the orientation of social communication (Neculau, 1996, p. 37).

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[2] Agenda Theory represents the ability of the media to mentally organize and arrange the world for us, in other words, to produce macro-effects. By listing macro-models, *agenda-setting* shifts focus on micro-effects, long-term effects and indirect effects, as well as cognitive effects that describe the influences on information selection, perception, and memorization. The theoretical statement of the model belongs to the famous American jurist Walter Lippman who, in 1922, in the chapter entitled "*The World Outside and the Pictures in Our Heads*" in his famous work *Public Opinion*, referred to the postulation of a relationship between the media agenda and the public agenda. (Coman, 1999, pp. 106-107)

[3] The theory was launched by Serge Moscovici in 1961, by re-evaluating the Durkheimian concept of collective representation. Emphasizing the complex and systemic nature of social representation, Moscovici defines it as a structured set of values, notions and practices related to the object, aspects or dimensions of the social environment, which allows the individual to adapt to society, directing behavior and communication, selecting responses to environmental stimuli and so on. The social representations are not just attitudes, opinions or images, but also the theories or collective sciences, generis to interpret and rule the surrounding world. Moreover, they also propose a reconstruction of the real, a remodeling of the environment, both natural and social (Moscovici, 1961, 1969, 1976). Occupational Stress and Social Representations ... (PDF Download Available). Available from: https://www.researchgate.net/publication/308747204_STRES_OCUPATIONAL_SI_REPREZENTARI_SOCIALE_ALE_MUNCII_IN_MEDIUL_UNIVERSITAR_1 [accessed May 13, 2018]. (Neculau, Zaharia & Curelaru, 2007, pp. 49-68).

Media discourses induce thematic issues (the agenda-setting theory metaforically elope the organization of the concerns - "what to reflect, and less to interpret") (Rovenţa-Frumuşani, 2004, p. 120), operating as a coherent social narrative. Hence the hypothesis that the younger they are, the more frequent s use of media content of a certain gender (political information, for example), the more preferred media discourses influence their attitudes, opinions, behaviors and social representations.

The concept of discourse has many and various definitions and meanings. We take the premise that the discourses are social practices, so that any speech has a situational dimension, updates a series of conventions and social mechanisms (Beciu, 2007, p. 31). In the sense of Norman Fairclough, "any speech indicates the perspective of a social actor who builds his identity towards his interlocutors; the perspective of a social actor communicating in a certain type of situation and in a particular public culture - so the social actor uses language as well as other communication resources as elements of social life" (Fairclough, 2003, p. 125).

The discourse highlights the ways in which a social actor uses language in a social situation characterized by social practices, values, norms, routines so that by using a certain type of language (administrative, scientific, conversational), but also by non-verbal language, a discourse can formulate a certain point of view or a position about what is being communicated (Beciu, 2009, pp. 33-34). From this point of view, the discourse can be considered as a grid for reading and interpreting some situations. The use of discourse concept refers to a "discursive field (didactic speech versus daily discourse), a category of locators (speech by trade unions, left-wing intellectuals), a function of language (prescriptive versus polemic speech)" Rovenţa-Frumuşani, 2004, p. 71).

From the semio-discursive perspective, a discourse results from the fact that the social actor uses a certain way of enunciation that refers to certain socio-cultural conditions appropriate to that communication situation, so that "any discourse is established at the intersection of a field of action - a place of symbolic interactions organized according to the forces' relations (Bourdieu) - and an enunciation field in which the mechanisms of staging the language" (Charaudeau, 2005 *apud* Beciu, 2007, p. 32).

Journalistic discourse can not only be content to report the facts, its role is also to explain, in order to illuminate the citizen. Hence a discursive activity consisting of proposing a series of questions to elucidate different positions. Once more, the play of credibility requires that the enlightening journalist explain without spirit a partisan and without influencing the public at his own will.

The journalistic discourse is presented in opposition to the historical narrative, the scholarly explanation (scientific discourse) and the political (or persuasive) discourse. Thus, history, being a discipline that, by its technique of gathering data into archives, by its critical method and by its interpretative principles, reports events in the past, proposing an explanatory view. The journalistic discourse, confronted with the idea of reporting events that will occur, does not lend itself to such a method. Thus, the time of history is not the same as the time of the media - actuality, therefore present, "here and now".

As the journalistic discourse can take the form of comments, it produces a speech of analysis and explanation. But this is not the same as a scholarly (scientific) speech. The scholarly speech has this dual feature of being demonstrative and open to discussion. The journalistic discourse, unlike the scientific one, cannot refer to any theoretical explanation, it does not follow any particular method, and it does not work with any concept. That is why the journalistic explanatory speech is in the form of an assertion. Thus, a journalistic debate cannot resemble to a scientific colloquy.

In contrast to persuasive discourse, journalistic discourse is subject to certain media conditions. The political discourse aims, through the political subject, at persuading the citizen of the benefits of his action project or his political action. For this, he uses discourse strategies of credibility, attraction of attention to build an indisputable leader image, seducing his audience to make them adhere to his policy. In contrast to this, the journalistic discourse is subject to an information vision, so that the position of the one who discloses is the same in these two cases. The political disclose must build an ethos of conviction, authority, power, seduction. The disclose journalist should not be preoccupied with credibility in the eyes of his lecturers, building an ethos of knowledge.

Charaudeau emphasizes the idea of topicality and over-current that completes the media discourse. Thus, two discursive processes transform the eventuality of actuality, producing deforming effects. It is about "focusing", which is to bring an event in front of the stage, through newspaper headlines, by announcements at the beginning of the TV news journals, producing an "increase", augmentation, coming into forefront at any cost.

Another dimension of the media discourse, dramatization, is dealt with by Charaudeau, for which this is a process of discursive strategy, that consists in reaching the recipient's affection. Since Aristotelian rhetoric, many papers have dealt with emotions so there is no need to justify this strategy. However, we find a particular case of redundant dramatization in the media stage of world news, that of the triad victim / aggressor / savior. From here, the three types of speech: victimization, portrait of the enemy, heroism. All these are obtained by a technique that Charaudeau calls "amalgam", defining it as an analogous abusive process: two events, two facts, two phenomena are approached without any distance that would allow this comparison to have an explanatory effect.

Charaudeau's findings in this study point to the position of the enunciating journalist, which should not be evaluated only by one of the possibilities and strategies of the enunciation he uses. This position is not always manifested in an explicit manner. It depends on a set of discursive procedures (descriptive, narrative, argumentative) and a set of words that are revealing for its journalistic discourse. The journalist must produce meanings through his media discourses, using various appropriate communication methods, using language practices that fit the communication situation, so that it should be seen behind the enunciator's mask, the discursive positioning.

The journalistic discourse creates media sensitivities and specific communication situations, which are based on a logic and media practice, converging to the idea of actuality, "here and now", of facts and events that must be staged for the public wishes to be constantly informed, unlike other types of discourse, in which the enunciating court wishes either to seduce the audience (political discourse) or to demonstrate a theory, using its own language (scientific discourse), or to bring into current facts and past events, kept in the archives of history (historical story discourse).

Media speeches are based on articulated enunciation and interaction styles that make up the "media communication contract", unlike the other types of discourse presented by Charaudeau in his study.

The media is an important actor of the public space that actively participates in the symbolic building of issues of public interest. Journalists, by resorting to various discursive strategies, are the ones who give relevance to events, themes, problems for their community. Mass media are those who, under the aging set-up theory, have been able to impose issues of general interest to the public, which we must know at that moment, the problems that are discussed at that time so that our daily agenda is organized on social concerns.

The media discourse operates as a social narrative that updates specific mediation phenomena, such as linguistic transposition operations (schematization, selection, determination, modulation), a mediating

court (witness, expert, moderator, politician etc.) communicative intentionality (argumentation, explanation, clarification, narration, etc.) (Soulages, 1999 apud Roventa-Frumuşani, 2004, p. 120).

For Charaudeau[1], media discourse is part of a composite production court, which includes various actors, each with well-defined roles. At the same time, this court is defined globally by five types of roles that are embedded in each other: a) the person seeking the information, which may be field correspondents, special dispatches, etc.; b) the person providing the information, selecting them according to the journalistic criteria; c) the person transmitting the information; d) who comments on the information, producing an explanatory media discourse, trying to establish cause and effect relationships between events; e) the one that provokes debates aimed at confronting views of different social actors.

Media speeches imply a positioning of events, being used as a public agenda, through the sources they use, serve the public's general interest in having access to information of public interest through all mass-media products and media. There is thus a convergence of media (television plus written press in the various iconic newspapers) as well as the intertextuality of the media (written press debate on topics in television news stories) so we can talk about "a centrality of media discourses "(Roventa-Frumuşani, 2004, p. 123).

Young people find in the media discourses promoted by the media products the models and values they adopt in everyday life, the influences of these messages being found in their behavior and in their social and group activities. Their attitudes, opinions, social representations are no longer in connection with those practiced by the family environment, its role is taken by media messages promoting values and lifestyle styles.

The psychological identity of young people, especially adolescents, is based on their own leisure choices, of consumed products, so that by this freedom of choice, self-esteem is created and maintained. Media discourses influence the opinions, attitudes, behaviors, and social representations of this category through graphic content and presentations, and imposes models to succeed in achieving success.

Conclusion

In our opinion, any journalistic discourse, as a form of media discourse, is a combination of several types of discourse. It is also possible to use the characteristics of the historical discourse, bringing to the public, at present, facts, events and personalities removed from the archives of history, but also to seduce the public lecturer, borrow from political discourse techniques, just as it can present different events and scientific discoveries, and then it will have to resort to the rigorous character of the scholarly discourse. Media discourses are heterogeneous forms of communication, which relate both to the logic of profit and to the logic of ethics, and the main purpose is informing the citizen.

[1] www.patrick-charaudeau.com, accessed on 11.09.2011.

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REALITIES AND PERSPECTIVES

Romanian Journalism– a Few Aspects

Fănel Teodoraşcu[1]

Abstract: We can only discuss about Romanian press, according to some sources, since 1820. However, the growth of Romanian press was so fast that we cannot imagine such a rhythm nowadays. The battles in newspaper pages have often been noisy and long. Some journalists have fought against *parliamentarianism* and others against *universal vote*, since these gave illiterates the power to decide who can lead the country. Another fierce battle that took place in the press was the one that discussed on which side Romania should fight in the First World War. Terrible battles also took place on the pages of newspapers regarding the issue of "affirmation of feminine personality". The same happened in the case of *honour battle*. Today, the headlines are different, but now, just as in the past decades, Romanian journalists cannot even agree on issues that are of national interest.

Keywords: History of the press; nationalism; journalism; duel; bio politics

Romanians Were Born Journalists

Romanians like the *press*. They like to make it, to read it, to comment on it and, if necessary, to fight it. In the eyes of the Romanian press consumer, journalists are either "masters", or "punks". After choosing his "side", Romanians are very hard to convince that the journalists they prefer are not the holders of absolute truth. At the same time, a journalist can never truly know his relation with the readers (or with the watchers), as A.P. Samson has shown almost four decades ago. The author claims that the reader, having a *curious psychology,* judges a newspaper or an article following criteria that are, most of the times, different from those of a professional. The power of habit, with an important role in this issue, *sometimes acts in favour of the newspaper*, and *other times in favour of the signature*. However, Samson emphasises that the *history of the press indicates a higher probability of the first alternative*. (Teodorașcu, 2014, pp. 54-55) We can find references to this issue in Pamfil Șeicaru. Speaking about his plans for the newspaper he had founded in 1928 (*Curentul*) *(The Current),* he shows that one of his greatest wishes is to make the publication *a perfect mirror of the entire Romanian life*. (Teodorașcu, 2014, p. 177) For Șeicaru what mattered was that the newspaper as a whole, not the signatures in it. According to the same journalist, a newspaper must be capable of living even without its founding journalists. (Teodorașcu, 2014, p. 195) Such examples were the newspapers *Adevărul (The Truth)* and *Universul (The Universe)* that remained among the preferences of readers even after changing management. (Teodorașcu, 2014, pp. 45-51) We must also mention that the journalistic activity of Pamfil Șeicaru is the clear proof that, sometimes, journalists remain faithful to a journalist even when he leaves their favourite newspaper. (Teodorașcu, 2014, pp. 176-177)

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The success of a press institution may also vanish even if the teams that created it do not change. *Epoca (The Era)* and *Lupta (The Fight)*, for example, made a sensation on the Romanian journalism scene only in a particular political context. After the government changed, the glory years of the two publications finished, since they were fighting the policies of the liberal government. (Teodorașcu, 2017, pp. 566-567). The strong connection between political parties and the press is emphasized too by C. Rădulescu-Motru, who claimed that the press is the trustworthy help of statesmen in their fight with political adversaries. (Teodorașcu, 2017, p. 566). Speeches referring to the activity of the press that were held in the Romanian Parliament were based on the political interests of the speaker. Those that had the leadership of the country in their hands were always dissatisfied with the vituperative vocabulary used by the opposition press, forgetting that newspapers representing their interests did exactly the same when another political organization was in power. It was usual that politicians used the press to get in power and after achieving their objective to discover that newspapers and journalists were the worst obstacles to the development of the country. (Teodorașcu, 2016, p. 127) Nevertheless, readers had so much trust in journalists, especially during the years between the two world wars, that they started sending them to Parliament. (Teodorașcu, 2016, pp. 101-102). One of the main issues of the Romanian press, even during its golden days, was the lack of professional training of many of its members. The prototype of the reporter who, although he did not know how to write, was very admired by the public is very frequent in novels that inspired in the Romanian press. (Teodorașcu, 2016, pp. 131-132)

In this context, famous Bucharest journalists asked Romanian authorities to found schools of press. (Teodorașcu, 2016, pp. 94-98) In 1932, in a paper on *elementary notions of journalism*, Emil Samoilă shows that *journalism is a profession like any other, and* those who want to practice it must learn it first. The same source speaks about the intention of some government officials to create a "*free school"* of *journalism.* In charge with the elaboration of the project for this *journalism school* was Nae Ionescu, director of the newspaper *Cuvântul (The Word)*. (Samoilă, p. 47) The quoted paper is, as even its author shows (Samoilă, p. 51), the first Romanian journalism handbook. Other journalists also made efforts to create a theoretical framework for the journalist profession, and Pamfil Șeicaru is one of them. (Teodorașcu, 2016, p. 88)

Classical Journalism

In Romania, the first real journalism schools appeared very late. Less than three decades ago. As mentioned above, in our country, journalism handbooks appeared before journalism schools. In the book *Învăţământul jurnalistic clujean (Cluj Journalism Education) (1993-2006)*, Ilie Rad speaks about a journalism course held in Cluj, between 1919 and 1925, at the Law and State Sciences Faculty. It is not clear, however, if that course also existed outside official documents:

"The favourable circumstances for such a course were created once the University Daciei Superioare was founded, in October 1919, five months after the university was taken over from Hungarian authorities. Thus, in the *Cluj University Yearbook*, for the years 1919-1920, 1920-1921, 1921-1922, 1922-1923, 1923-1924, 1924-1925, the curricula of the Law and State Sciences Faculty also included a **chair of journalism**. The head of this chair was the associate professor Iorgu Radu (b. 7th of December 1886, with a PhD in law at Berlin, specialist in international law, also teaching a course of Romanian civil law). Unfortunately we do not know the themes debated in this course, because in the University *Yearbooks* for the mentioned years, this course is one of the few with not even a brief presentation, as is the case of other disciplines. The well-known nonagenarian professor Tudor

Drăganu, once a student of Iorgu Radu, does not even remember such a discipline." (Rad, 2006, pp. 14-15).

It is true that, in Romania, there has been a lot of talk about the idea that journalists "are born, not made". Such a debate was not reserved to Romania, it also happened in the United States of America. Both here and there, the discussions have been intense. Whitelaw Reid is an advocate for American journalism schools created in universities:

"I have been asked to say something of Journalism, and of schemes of special instruction for it. The Chancellor and Faculty have had in view, however, no absurd plan for turning raw boys into trained editors by the easy process of running over some new curriculum. West Point cannot make a soldier; and the University of the City of New York cannot give us assurance of an editor. But West Point can give the training, discipline, special knowledge, without which the born soldier would find his best efforts crippled, and with which men not born to military greatness may still do valuable service. There were thousands of brave men around Toulon, but only Napoleon could handle the artillery. It was the scientific training that gave his warlike genius its opportunity and its tools of victory. West Point does the same for the countless Napoleons whom (according to the popular biographies) Providence has been kind enough to send us; and this university may yet do as much for the embryo Bryants and Greeleys, Weeds and Raymonds, and Ritchies and Hales, who are to transform American journalism into a profession, and emulate the laurels of these earlier leaders, with larger opportunities, on a wider stage, to more beneficent ends." (Reid, 1913, p. 193).

A preoccupation in this sense, of training young people interested in a career in journalism, has existed for over a century and a half. People from the press who wanted to improve the quality of Romanian journalism published articles in which they presented basic elements of their profession. Situations of this kind determined some researchers to speak about "substance without form" in Romanian journalism. (Munteanu, 2008, p. 7).

In 1862, when Romanian statesmen made huge efforts to create the Romanian modern state, the magazine *Revista română pentru ştiinţe, litere şi arte (Romanian magazine for sciences, letters and arts)* published the article „Ziaristica după școală clasică" (Journalism according to the classic school). The importance of the text is not owed only to the fact that it one of the first of this kind in Romanian press, but also to the way in which the author understood, in the complicated political context of Romania at the time, the role of *national journalism.* As this author states, journalism must take on a role that was at least as important as the role of state institutions. The text contained recommendations not only for a certain type of press. The author mentioned that there are differences that cannot be ignored, for example, the difference between a magazine/an article focusing on history and a magazine/an article focusing on literary criticism. The author also speaks about the *sole political mission of the periodical press*. (Missail, 1862, p. 144) As we have seen above, during the interwar period, a successful newspaper was the newspaper that succeeded in being *a true mirror of Romanian life.* In 1862, the newspaper and the journalist responded to other *performance criteria.* The newspaper was not asked to be the *mirror* of society, but its *guide* to a better future:

"A new era, a new life opened up for Romanians at the beginning of 1862. The *Union* became fulfilled. The small countries between the Carpathians and the Pontus Euxin will be just *one and great Romanian government.* Forced by circumstances and if Romanians will want to live, from now on, as a living, constituted nation, everything will have to change profoundly. In the context of this general change of the country, the periodical press, Romanian journalism, cannot be left behind. A new horizon of work, of political, national, intellectual and moral action opens up before it.

Today, when party, coterie, provincial interests should come after the interest of the nation, before the great Romanian country, they will lose their place in the eyes of the press, emancipated from the provincialism that strangled it, as well as the entire country and Romanian journalism will enter an unity independence for which it strived for a long time. From now on, the Romanian press will raise the voice not in the same of separate Moldova, of isolated Walachia, but in the name of the *entire Romania*, in the name of five million people, in the name of our political interests as well as of literary, economical, commercial, industrial and agricultural interests. Many eyes, the eyes of the European Argus, will be looking from now on at our country and at our press. All its words, all its objectives, all its thoughts, will be evaluated, debated, discussed by the European public. The position of the press thus becomes as important in the eyes of the country as the country's becomes in the eyes of Europe. Europe, legitimately impatient, is waiting to see if Romanians postponed all their great reforms until the Union becomes definitive and if, after the union, things will work better. On the other hand, the country is waiting for advice, encouragement and light from the press in the great reformation era in which it entered." (Missail, 1862, pp. 121-122)

The author also emphasizes that all those who *claim to hold the pen of a journalist in hand* must *think very well about the responsibility that lies upon them* and of everything they will write from that moment onward:

"The Romanian press must occupy their place in the temple of European press. No one denies it this place; hopefully, it will occupy it with dignity! Hopefully it will raise up to that height of ideas, of correct judgment, of prevision, of light, to that height where its sisters are today, so that the soul of public opinion, the engine of the regenerating movement and so that us all, are sure that it will be supported, both inside the country, as well as outside and that it will be lent a helping hand.

But, in order to get there, our press must set some rules, some dogma that are above the daily passions, the fights between parties, the winds of passing circumstances. This is what European press did when, after a temptation of several years, reached the point of self-instituting as the fourth power in the State.

Why would we not take advantage of others' experience when our own interest commands it and when we are in a similar position?" (Missail, 1862, pp. 121-123).

A newspaper that wishes to be liked by its century and its era, the same author shows, must comply with two conditions. The first condition is that the newspaper is *impartial.* The second condition is related to the profession of journalist. *The knowledge, the taste and the sense of justice* are the *qualities* that a journalist must have if he wishes to be successful. When reading the text, it is easily noticed that, in the author's vision, the journalist has an extremely important political role. He has the duty to defend the interests of all Romanians, despite the voices that claimed that for the Romanian state there were no reasons, internal or external, to worry:

"But some will say that the interests of Romanians are completely different from the interests of other peoples in the Orient; that their faith is guaranteed, that Europe took them under its protection; briefly, that our politics, that our mission is a kind of politics and a mission of silence and peace. It may be so for the moment; but for the future, in a moment of general conflagration, who can guarantee us that providence will offer us the miracles it has offered us so far, giving us, with no sacrifice, what others have not been given for rivers of blood?

By saying these things, we do not claim to provoke anyone; we do not refer to revolts, but we ask that our country is brought to that state of security that helps us cope with all the events happening in the Orient.

These considerations about the higher national interest have been revealed by the Romanian press so many times with a passion that honours its youth, so that if we still refer to them here it is so that we can remind those who should be reminded that one must persevere in these beliefs until the boat of the common country reaches the desired haven." (Missail, 1862, p. 149)

The author concludes with a fragment from the article "Jurnalismul românesc în 1855" (Romanian Journalism in 1855), published by M. Kogălniceanu in *România literară* (Literary Romania). The mentioned article appeared, as shown in its title, four years before the "Small Union" (24th ofJanuary 1859). In short, Kogălniceanu believed that one happened on the European political stage practically obliged the Romanian national press to be near the cou try and its statesmen. (Missail, 1862, p. 150)

Journalism and the Needs of the Nation

We also read the text of M. Kogălniceanu (published in *România literară* in the issues 4, 5 and 6 of the 22nd of January, 30th of January and the 6th of February 1855), to be able to see the big picture. We also excerpted a few fragments of this article that we found to be relevant for our research. The first thing Kogălniceanu does in his text is to fix the definition of the *press*. This way, the author emphasizes, ever since the beginning, the on the importance of the press in the entire world:

"Nowadays, the spirit is such a great power and, sometimes, even greater than any other. This spirit manifests through public opinion; and one of the most important works of public opinion is the Press in general, and the periodical press or journalism, in particular.

The press is the echo of the human voice, it is the tribune in which the voice of the crowd spreads in all parts of the world and becomes the property of all humankind." (Kogălniceanu, 1855, p. 52)

Romanians have known the press, as it is later shown in the text, pretty late, compared to the citizens of Western states. The first newspapers that arrived on Romanian land were written in foreign languages, and access of readers to them was limited:

"The periodical press that, in free countries, is called the fourth power of the state and that, everywhere, even in the parts of the world that are governed in a despotic manner, has ended up being a necessity for governments and peoples too; that all compliment and ask for applause, this press, in the case of Romania, is an innovation whose origin is yesterday. Less than fifty years ago, the Principalities only saw five French journals and two German; and these were only read in the houses of some nobles and, especially, in the cabinets of governors, who had to gather news from all parts of Europe and to share them in Constantinople.

Less than thirty years ago, Romanians did not have a periodical newspaper in their own language." (Kogălniceanu, 1855, p. 52)

Of all publications, political newspapers play a special part in the life of a state. Romanian political newspapers were fewer and Kogălniceanu criticized the lack of *political faith*:

"Today, Romanians have six political newspapers: two in Moldova, *Gazeta de Moldavia* and *Zimbrul (The Bison)*; two in Walachia, *Vestitorul românesc (The Romanian Announcer)* and *Timpul (The Time)*; two in Ardeal, *Gazeta de Transilvania* and *Telegraful (The Telegraph) [Romanian]*. *Gazeta de Moldavia* and *Vestitorul* are semi-official newspapers; they communicate the news of the court, the measures adopted by the government, issue articles and political discussions are very rarely in their columns and the rest of the pages contain news from foreign countries translated from their newspapers. They reproduce, like in a daguerreotype, all events, all opinions of the day, with no

system, with no political faith. It is not our duty to present their flaws or their qualities, since they are not trying to follow a progress path, not even when it comes to grammar rules." (Kogălniceanu, 1855, p. 67).

At the end of his text, Kogălniceanu signals the bizarre situation of Romanian journalism, with great journalists, but no *serious* newspapers:

"We've always had and we still have publicists. […] But, so far, we do not have one newspaper that answers the needs of the nation; and, however, in the face of the serious era we are in today, in the middle of the severe circumstances that gather before the foreign press, which always deals with Romanians, but, most often, in an ignorant or hostile manner, our greatest need is to have a serious newspaper, independent, submitted only to the laws of the truth, that proclaims, every day, and that defends the rights of the Principalities, recognized, today, in principle, by all Europe; this press would offer the government a faithful and uninterested support, it would reveal the abuses made without its knowledge and to the damage of the country; it would have the sole purpose of its efforts to form not only our political education but also to cultivate our moral nature, founding noble faiths, developing in our hearts the feeling of beauty and honesty; and being, in all, the defender and the supporter of morality." (Kogălniceanu, 1855, p. 78)

Other authors saw the press as the tool with which the journalist may model the community in which he lives, as the sculptor models the marble block with the chipper.

The Press as Biopolitical Tribune

In an article in 1926, the press was called to be a *biopolitical tribune*. The biopolitical creed resulted, as the author of the text showed, from the desire to ensure the country has human capital in optimal conditions, at present as well as in the future:

"More and more promoters of the nation's hygiene appear each day. The future doctors graduates of the faculty of medicine in Cluj, when they will reach the whirlpool of social life, will realize that the education they gained in terms of eugenics and nation's hygiene are the bedrock of the social institution of the country, made up in all the aspects of its life on the basis of the bio political programme." (Voinea, p. 144)

The same source shows that statesmen everywhere were looking to rehabilitate the *human capital*, considered to be the vital element for the *progress of a country and the future of a nation*. Their effort will not succeed without the contribution of the *press*:

"In the service of an idea or of a political programme, the press must always remain the most generous tribune of any humanitarian idea. If the political press presents ideas to the public opinion, ideas that are commented and debated and can be introduced in the laws of the general good, that means that the press, **without consideration of the political colour**, will fulfil its most elementary duty and it will create its most immaculate title of glory vigorously fighting to fulfil the bio political programme, issued from the life needs of the people disrupted by so many social diseases that trouble its evolution and compromise its vitality." (Voinea, p. 144)

In 1927, a publication appeared dedicated to *biopolitics*. Ever since its first number, the publication *Buletin eugenic și biopolitic (Eugenic and Bio Political Bulletin),* explained its readers that *bio politics* and *eugenics* are not one and the same thing, the first one including the second. In this sense, we will reproduce the definitions given by I. Moldovan to *eugenics*, first, and, then, to *biopolitics*. Thus, in the

case of the first, the already mentioned author made the following observations:

"Eugenics is recent and defined by its creator, the English researcher *Galton*, as the science dealing with the factors that can modify, for the best or for the worst, race traits – mental or physical – of future generations. The purpose of eugenics is the quality improvement of the race. It is negative when it refers to suppressing or eliminating factors susceptible of influencing future generations for the worst, it is positive when it contributes to those qualities or factors that elevate the quality of future generations. Eugenics deal exclusively with hereditary traits that can be passed by genetic heritage from parents to children and is not interested in other traits influenced by the physical or social environment. The measures of negative eugenics are prevention of damaging future generations through diseases and intoxications (sexual, alcoholism etc.) and the elimination from procreation of imbeciles, criminals or people suffering from hereditary diseases or flaws, and in its positive part it tries to facilitate the procreation of individuals with normal or superior psychical or physical traits." (Moldovan, 1927, p. 3)

The author specified that the supporters of *eugenics* are not thinking of an *improvement of race through methods specific to animal breeding.* Concerning *biopolitics*, I. Moldovan showed that this did not have to be a *militant party policy*, but the *basis of any policy that aims for the good of the country*: "*Bio politics, the science of government based, first of all, on the biological capacity of citizens and aimed toward their biological prosperity is the fundamental policy, the regulating conscience of individual and social tendencies.*" (Moldovan, 1927, p. 6) *Societatea de mâine (Tomorrow's Society)*,[1] that self-declared as a magazine "for social and economic issues", also focused on bio politics. (Moldovan, 1924, pp. 69-70; Voina, 1926, pp. 360-362; Clopoţel, 1926, p. 171)

There have also been times when journalists criticised those leading the country for their lack of interest for the needs of the press.

The Government and the Press

For example, in an article of 1895, journalists from *Adevărul (The Truth)* asked the Government to subsidize some of the expenses Romanian journalists incurred to perform their professional duties. (Dragoş, 1895, p. 1). Other times, journalists complained that the Court of Juries in Bucharest judged "more press trials than murders." (***, Ultimele informaţiuni, 1888, p. 3). Sometimes, journalists warned about the attempts of authorities to block access of readers to information published in anti-government newspapers:

"Yesterday, extremely terrible deeds took place in the Capital. Direct agents of the police prefect brutalised newspaper sellers, confiscated their merchandise and destroyed it. [...]

And beware of how many rights are breached through this brutal and cynical act: it is an attack to the freedom of the press, the freedom of thought and individual property!" (***, Confiscarea ziarelor independente, 1896, p. 2).

Some journalists also complained about the lack of respect that some of their colleagues showed to the profession of journalist. In this sense, we propose an excerpt from a text published in 1888, in the newspaper *Epoca (The Era)*:

[1] The first issue appeared on the 12th of April 1924.

"Sometimes, even people that are always looking for reality may be wrong about a certain situation and imagine that progress has been made where old and bad habits are more flourishing than ever.

This is what happened to one of our brothers.

We believed that the old system of journalism and the old way of understanding the mission of the newspaper was outdated and, surprisingly, bad habits, the mean way in which the press was regarded in the past is more rooted than ever – only in some places, must we say.

So, in our country, until recently, due to the small number of readers and to the lack of necessary staff, newspapers could not live outside the tyranny and censorship of the narrow organization of parties. A certain politician, party chief, subsidized and harshly censored a newspaper; another one subsidized and also censored his newspaper. Everybody knows what happened to this kind of press. The newspaper of the boss in power admired and promoted all of his actions, while the newspaper of the one who was not in power criticised everything his rival did.

This way, it was possible that a person in government put a city on fire and slaughtered its entire population and, still, one could be sure that his newspaper would praise him. The same person could do the right thing, have the most generous behaviour, one could be sure that the newspaper of his adversary finds a flaw and criticizes him.

We had subsidized newspapers, official newspapers and we had no independent newspapers, party newspapers that would put the interests of the party and of ideas above the interests of certain members of that party, above the interests of a government. [...]

What was the prestige that such a press could gain and what influence could it have on public opinion, when lies, cowardice and blind submission were bashing in its columns? And also, what confidence could citizens have in those journalists, with a small heart and brain, who, for a matter of commerce or low envy, or petty group interest, attack their adversaries especially when their attitude was more correct and more generous?" (Iancovescu, 1888, p. 1).

According to some Romanian publications, the worst type of press was made by American journalists who, in search of as many readers, published *sensational* stories that they *fabricated themselves*.

"*We choose the following details from a private letter that I received from a friend from Romania, immigrant in New-York, even before the great world war.*

New-York, 30th of October 1931 […]

Even firsthand journals, and even the less important, in their quest for sensational and for the public – the press is nothing but the reflexion of society– do not hold back from anything, they just want to tease and to satisfy their readers' curiosity. They simply invent diverse facts, without the slightest scruple.

Imaginary crimes, burglaries, thefts with adventure, all kinds of mishaps, they dress them all up in mystery, they mix them and colour them with the most ludicrous details.

Even more: they go all the way to set up pseudocrimes, with victims' andassassins, just to include some photos. All these for payment agreed between parties: between the newspaper and the characters that will play a part in the «business». They take interviews from lawyers, from doctors and other famous people, everything in relation to a «business» that did not even happen.

In matters of adultery and divorce, things get even worse. Two persons are hired, of opposite sex, pretending to be husband and wife. A third one is hired, who is caught in the act of pseudo-adultery.

The intervention of authorities is called for, reports are filed, with all processions involved in this kind of affair, investigations are made, confrontations, confessions; the photos of the heroes are published, autographs, letters, debates – and the whole affair is built on sand.

Such a set-up affair only costs 400-500 dollars, amount that helps the newspaper, by extending the «business», to increase its circulation, the public snatches the newspapers from the hands of sellers and...Everything goes smooth.

This is how American gentlemen conceive the entertainment of the public, with all kinds of fairy tales.

When it comes to suicides and accidents, there is absolutely no limit. There is competition between newspapers, whichever brings something more sensational." (Ionetti, 1931, p. 7)

When it comes to the revenues of American journalists, the already mentioned source shows, *verbose* reporters with "fantasy rich in invention" are those that win the most. (Ionetti, 1931, p. 7)

Short Romanian Guide on "How to Create a Modern Newspaper"

In his study *Pregătirea profesională a ziaristului (The Journalist's Professional Training)*, Mircea Vulcănescu speaks about the internal organization of a newspaper.[1] The mentioned text is one of the few of this kind. However, we will refer to another article that discusses the structure of a newspaper. Under the signature N.G., *Almanahul ziarului „Curentul" pe anul bisect 1940 (Almanac of the newspaper "The Current" leap year 1940)* published the article "How to Create a Modern Newspaper". The author of this article tries to *sketch* the activities of people *labouring* so that the reader may hold in his hands, every morning, his favourite newspaper. The newspaper is, as shown in this mentioned text, *the cheapest commercial item,* as it can be bought with just *one, two or three lei.* Despite this small price, the value of the newspaper is significant. Nobody, says the author of the text, can dispense of a newspaper. The only wish of the reader is to find out everything. Only the reader knows the criteria upon which he chooses his favourite newspaper. The life of a newspaper is short, it only lasts *24 hours*: "It is born at sunrise, when the rooster sings, and its life ends when the night sets in."[2]Afterwards, the author speaks about those who make the existence of a newspaper possible. The first ones he refers to are the *manager*, *the editors* and the *reporters*.

The manager is, as shown in the text, the one who is responsible for the existence of the newspaper:

"More than in any other institution, the manager of a newspaper must come into contact with absolutely all his employees. He is the master and the slave of all.

He unleashes and tempers enthusiasm; he decides and he checks attitudes; he coordinates and supervises the news. He is the heart of the newspaper. And the newspaper is his child."[3]

The editors, people "dedicated to journalism through the infinite possibilities of expression of their ideas", are those who "develop raw information or the subjects that current life offers them, through a correct and logical comment, revealing to the reader some sides of the topic that may have escaped them, or that may have been ignored". To be able to fulfil his mission, "the editor must be especially

[1] See Fănel (Teodorașcu, *Pamfil Șeicaru*..., pp. 84-85).
[2] N.G., „Cum se lucrează un ziar modern", in *Almanahul ziarului „Curentul" pe anul bisect 1940,* p. 80.
[3] *Ibidem,* p. 80.

trained in the field he has chosen. For an economical editor will never be able to write a good article on literature and vice versa."[1]

Reporters are *vocation journalists*. They *are the working bees of this huge bee hive: the newspaper*. Reporters "pick information either directly through the diverse environment of reality or through the means of different institutions"[2]. Because their work is especially important in the mechanism that makes the newspaper appear, with no delay, everyday, reporters are not allowed to rest:

"No absence is excused. In a permanent quest for news they are also in constant competition with each other. Because the newspaper gains importance for the reader especially through prompt information each day. No reporter is allowed to ignore a certain fact happening in his field. His information sources are innumerable. But the reward the published story gives him is unimaginable.

Following everyday life, he lives a permanent adventure."[3]

Concerning the role and the place of the report in Romanian press, all things said along the years have been both positive, (Samson, 1979**,** p. 88) as well as negative[4]. The category of *reporters* also includes *correspondents*, who, being "placed in all cities or centres of social activity"[5], give the newspaper information through *telephone, telegramsor letters*.

The text also mentions press agencies. These "are independent from the newspaper, most of the times, or they function within the newspaper, but seldom. Their structure is pretty much the same as that of a newspaper, of course without all its gear. They are based on the activity of reporters and correspondents spread all over the world. The news thus gathered and verified are sent, as shorter or longer telegrams, to newspapers they have agreements with. Only agencies are responsible for the veracity of the news. The newspaper does not bear the same kind of responsibility as in the case of news published through their own reporters, unless that particular agency functions within the newspaper. This is the reason why, any telegram from abroad must permanently have its source indicated (Rador, Havas, Stefani etc.)."[6]

The author of the text makes some mentions about *collaborators* too, to which he says that the *newspaper owes a significant part of its existence:*

"There are collaborators who, invited by the newspaper management, contribute with their talent and personality to a good presentation of the newspaper and others who practice journalism out of dilettantism.

We cannot include in another category the anonymous informers, that roam every day through the newsrooms with one sheet of manuscript containing some sort of notification or communication of general or partial interest."[7]

Before being published, the manuscripts of editors, reporters, correspondents and, when necessary, of collaborators must pass through the *newsroom secretary*:

"It is with him that the true shaping of the newspaper begins. He must coordinate and classify all the information, newsroom, reporters' material. He indicates the characters that the material will be

[1] *Ibidem*, p. 80.
[2] *Ibidem*, p. 80.
[3] *Ibidem*, p. 80.
[4] See (Teodorașcu, *Pamfil Șeicaru*..., pp. 85-86).
[5] N.G., *op.cit.*, p. 80.
[6] *Ibidem*, p. 82.
[7] *Ibidem*, p. 82.

printed in, just as he decides on the titles of articles and stories and the pages that he supervises. Being at the heart of the newspaper, the newsroom secretary must take care of presenting it in the best conditions."[1]

The newsroom secretary is the one who*harmonises*the activity of the *newsroom* with that of the *printing house.* He is assisted*in all hisattributions* by the *corrector*, who "has the task of reviewing the matter [that was] typed in the printing house, so that it corresponds to the manuscript."[2] The *corrector* "must correct the mistake that may have escaped the eyes of the secretary."[3] The *professional training* of the *corrector* "is made through a long experience and through a constant update of the knowledge in all fields."[4]

Under the supervision of the newsroom secretary, the workers in the printing house layout the *material* in pages (the typed manuscript):

"This is pretentious: on one hand because the typing norms impose certain constraints and, then, because the harmonious arrangement of the matters on the page must be respected, for an artistic and pleasing aspect.

Once concluded, that is prepared for the finishing of the newspaper, the pages go to the calender or the press, where the lead letters arranged on the page are printed on a piece of cardboard called mould. This cardboard[is] laid in another lead pouring machine, [which] transforms the page that left the calender in another semi circular page, adequate for the size and shape of the cylinders of the rotating machine.

Finally, once the pages are in the rotating machine, the newspaper changes form, and it becomes the form that the reader will hold.

The rotating machine, this huge monster loaded with the most ingenious mechanisms, produces each hour 50-60-100 thousand copies..."[5]

The work for the finishing of the newspaper does not end here. From the *rotating machine*, the newspaper is taken to *expedition*, that means the *department* "where it is labelled with the address of the storages all over the country, of subscribers or it is distributed to sellers or given to the railway or air company."[6]The text shows that, only at this point, we can say that there is nothing left to do.

However, the author does not conclude his article before referring to the *administration*:

"But, one must not forget that, in parallel with the activity of all these departments that we presented above, the other employees of the institution editing the newspaper take care of all the works that involve its proper distribution. The administration is the one who truly knows the pulse, the tastes, and the preferences of the reader. Because this is where the entire activity is evaluated from dusk till dawn!

And all this immense machine must be fed out of the 1, 2 or 3 lei of yours, reader!..."[7]

[1] *Ibidem*, p. 82.
[2] *Ibidem*, p. 82.
[3] *Ibidem*, p. 82.
[4] *Ibidem*, p. 82.
[5] *Ibidem*, p. 82.
[6] *Ibidem*, p. 82.
[7] *Ibidem*, p. 82.

We notice that the author of the article we discussed forgot about advertising. The situation is at least bizarre, since it was known by all journalists that "the amounts gathered from selling the newspapers only solved part of expenses of the newsroom, the administration and." (Teodorașcu, 2014, p. 216)

The newspaper *Universul (The Universe)* was living proof that advertising could turn a regular newspaper into a very rich one. (Teodorașcu, 2014, p. 216) In fact, the management of *Universul* showed its appreciation for the work of advertising agents by throwing banquets for them. (Teodorașcu, 2015, pp. 294-295).

This is how *Universul*presented its advertising services in *Calendarul ziarului „Universul" pe anul 1928 (Calendar of the newspaper Universe for the year 1928)*:

"The advertising and publicity appearing every day in the newspaper *Universul* as announcements, information etc. and that are read, along with the newspaper, in the entire country and abroad, bring a lot of benefits to commerce, industry, art, science and, in general, to social life by facilitating the connections between the producer and the consumer, offering the public the best information method.

It is known that advertising is most effective, when it is as spread as possible.

The fact of being unknown does not always inspire mistrust, but, always, a well known person has an advantage over those that are not known.

Besides that, the age we live in is the age in which advertising is known everywhere as a measure necessary for having commercial reputation without which sellers cannot claim the confidence of buyers.

Advertising is, in fact, the means to continuously and limitlessly develop the selling of current objects when these objects are known and used for years.

There is no product whose sale does not increase due to advertising, which is the promoter of success because, by selling products of real value, perfectly fit with the ads, products intensify their sale. [...]

The seller who constantly describes his merchandise through advertising ends up by imposing his product, - Even more, the public feels at home in a shop whose story he knows in detail, as well as the prices and the selling method.

So, advertise in *Universul*, the most spread newspaper."[1]

According to C. Rădulescu Motru, advertising (publicity)[2] may be of two types:*dishonest* and *fair*:

"The art of advertising is so developed and, most of all, so effective, that almost nobody knows its modest origin. If we are to believe what Americans say, it is the lever of civilisation and of progress; for nothing moves in the world without advertising. The heart of commerce is in advertising; and all other social activities derive, as it is well known, from the heart of commerce. An American says that advertising was the sublime music of modern times. If we are to believe the Americans again, we should expect an era when the art of convincing through advertising will surpass the art of convincing through logical arguments. In such an era, the old and classical Logic will appear as a simple mental health accident in the long struggle of madness of sick humankind.

But with such affirmations, Americans, in fact, advertise advertising." (Rădulescu-Motru, pp. 39-40)

According to Rădulescu-Motru, the only *honest advertising* is *commercial advertising*:

[1] Text taken from an advertising caption in *Calendarul ziarului „Universul" - anul 1928*. Bucharest, *Universul*.
[2] The author uses both terms, publicity and advertising, giving them the same meaning.

"Among all those who advertise, only sellers seem to have remained honest, for they limit themselves to presenting their objects of commerce, without fighting with the competition. They say there once was, in the case of sellers too, an era of fighting, but it has ended. [...] There are newspapers in which the only pages printed with honest intentions are the pages reserved for commercial announcements..." (Rădulescu-Motru, p. 46)

The success of *dishonest advertising* is in straight connection with the level of knowledge that the advertiser has regarding the *mentality of the public it addresses*. In the case of the public with *an inferior mentality, inferior advertising* is called for. Advertising must be improved in the case of the *public with superior mentality.* Thus, the same author shows, the mentality of the population of a country may be determined only by following *advertising that is successful* in that country: "The genre of successful advertising is a sure clue, more sure than any statistic." (Rădulescu-Motru, p. 41)

In the quoted text, the author uses, in support of his claims, the story of Gustave Le Bon (Le Bon, pp. 120-122) about the seller dressed on golden and diamond clothes, selling people powder sugar at the price of *magical powder*. (Rădulescu-Motru, pp. 42-44)

Final Words

For some journalists, the newspaper page is like a battlefield (Teodoraşcu, pp. 26-27), where they entered to destroy their enemies who, in turn, were dominated by the same warlike thoughts. For journalists of the type, the happiness of success vanishes in one second and the suffering caused by potential failure may persist for a long time. Such a journalist believes that he is never wrong and he always claims that the position of his adversaries is wrong. Many times, journalists defended the ideas they believed in with their fists too. (Teodoraşcu, pp. 191-195) There were cases in which the fights of ideas turned into real fights brought upon the rivals heavy punishments.[1] There were also cases in which, although they wanted to inspire chivalry, they made a fool of themselves in the eyes of the reader. Here we refer to those *site outings* in which fights did not even get a scratch.[2]

Compared to what happened in Western countries, press appeared late in Romania. In England, the first newspaper (*English Mercuri*) appeared in 1588. (Samoilă, p. 14) France, at its own turn, published, in 1631, "the first regular periodical newspaper"[3] (*Gazette*, which, later, will be called *Gazette de France*). (Samoilă, p. 9) Germany is the country that published, in 1660, the first daily newspaper (*Leipziger Zeitung*). (Samoilă, p. 13) In Germany too, in 1690, Tobias Peucerdefended the first PhD thesis in journalism. (Peucer, 2008). As Ioan Bianu showed, we can only speak about press in Romaniain 1820. (Bianu, p. VII) However, at the beginning of the third decade of the past century, Emil Samoilă brought to the attention of the public the following fact: "A statistic of the institution «Adevărul» shows that 14.000 persons in the country and abroad contribute through their intellectual or manual work to elaborating, printing, shipping and distribution of the newspaper *Adevărul* and *Dimineaţa*." (Samoilă, p. 30) In other words, the development of Romanian press took place in a rhythm that is unimaginable nowadays. The face of Romanian press changed during the communist period, as Peter Gross shows. The "mobilization and indoctrination" messages characterised the press of those times. According to the same source, Romanian press remained highly politicized after the

[1] *Idem*, Terrorism in Galati - The Press and the Lie (Understood as Political Tactic). In (Boldea, 2017, p. 578).
[2] *Idem*, The Duel in the Formerly Romanian Press – from Thrilling to Trivial. In (Boldea, 2016, pp. 269-279).
[3] Ioan Bianu, *Introducere/Introduction* of Nerva Hodoș; Ionescu, Al. Sadi (1913). *Publicațiunile periodice românești*/ Romanian periodicals, Bucharest: Librăriile Socec & Comp. & C. Sfetea.

events of December1989, when the soviet inspired political regime was replaced by one that claimed to be democratic. (Teodoraşcu, p. 127)

Some journalists have fought against *parliamentarianism* (Teodoraşcu, p. 111), and others against *universal vote*, since these gave illiterates the power to decide who can lead the country. Another fierce battle that took place in the press was the one that discussed on which side Romania should fight in the First World War. (Teodoraşcu, pp. 25-40) In this sense, some journalists have even taken on the role of forming the *courage* of Romanian military. (Teodoraşcu, 2017, pp. 75-82)

Terrible battles also took place on the pages of newspapers regarding the issue of "affirmation of feminine personality"[1]. The same happened in the case of *honour battle*. According to some publications, "duel was for many Romanian *honourable* men a method of obtaining *free advertising*"[2]. Some journalists criticised their colleagues for being too preoccupied by the *information function* of the press and for ignoring its *education function.*[3] Regarding the *cinema* too we can say that Romanian journalists did not have a common opinion. If some were careful to emphasize its importance each time they had the opportunity, others claimed that "the cinema is a degrading element of Romanian society"[4].Not even when "feminine beauty" was discussed, journalists did not manage to see things through the same lenses.[5] Today, the headlines are different, but now, just as in the past decades, Romanian journalists cannot even agree on issues that are of national interest. Each journalist, past or present, has the tendency to give the truth the shade in which he believes.[6]

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[1] *Idem, The Issue of Affirming the Feminine Personality Commented in the Newspapers of Past Eras*. In (Puşcă, Sandache, Teodoraşcu (Coordonatori), 2016, pp. 101-112).
[2] *Idem,* Bread Crumbs Instead of Lead Bullets – The Duel in the Journal Furnica/The Ant. *Proceedings. European Integration - Realities and Perspectives*, Galaţi, Danubius University, 2017, p. 432.
[3] *Idem,* Terrorism in Galati. The Press and the Lie (Understood as Political Tactic)..., p. 562.
[4] *Idem,* The Satanic Cult of Nude - About the Cinematography in Some of the Inter-war Publications in Romania. *Acta Universitatis Danubius. Communicatio*. Galaţi: Danubius University, (XI) nr. 2/ 2017, p. 135.
[5] *Idem,* "When the "Weaker Sex" become "Beautysymbol" – The Feminine Beauty in the Romanian Interwar Press", în*Proceedings. European Integration - Realities and Perspectives*, Galaţi, Danubius University, 2018, p. 5.
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THE 13TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

Conflict of Competence on The Investigation of Crimes against the Shipping Regime

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Abstract: In this paper, the authors investigate cases from the shipping practice that gave rise to controversy over a potential conflict of jurisdiction over the investigation of crimes against the shipping regime. The investigation of crime against shipping regime requires specialized naval training necessary for their understanding, as there are numerous situations in which criminal investigation bodies do not have the technical capacity to analyze and investigate those crimes, a circumstance which may lead to erroneous conclusions, with particular consequences on the quality and accuracy of the investigation act.

Keywords: shipping practice; potential conflict of jurisdiction; shipping regime

In recent years, at the level of the Romanian Naval Authority, there have been numerous cases in which the investigation bodies of the Shipping Police carried out the criminal investigation for the crimes established by the special law, Law no. 191/2003 crimes against the shipping regime, invoking the quality of criminal investigation bodies of the judicial police[3], replacing the special criminal investigation bodies within the Harbor Masters.

The quality of the special criminal investigation bodies of the Harbor Masters, which obtained the assent of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice[4] allows it to carry out criminal investigations for the offenses established by the special law in the case of the Romanian Naval Authority, Law no. 191/2003 crimes against the shipping regime.

The legislator expressly states that "the criminal investigation bodies of the judicial police carry out criminal prosecution for any offense not given, by law, within the competence of the special criminal investigation bodies or the prosecutor, as well as in other cases stipulated by the law"[5].

Thus, the competence of the criminal investigation bodies of the judicial police is clearly delineated, referring to the crimes provided by special laws, to which their investigation belongs to the special criminal investigation bodies.[6]

In practice, there were two situations:

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[3] According to Criminal Procedure Code, art. 55, para (1), letter b).
[4] Ibidem, art. 55, para (5).
[5] Ibidem, art. 57, para (1).
[6] Ibidem, art. 57, para (2).

• the first, in which the special criminal investigation bodies within the Harbor Masters are notified of criminal aspects, as provided by the Law no.191 / 2003 or for the crimes of corruption and malfeasance provided by the Criminal Code, committed by the civil navy staff, if the deeds have put or could endanger the safety of the ship or of the navigation or cabin crew staff.[1]

• the second, in which the police bodies within the Shipping Police are notified or refer to the same issues listed above.

In connection with these situations, each of the two bodies should check their competence in criminal investigation, and if it finds that they have no competence to decline the competence of the other body.

At the same time, the criminal investigation files initiated both by the special criminal investigation bodies within the Harbor Masters and those initiated by the Shipping Police bodies sent to the Prosecutor's Office for the assignment of the unique number and the notification to the Prosecutor must be checked from the point of view of the competence of the investigation body into the continuation of criminal investigation.[2]

However, there have been several situations where investigation files opened by the special criminal investigation bodies within the Harbor Masters after being registered with the Prosecutor's Office, have been redirected to the Shipping Police investigation bodies for criminal investigation of criminal offenses established by the special law, as stated above.

In this context, case prosecutors who coordinate the criminal prosecution of both the judicial police and the specialized criminal investigation bodies[3] against the crimes against the shipping regime should have verified the competence of each body and consequently directed the files for the continuation of the investigations to the special criminal investigation bodies within the Harbor Masters.

Crime investigation into the shipping regime requires specialized naval training necessary for their understanding, against which the criminal investigation bodies within the judicial police, in many cases, do not have the technical capacity to analyze and investigate the offenses in question which could generate erroneous investigation, with particular consequences on the quality and accuracy of the investigation act.

That is why special criminal investigation bodies have attributions and competences in the investigation of offenses established in special laws and any other interpretation or approach of the criminal investigation bodies within the judicial police, could lead to the nullity of the criminal investigation, in the absence of their competence, of otherwise not specified in the special law.

Causes that Generated Conflict of Interest in Investigating Crimes against the Shipping Regime

Prior to the entry into force of the Government Ordinance no. 42/1997 on the maritime and inland waterway shipping, the crimes stipulated in the Decree no. 443/1972 on civil navigation - Chapter VI were correlated with the provisions of the Criminal Procedure Code applicable at that time.

Thus, the Criminal Procedure Code provided clearly that criminal investigations could be carried out by the Special Investigation Bodies of the Harbor Masters for crimes against waterway shipping safety

[1] Ibidem, Title V, Corruption crimes and malfeasance.
[2] According to Criminal Procedure Code, art.58, para (3).
[3] Ibidem, art.56, para (1).

and on-board discipline and order, as well as for malfeasance or related to work provided by the Criminal Code, committed by civilian naval sailors, if the deed has or could have endangered the safety of the ship or of the navigation."[1]

Subsequently, following the entry into force of Law no. 191/2003 regarding the crimes against the shipping regime, the crimes provided by the Decree no. 443/1972 on Civil Shipping under Chapter VI have been grouped into crimes against **civilian shipping safety, crimes against order and discipline on board ships**, to which new crimes have been added.[2]

Against these new crimes, through Law no. 191/2003 have been given clear powers to Harbor Masters to carry out criminal investigations, considering that a special article is no longer needed to establish criminal investigation powers for crimes previously established.

After the amendment of the Criminal Procedure Code, it was established that criminal investigations can be carried out by special criminal investigation bodies, under the conditions of art.55 par. (5) and (6) of the Criminal Procedure Code.[3]

As a consequence, the Romanian Naval Authority requested the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice[4], for certain officers within the Port Captains, to obtain the necessary opinion necessary for the criminal investigation for the offenses established by the special law, Law no. 191/2003 offenses to the shipping regime, Criminal Procedure Code, Criminal Code - offenses related to the service of the cabin crew staff.

Conclusion

In the matter of the competence of the criminal investigation against the old crimes transposed by Law no. 191/2003 on crimes against civilian shipping safety, crimes against order and discipline on board ships, have created serious confusion.

Thus, there are many opinions according to which it can no longer be investigated by the officers of the Harbor Masters which have obtained the appropriate assent, because within Law no. 191/2003 are established powers for criminal investigation only for new offenses[5].

The new Criminal Procedure Code amended art. 208 letter e)[6] without expressly specifying the crimes against the shipping regime, as the old Code specified, to which the criminal investigation competence was assigned to the special criminal investigation bodies within the Harbor Masters.

In this context, a totally erroneous interpretation of the Criminal Procedure Code and Law no. 191/2003 was generated, as amended, in the sense that for the crimes against the safety of navigation on water and against discipline and order on board ships the competence of the criminal investigation bodies is currently of the Shipping Police.

[1] According to Old Criminal Procedure Code, art. 208, letter e).
[2] Law nr. 191/2003 on crimes against shipping regime, within Chapter IV.
[3] New Criminal Procedure Code.
[4] According to provisions of the Criminal Procedure Code, art. 55, para (5).
[5] Law no 191/2003 on crimes against shipping regime, Chapter V, art.33, para (1).
[6] Criminal investigation is also carried out by the following special bodies: Harbor Masters, for crimes concerning the safety of navigation on water and against discipline and order on board, as well as for malfeasance or related to work crimes, as provided for in the Criminal Code, committed by cabin crew staff of the civilian navy, if the deed has or could endanger the safety of the ship or navigation.

This erroneous interpretation was also generated by the fact that Law no. 191/2003, as amended and supplemented, introduced in particular an article[1] only to establish the competences of the criminal investigation against the new crimes, "other crimes", without specifying that for the crimes against which the old Criminal Procedure Code expressly reference[2], jurisdiction over criminal investigation remains with the special criminal investigative bodies within the Harbor Masters.

Thus, currently, there are many cases where the criminal investigation of crimes against shipping safety and against order and discipline on board ships is carried out by police bodies within the Shipping Police, although it have been established by a special law, and the Criminal Procedure Code provides in this case that criminal investigation is carried out by officers who have received the assent of the Prosecutor General of the Prosecutor's Office attached to the Court of Cassation and Justice.

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Criminal Procedure Code.

Old Criminal Procedure Code.

Law no. 191/2003 on crimes against shipping regime.

[1] Law nr. 191/2003 as amended in 01.02.2014 by Law nr. 255/2013, art. 33, para 1)
[2] In the Old Criminal Procedure Code, art. 208, lit. e).

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REALITIES AND PERSPECTIVES

Violation of Secrecy of Correspondence - Means of Committing the Offense of Criminal Acts by Public Officials. Case Studies from the Practice of the European Court of Human Rights

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Abstract: Global threat of rape submission was informed by legislators of all nations. Within the European Union, guaranteeing privacy and secrecy of correspondence is governed by the Charter of Fundamental, STI General Data Protection Regulation (679/2016) and Directive Protection of personal time in the specific activities Carried out by enforcement Authorities (680/2016). Nationally, the legislature has guaranteed secrecy of correspondence in the first phase in the fundamental law by Article 28 of the Constitution. Violation of this law is rightly seen by the legislature as the Breach of social relations That is born and Develop in relation to the safety of communication Between people in any way; therefore bu regulated as a crime in Article 302 of the Criminal Code - Special Part, Which emphasizes social danger created by the violation of secrecy.

Keywords: communication; secrecy of correspondence; personal date protection; crimes

Introduction

A fundamental need in the company's existence and even the existence of human being, one is without a doubt - communication. Without communication there can be no human relationships as we know them today. The need of individuals to express their thoughts, feelings, emotions and ideas to families and to those with whom she lives, has led to the evolution of communication - made from the beginning of simple gestures, signs or words - to a higher level, which advanced techniques involving transmission of information between individuals.

Economic relations have developed steadily between communities or states, personal relationships of an emotional or family of individuals, labor relations of people, all of us to evolve transmission of information on a variety of communication channels remotely. Extremely useful these ways to communicate hiding a vulnerability which, unfortunately, many of us remain indifferent, considering without reason that the information provided will not be transferred to third parties for use in illegal activities, causing harm in this way privacy and most often affecting privacy.

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No doubt the relationship between the state and its citizens is one indissoluble. The state can not exist without its citizens, communication between state institutions and citizens must be effective and based not only on good faith but must be governed by strict legal rules aimed at protecting the state-citizen relationship as a whole. Romanian national unity and equality among citizens is guaranteed by the Basic Law in Article 4[1].

Basis which was the basis of our commitment to address this issue lies in the many cases where civil servants (as they are defined in Art. 175[2] Criminal Code) prelevându the access to citizens' personal data or even have in management with the nature of their (bank clerk, tax clerk, magistrate, intelligence officer, policeman, etc.) can use these data misuse.

The goal revealing the crime of violation of secrecy of correspondence (regulated by art. 302 Criminal Code) as offense-means for committing criminal offenses or serious breach of fundamental rights is to shape social danger created by the quality of the active subjects of this crime, par. 3 of art. 302 constituting an embodiment of the offense is aggravated punished by more severe (1-5 years in prison) to variations type (3 months to 1 year or 6 months to 3 years depending on the structure of the active material element in subjects unskilled workers).

1. Analysis Offense of Violation of Secrecy of Correspondence in Terms of Qualified Active Subject - Civil Servant

Fundamental right of privacy of correspondence is revealed primarily by way of the Criminal Code criminalizing its violation. The offense is regarded as a complex, it is presented as two variants type that highlights the various ways in which this can be accomplished, or by accessing and / or seizure of correspondence of another without law and disclosure of information obtained by third parties, even if the information has arrived inform the offender mistake (art. 302, para. 1, Criminal Code) or by interception as electronic communications of any kind (art. 302, para. 2 Penal Code) and disclosure to third parties without the right even if the information they came to the attention of grşeală perpetrator (art. 302, paragraph 4, Criminal Code).

The structure of criminal offenses of the offense is filled by a distinct variation (Art. 302, par. 6), which consists of making the interception means for recording, with the aim of intercepting the execution of the free as introduced by Law 187/2012[3] Implementation of the Criminal Code.

Another essential element in the structure of this crime consists of supporting specific cause (art.302, par. 5, Penal Code), under which the offender will not be held criminally liable if the act of violation of secrecy of correspondence helps to prove a or commit any other crimes or discover surprising if public showing interest and benefits to society outweigh the damage done to the passive subject.

[1]Constitution Art. 4 Unity of the people and equality among citizens. (1) The State foundation is Romanian national unity and solidarity of its citizens. (2) Romania is the common and indivisible homeland of all its citizens, irrespective of race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, wealth or social origin.

[2]Penal Code Art. 175 civil servants. (1) Civil servants, for the purposes of criminal law, an individual who, permanently or temporarily, with or without remuneration:

a) attributions and responsibilities established by law in order to achieve the prerogatives of the legislative, executive and judicial;

b) exercising a public dignity or public office of any kind;

c) exercise alone or with others, in an autonomous, of another operator or a legal entity owned or majority state tasks related to achieving the object of its activity. (2) It is also considered a civil servant within the meaning of criminal law, the person who exercises a public service which was invested by public authorities or is subject to control or supervision of the completion of their respective public service.

[3]Published in the Official Gazette, Part I no. 757 of November 12, 2012

Finally, the aggravated (art.302, paragraph 3, Criminal Code) the crime is given by qualified active subject of the offense, it consisting of individual civil servant is just as responsible service confidentiality protection. Aggravated variants on this we will focus below.

Object of the crime in question is the subject of special legal - it is shaped by social relations that are born and developed in conjunction with the normal and safe communication between people - and the subject material - which is the very correspondence was stolen or destroyed or passage in which the communication line connected the device to intercept. (Dobrinoiu, et.alli., 2016, p. 592)

Active subject if aggravated variant is directly only a person who is a civil servant. In this case they will be outlined situations in which to commit the criminal offense involving more than one person, so we faced a stake improper.

The interest is possible in all its forms, but supports certain shades depending on the form of the paricipaţii namely:

→ instigator and accomplice will be held criminally responsible for aggravated form of the crime if they knew or could provide quality poster public official, otherwise they are subject to prosecution for one variant type of crime according to the material element done;

→ if coautoratului, a prerequisite is that all who work directly for carrying material element to have the status of civil servants to be able to retain this form of participation, otherwise, those who acted directly in the act and have Varant aggravated required quality will meet one variant type depending on the material element done.

The discussion regarding passive subject does not require a thorough analysis, it can be any natural or legal person. It has noted, however, that there is a general and immediate passive subject, represented by the company, whose interest in the private life of persons is violated by violating secrecy.

One issue that will be examined for nuances complexity offense of violation of secrecy of correspondence is the criminal unit. We initially discusses the legal unit of the crime is, the offense in question, a plurality of actions as the law provides a single crime. (Boro & Anghel, 2016, p. 78) If the material element described in Article 302, paragraph 1 of the Criminal Code is committed by civil servants in several actions (opening, theft or destruction of mail) at different times and under the same criminal, against the same passive subject, the offense will get a continued character. For this purpose the crime continued to be detained, it needs to remember the essential conditions to be met:

→ be unity so active subject and the passive subject - one civil servant has committed any act of enforcement, targeting the same passive subject.

→ be a plurality of actions committed to a particular time - is a condition related to the essence of the offense repeated, each of the actions specified in paragraph 1 of article 302, can form single material element of the offense: for example, if a public official correspondence destroy a person, and the next day open its correspondence, it answers for the crime of violation of secrecy of correspondence through repeated and not a contest of two counts of violation of secrecy corepondenţei.

→ be a unit of content - every action of civil servant to destroy, steal, withhold or opening the mail will make content the same offense violation basecretului mail aggravated whether undertake acts mentioned or cumulative two or more among them. It will not matter if some of these actions remains tentative stage, others will consume as reporting facts will be consumed.

→ be unit criminal intention - the public servant will have to have representation assembly activities in advance of the first action and want to achieve while shares of content the same offense, in other words, to deliberate form of guilt can be only intention.

→ acts are committed at different times - the uniqueness of criminal intention is that the intervals must be reasonable in duration as follows: to be higher than normal interruptions (the normal mail delivery by courier) but less than the time between acts that would lead to the conclusion that there is not a single criminal resolution (in this case will hold the contest between the two counts of violation of secrecy of correspondence, even if there is unity of subject passive and active). (Boro & Anghel, 2016, p. 79)

Another unit crime, in addition to the legal unit, is the natural unit of crime, which will find applicability in option-type offense of violation of secrecy of correspondence given in paragraph 2 of Article 302 of the Criminal Code, the action interception without right to any kind of telephone or electronic communication shall be extended over time after time consuming, until the time of the last track (depletion) (Boro & Anghel, 2016, p. 76).

The characteristics of continuous form variant-type as provided in paragraph 2 of Article 302 are that there is only one criminal intention, enforcement of interception without right to extend the time to be committed only with intent to have a single active subject qualified (acts are committed by the same public official) crime unit is maintained throughout the interception without right.

Essential in our discussion concerning the material element of interception by public persons is this intercept is not right. This implies the absence of a warrant from a judge of rights and freedoms for interception, which is a special surveillance measure that can be used during the criminal proceedings under Article 138, para. 1 point a)[1] para. 2[2] the same article defines the concept of interception as it is permitted only under mandate interception.

Concluding observations on crime unit in the forms of this crime, it can get a continued criminal offenses (art. 35, para 1[3]) Where the public official correspondence violates the same person at different times given the same criminal (Mitrache & Mitrache, 2017, p. 133) or a continuum where the public servant intercepts a person naturally without the right to obtain information and continuously pursued criminal resolution. (Mitrache & Mitrache, 2017, p. 119)

To make the transition to the next section of our study we will have to address the subjective side of the offense of breach of secrecy. Undoubtedly, the existence form of knowledge required for the offense is the intention, directly or indirectly, by executing the perpetrator of the material element and having its representation will follow-up actions.

The content of this crime is linked to a phone or a goal, but if it exists and is in the form of other crimes, the situation becomes complex, meeting the requirements of a series of offenses, the offense of violation of secrecy of correspondence becomes infracţiune- middle.

[1]Criminal Procedure Code - Special methods of surveillance or investigation Art. 138. General. "(1) The special surveillance or research methods: a) the interception of communications or any kind of distance communication; ..."

[2] Criminal Procedure Code - Special methods of surveillance or investigation Art. 138. "... (2) interception of communications or of any type of communication means intercept, access, monitoring, collection and recording of communications by telephone, computer system or by any other means of communication ..."

[3] Criminal Code, Art. 35, para 1- continued crime unit and the complex. "(1) The offense is continued when a person performs at different intervals of time, but to achieve the same resolution and same subject passively against actions or inactions presenting, each one, the content of the same offense ..."

2. Use the Offense of Violation of Secrecy of Correspondence as Offense-Means for Committing Other Criminal Acts

Why I am qualified for this study crime of violation of secrecy of correspondence as offense-means for committing other criminal acts? - to define how this crime can be used to perform other criminal offense, thus achieving in this way a series of offenses charged perpetrators. Realization of offenses will outline creating a plurality of offenses, ie two or more crimes related legal entities through a personal connection or real. (Boro & Anghel, 2016, p. 85)

For the concurrence of offenses are necessary as more conditions are met, namely: to be committed at least two offenses by the same active agents (described in our case - the civil servant or official), and the latter can be criminal liability for at least two counts. In our study, we will analyze situations in which the crime of violation of secrecy of correspondence is put into the context explained above, is used as a weapon to commit another offense by a public official.

There will be confused whether the offense addressed in this study is the goal perpetrator pursued by the resolution of crime, committing a criminal offense to obtain information from private correspondence of a person - where the violation of secrecy of correspondence is an offense-purpose not an offense-means, being us but still under the influence of a series of offenses.

All crimes are committed through violation of secrecy of correspondence, from those against life and person (murder, manslaughter, battery or other violence, etc.), against property (burglary, theft, robbery, etc.) to crimes against forces army and state security, the latter qualified active subject with a leading role.

To narrow the range of offenses the violation of secrecy of correspondence is the USER as offense-means, we lean out several criminal active subject qualified person civil servant or official has the opportunity higher to act as follows: false identity, extortion and unjust repression.

→ false identity (art. 327 Criminal Code - is presented in the form of a variable type that consists in presenting under a false identity or assigning a false identity to another person presentation made by a public official or sent to a public body by illegally using a document or identification document, authorization to mislead a public servant in order to produce legal consequences for himself or for another, an alternative-compounded when the presentation identity false used a real identity of a person; a variant-treated in the custody of an act that is used without authorization to be used as (Dobrinoiu, et.alli., 2016, p. 712) - to define where that crime is a crime-purpose using violating the secrecy of correspondence as offense-means we bring into question the assumption that a public official of the National Agency for Fiscal Administration access information and correspondence of someone who wishes to revenge, with an iT operator within the same institution - the latter providing information from negligence, intentional or no guilt - and uses this information to create the account and the name of that false debts. In this case, the civil servant shall be liable for the crime of violation of secrecy of correspondence in competition with the offense of false identity. Regarding IT operator,

- Intent - accomplice to a crime contest between violating the secrecy of correspondence and false identity if he knew the intentions public official or other violation of postal secrecy only if it provides information knowing that it requires a civil servant is not right
- fault - will be liable to disciplinary or will be subject to a lighter pdeapsă
- without guilt - not criminally responsible, and eliminating this competition offenses hypothesis presented initially as the sole active subject will be held criminally liable for the crime of false identity.

→ Blackmail (Article 207, Criminal Code - is presented as a variant-type consisting of coercion of a person to give something, do something, do not do something that normally would have done without coercion or suffer some everything in order to acquire unduly avail patrimonial, a variant-treated which is threatening to give the public or to a third false or real, compromising the person threatened or to a family member of that order get a non-economic use; one-compounded version of the previous embodiments in which the actions are employed in order to obtain a patrimony. (Dobrinoiu, et.alli., 2016, pp. 115-116) - in this case we will bring into question the assumption that an officer working in the Romanian Intelligence Service, intercepts without right (without a warrant to intercept issued by a judge and a request from organuleor IP) electronic mail and calls a friend's family, threatening to provide information accessed if her husband will not get a steady amount of money or sexual favors. In this case, the officer will be criminally liable for the crime of violation of secrecy of correspondence in the competition with the aggravated offense of blackmail.

→ crackdown unfair (art. 283 Criminal Code - is presented as a variable type that is the initiation of criminal proceedings, the arrangement of preventive measures custodial or indictment of a person, knowing that it is innocent one embodiment, which consists in retaining worse, arrest or conviction of a person, knowing that innocent. (Dobrinoiu, et.alli., 2016, p. 472) - also if the information obtained illegally by violating secrecy of correspondence by an intelligence officer or by an investigative body, are altered or modified to create fake reasonable suspicion of an offense that will lead to the initiation of criminal proceedings and detention of a person, will be retained in the offense of unfair competition repression of the crime of violation of secrecy.

Violation of secrecy of correspondence is an offense classified as an offense in the Criminal Code service, which has a correspondent in the previous Penal Code criminalized in Article 195 which appears in the current indictment novelty is the option even worse in qualifying active subject, making it is transferred from the category of offenses against personal freedom in the category of service offenses. (Dobrinoiu, et.alli., 2016, p. 590)

3. Case Studies of European Court Of Human Rights Concerning the Violation of Secrecy of Correspondence by Officials

We focused attention on two case studies that have been brought before the European Court of Human Rights to address situations in which breached the fundamental right of privacy of correspondence, namely:

● Gagiu against Romania[1] (Prisoner died in prison. Responsibility death. State obligations - Application no. 63258/00 - JUDGMENT STRASBOURG February 24, 2009) - the Court exposure, the letter E shows that the version of the applicant, he complained that he was prevented correspondence to European Court of Human Rights by the civil prison asking him money (under the pretext that these services are not guaranteed to him by the free State - defendant is obliged to sell their food to buy stamps that can send letters) to facilitate the mail and keeps them letters. At point F, paragraph 39, stated that the applicant submitted two complaints regarding the violation of secrecy of correspondence, they were dismissed as a result of death,

Among the many applications of the applicant in relation to the right to life and health officials violated prison notified the Court held in paragraphs 87-92 violation of Article 8 of the European

[1] http://jurisprudentacedo.com/Gagiu-c.-Romaniei-Detinut-decedat-in-penitenciar.-Responsabilitatea-decesului.-Obligatii-statului.html

Convention on Human Rights and decided regarding refusal of prison Aiud to allow the applicant needs to correspondence, to give it its right end.

● Petri Sallinen et against Finland[1] - brings a new perspective on the notion of trespassing. In this case, the applicant requested that the business premises of which were built HardDiskDrive sites after some searches may be regarded as the home because he spends most of his time in that location and not the one that figure as the home of law and the search must be conducted according to procedures home search. The Court granted the request and gave the plaintiffs.

Following the admission decision the applicant's complaint, the search warrant that the investigating authorities have enforced loses its effectiveness, their actions turning into trespassing and violation of secrecy of correspondence and the evidence and information collected in this no way are considered as obtained, can not be used as evidence in a court.

4. Conclusions

Following the analysis in this paper, bending us and the views of the European Court of Human Rights applied solutions given consider as beneficial regulation offense of violation of secrecy of correspondence, sanctions fair and having an effective displays the contents of association. However, we believe that the actions of prevention of this crime are poor, even after classification function DPO (Data Protection Officer - responsible for the protection of personal data) that has been newly introduced by the General Data Protection Regulation.

Therefore we propose the establishment of autonomous bodies to supervise constant state agencies through their duties have access to and using personal data of citizens, developing public reports quarterly or annually to ministries related with proposals to amend the rules causing incidents, and their powers prosecution bodies competent to enter and notification in case of committing criminal offenses.

Given these findings, we welcome the idea of establishing the Judicial Inspection as autonomous and independent body according to the draft amendment of the law on organization and functioning of justice.

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[1] http://jurisprudentacedo.com/Notiunea-de-domiciliu-Sediu-profesional-Petri-Sallinen-contra-Finlanda.html

THE 13TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

Implications of Legal Misuse of Personal Data of Commercially Virtual Users

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Abstract: In the recent years, the Internet has had an enormous influence on society, changed our lives radically statement fully justified given that sources of information and communication has never been more readily available to the public, no doubt that we are in full digital revolution. Taking into account that the Internet has become accessible and relevant in the late 90s, we can say that in legal terms it is nowadays a relatively new field that requires a large number of regulations, both at national and at European or world. A controversy often a meet at this time is the storage, protection and accessibility of personal data navigation. It is well known that this data is stored, processed and used by various software companies, search engines, browser engines, social networks and Internet service providers. Many of these companies use this private data to provide users with advertising items and personalized recommendations stated aim to facilitate their web surfing and to protect personal data, which itself can be interpreted as a violation of privacy and not as protect it.

Keywords: personal data; web browsing; private life; human rights

1. Introduction

Protection of personal data is one of the most debated issues of the early 21st century, which is perfectly understandable given the technological advances of the past 30 years, the Internet reaching one of the main pillars modern society.

Given these circumstances, protection of personal data in online is a very sensitive issue, given the large number and are continually expanding the services and tools that to be used requires the collection of data identification and navigation user virtual.

Data collected online by diverse methods you shall go this presentation are used among others for campaigns pubic by analysing this information identifies the general interests of the user, their profile, goods purchased and services previously requested, age, sex, political and religious etc., Leading to display advertisements for goods and services for which the user is interested.

About data protection authorities in France and the Netherlands said that "Windows 10 users are not clearly informed what information Microsoft collects so that the agreement gave the company the use of their private data is not valid. Moreover, they do not know that their private information is used." Another example violation of privacy by using navigation data is the navigation system "Chrome"

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whose users even have the option to choose not their personal data be stored and used, this application cannot be considered by websites you visit and the condition use navigation engine is specified that, does not provide details about websites and web services respect requests and how sites interprets requests. "In other words, the user can choose effectively to preserve intimacy of their data private, nor receive clear information whether or not they are collected and used. In these circumstances it may be doubted, legitimately user rights on the protection of private data.

2. Law

2.1. According to the Constitution

Right to intimate, family and private life is enshrined in the Constitution under Art. 26[1] So that state authorities are obliged not only to respect but vine intimate person and to ensure its protection by means of legislative, institutional and material.

2.2. In relation to the European Human Rights Legislation

Through article 8[2] the right to privacy and family is also specified person's right to benefit from respecting the right to private life.

2.3. Regulation (EU) 679/2016 Data Protection

The rapid development of technology, along with globalization have led over the past two decades a change in how personal data is collected, accessed, transferred and used[3].

With the entry into force of this Regulation, on May 25 2018 a great deal of personal data protection issues will be resolved and the consent given by users will be offered by them a higher knowledge. Regulation clearer unambiguous consent character is one of the requirements listed in the statement of reasons given for making the said Regulation, as in paragraph 32[4] it highlighted the need for proper information to users on how information will be used data indexed from this and the need to guarantee that there are no uses other than those mentioned and accepted by it unequivocally.

In light of the REGULATION (EU) 2016/679, in Articles 5[5] listed a number of principal to be observed to protect the private lives of people, from which we can draw the following key ideas:

[1] Constitution Article 26 (1) public authorities shall respect and protect the intimate, family and private life. (2) Any natural person has the right to dispose of himself, if not violate rights and freedoms of others, public order or morals.

[2] European Convention on Human Rights, Article 8 1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as it is required by law and constitutes a democratic society, a necessary measure to national security, public safety or economic well-being of the country, prevention of disorder and prevention of crime, protection of health, morals, rights and freedoms of others.

[3] Nicholas cute Ploeşteanu Andrei Mariş- Protection of personal data, impact protection of personal data on business-assessments Romanian experiences and new challenges of Regulation (EU) 2016/679, p. 78.

[4] Position of the European Parliament of March 12, 2014 (not yet published in the Official Journal) and Council's position at first reading on April 8, 2016 (not yet published in the Official Journal). European Parliament position of 14 April 2016- (33) It is often not possible when collecting personal data, to identify the full order processing for purposes of scientific research. For this reason, the persons concerned should be allowed to express their consent to certain areas of scientific research when observed recognized ethical standards for scientific research. Data subjects should be able to express consent only for certain research areas or parts of research projects to the extent permitted by its intended purpose.

[5] Regulation. 679 of April 27, 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46 / EC (General Regulation on Data Protection, Art. 5: Principles relating to processing personal data (1) personal data are: a) lawfully processed, fair and transparent to the subject ("legal, fair and transparent"); b) collected for specified, explicit and legitimate purposes and are not subsequently processed in a manner incompatible with these purposes; further processing for archiving purposes in the public interest for the purposes of historical or scientific research or statistical purposes is not considered incompatible with the initial goals, in accordance with

→ The consent given by the person concerned must be fully informed and unequivocal.

→ Data processing must be transparent and under the conditions accepted by the user

→ The time period in which the data collected are stored should not be higher than reported

→ Keeping data safe without permits modification, deletion or spoiling by taking appropriate technical and organizational measures

3 The influence of the Regulation

This regulation allows the user to be better informed and to have a better control over their personal information data. The managers of these IT platforms will be required to provide a more concise statement of the terminal and conditions of use. However, even after the entry into force the new regulation, in our opinion, will remain a number of issues that should be a concern for the legislative Romanian and European authorities, among them is the existence of the basic settings of the approval user to use its data for commercial reasons thus with the basic agreement that it provides simply by selecting a mailbox, enterprises dealing with management operating platforms or social networks.

4. Conclusions

Regulation (EU) 2016/679 is welcome and will solve a number of current issues with a more modern and realistic perspective on computer data domain of virtual users, significantly reducing the use of such data improperly, however, given that technology advancing constantly consider and legislation must keep pace with it.

In our opinion, given globalization and the fact that through the Internet information can get instant anywhere in the world and that these data can easily outside the European Union, so out of power regulation, consider the need for a global treaty universally accepted, through which he could make a more effective protection of personal data of virtual users.

Article 89 (1) ("limitations on purpose"); c) relevant and limited to what is necessary in relation to the purposes for which they are processed ("minimizing data"); d) accurate and, where necessary, kept up must take all necessary measures to ensure that personal data which are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ("accuracy"); e) kept in a form which permits identification of data subjects for a period not exceeding the period necessary to fulfill the purposes for which data are processed; personal data can be stored for longer periods to the extent that they will be processed solely for archival purposes in the public interest for the purposes of scientific research or historical or statistical purposes, in accordance with Article 89 (1) subject to the implementation of technical measures and organizational measures provided for in this Regulation to ensure the rights and freedoms of the data subject ("limitations on storage"); f) processed in a manner which ensures adequate security of personal data, including protection against unauthorized processing or illegal and against loss, destruction or accidental damage by taking appropriate technical and organizational measures ("integrity and confidentiality").

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Violation of Secrecy of Correspondence - Means of Committing the Offense of Criminal Acts by Public Officials. Case Studies from the Practice of the European Court of Human Rights

Răzvan-Alexandru Condunina[1], **Narcisa Pintilie**[2]

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Keywords: communication; secrecy of correspondence; personal date protection; crimes

Motto:

"*Secrets are well hidden if they have one guard"*

Abu Shakur Balkh

1. Introduction

A fundamental need in the company's existence and even the existence of human being, one is without a doubt - communication. Without communication there can be no human relationships as we know them today. The need of individuals to express their thoughts, feelings, emotions and ideas to families and to those with whom she lives, has led to the evolution of communication - made from the beginning of simple gestures, signs or words - to a higher level, which advanced techniques involving transmission of information between individuals.

Economic relations have developed steadily between communities or states, personal relationships of an emotional or family of individuals, labor relations of people, all of us to evolve transmission of information on a variety of communication channels remotely. Extremely useful these ways to

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communicate hiding a vulnerability which, unfortunately, many of us remain indifferent, considering without reason that the information provided will not be transferred to third parties for use in illegal activities, causing harm in this way privacy and most often affecting privacy.

No doubt the relationship between the state and its citizens is one indissoluble. The state can not exist without its citizens, communication between state institutions and citizens must be effective and based not only on good faith but must be governed by strict legal rules aimed at protecting the state-citizen relationship as a whole. Romanian national unity and equality among citizens is guaranteed by the Basic Law in Article 4[1].

Basis which was the basis of our commitment to address this issue lies in the many cases where civil servants (as they are defined in Art. 175[2] Criminal Code) prelevându the access to citizens' personal data or even have in management with the nature of their (bank clerk, tax clerk, magistrate, intelligence officer, policeman, etc.) can use these data misuse.

The goal evealing the crime of violation of secrecy of correspondence (regulated by art. 302 Criminal Code) as offense-means for committing criminal offenses or serious breach of fundamental rights is to shape social danger created by the quality of the active subjects of this crime, par. 3 of art. 302 constituting an embodiment of the offense is aggravated punished by more severe (1-5 years in prison) to variations type (3 months to 1 year or 6 months to 3 years depending on the structure of the active material element in subjects' unskilled workers).

2. Analysis Offense of Violation of Secrecy of Correspondence in Terms of Qualified Active Subject - Civil Servant

Fundamental right of privacy of correspondence is revealed primarily by way of the Criminal Code criminalizing its violation. The offense is regarded as a complex, it is presented as two variants type that highlights the various ways in which this can be accomplished, or by accessing and / or seizure of correspondence of another without law and disclosure of information obtained by third parties, even if the information has arrived inform the offender mistake (art. 302, para. 1, Criminal Code) or by interception as electronic communications of any kind (art. 302, para. 2 Penal Code) and disclosure to third parties without the right even if the information they came to the attention of grşeală perpetrator (art. 302, paragraph 4, Criminal Code).

The structure of criminal offenses of the offense is filled by a distinct variation (Art. 302, par. 6), which consists of making the interception means for recording, with the aim of intercepting the execution of the free as introduced by Law 187/2012[3] Implementation of the Criminal Code.

[1] Constitution Art. 4 Unity of the people and equality among citizens. (1) The State foundation is Romanian national unity and solidarity of its citizens. (2) Romania is the common and indivisible homeland of all its citizens, irrespective of race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, wealth or social origin.

[2] Ciminal Code Art. 175 civil servants. (1) Civil servants, for the purposes of criminal law, an individual who, permanently or temporarily, with or without remuneration:

a) attributions and responsibilities established by law in order to achieve the prerogatives of the legislative, executive and judicial;

b) exercising a public dignity or public office of any kind;

c) exercise alone or with others, in an autonomous, of another operator or a legal entity owned or majority state tasks related to achieving the object of its activity. (2) It is also considered a civil servant within the meaning of criminal law, the person who exercises a public service which was invested by public authorities or is subject to control or supervision of the completion of their respective public service.

[3] Published in the Official Monitor, Part I no. 757 of November 12, 2012.

Another essential element in the structure of this crime consists of supporting specific cause (art.302, par. 5, Penal Code), under which the offender will not be held criminally liable if the act of violation of secrecy of correspondence helps to prove a or commit any other crimes or discover surprising if public showing interest and benefits to society outweigh the damage done to the passive subject.

Finally, the aggravated (art. 302, paragraph 3, Criminal Code) the crime is given by qualified active subject of the offense, it consisting of individual civil servant is just as responsible service confidentiality protection. Aggravated variants on this we will focus below.

Object of the crime in question is the subject of special legal - it is shaped by social relations that are born and developed in conjunction with the normal and safe communication between people - and the subject material - which is the very correspondence was stolen or destroyed or passage in which the communication line connected the device to intercept (Dobrinoiu & others, 2016, p. 592).

Active subject if aggravated variant is directly only a person who is a civil servant. In this case they will be outlined situations in which to commit the criminal offense involving more than one person, so we faced a stake improper.

The interest is possible in all its forms, but supports certain shades depending on the form of the paricipaţii namely:

→ Instigator and accomplice will be held criminally responsible for aggravated form of the crime if they knew or could provide quality poster public official, otherwise they are subject to prosecution for one variant type of crime according to the material element done;

→ If coautoratului, a prerequisite is that all who work directly for carrying material element to have the status of civil servants to be able to retain this form of participation, otherwise, those who acted directly in the act and have Varant aggravated required quality will meet one variant type depending on the material element done.

The discussion regarding passive subject does not require a thorough analysis, it can be any natural or legal person. It has noted, however, that there is a general and immediate passive subject, represented by the company, whose interest in the private life of persons is violated by violating secrecy.

One issue that will be examined for nuances complexity offense of violation of secrecy of correspondence is the criminal unit. We initially discusses the legal unit of the crime is, the offense in question, a plurality of actions as the law provides a single crime (Boroi & Anghel, 2016, p. 78). If the material element described in Article 302, paragraph 1 of the Criminal Code is committed by civil servants in several actions (opening, theft or destruction of mail) at different times and under the same criminal, against the same passive subject, the offense will get a continued character. For this purpose the crime continued to be detained, it needs to remember the essential conditions to be met:

→ be unity so active subject and the passive subject - one civil servant has committed any act of enforcement, targeting the same passive subject.

→ be a plurality of actions committed to a particular time - is a condition related to the essence of the offense repeated, each of the actions specified in paragraph 1 of article 302, can form single material element of the offense: for example, if a public official correspondence destroy a person, and the next day open its correspondence, it answers for the crime of violation of secrecy of correspondence through repeated and not a contest of two counts of violation of secrecy corepondenţei.

→ be a unit of content - every action of civil servant to destroy, steal, withhold or opening the mail will make content the same offense violation basecretului mail aggravated whether undertake acts

mentioned or cumulative two or more among them. It will not matter if some of these actions remains tentative stage, others will consume as reporting facts will be consumed.

→ be unit criminal intention - the public servant will have to have representation assembly activities in advance of the first action and want to achieve while shares of content the same offense, in other words, to deliberate form of guilt can be only intention.

→ acts are committed at different times - the uniqueness of criminal intention is that the intervals must be reasonable in duration as follows: to be higher than normal interruptions (the normal mail delivery by courier) but less than the time between acts that would lead to the conclusion that there is not a single criminal resolution (in this case will hold the contest between the two counts of violation of secrecy of correspondence, even if there is unity of subject passive and active) (Boroi & Anghel, 2016, p. 79).

Another unit crime, in addition to the legal unit, is the natural unit of crime, which will find applicability in option-type offense of violation of secrecy of correspondence given in paragraph 2 of Article 302 of the Criminal Code, the action interception without right to any kind of telephone or electronic communication shall be extended over time after time consuming, until the time of the last track (depletion) (Boroi & Anghel, 2016, p. 76).

The characteristics of continuous form variant-type as provided in paragraph 2 of Article 302 are that there is only one criminal intention, enforcement of interception without right to extend the time to be committed only with intent to have a single active subject qualified (acts are committed by the same public official) crime unit is maintained throughout the interception without right.

Essential in our discussion concerning the material element of interception by public persons is this intercept is not right. This implies the absence of a warrant from a judge of rights and freedoms for interception, which is a special surveillance measure that can be used during the criminal proceedings under Article 138, para. 1 point a)[1] Para. 2[2] the same article defines the concept of interception as it is permitted only under mandate interception.

Concluding observations on crime unit in the forms of this crime, it can get a continued criminal offenses (art. 35, para 1[3]) Where the public official correspondence violates the same person at different times given the same criminal (Mitrache & Mitrache, 2017, p. 133) or a continuum where the public servant intercepts a person naturally without the right to obtain information and continuously pursued criminal resolution (Mitrache & Mitrache, 2017, p. 119).

To make the transition to the next section of our study we will have to address the subjective side of the offense of breach of secrecy. Undoubtedly, the existence form of knowledge required for the offense is the intention, directly or indirectly, by executing the perpetrator of the material element and having its representation will follow-up actions.

[1] Criminal Procedure Code - Special methods of surveillance or investigation Art. 138. General. "(1) The special surveillance or research methods: a) the interception of communications or any kind of distance communication; ..."

[2] Criminal Procedure Code - Special methods of surveillance or investigation Art. 138. "... (2) interception of communications or of any type of communication means intercept, access, monitoring, collection and recording of communications by telephone, computer system or by any other means of communication ..."

[3] *Criminal Code, Art. 35, para 1*- continued crime unit and the complex. "(1) The offense is continued when a person performs at different intervals of time, but to achieve the same resolution and same subject passively against actions or inactions presenting, each one, the content of the same offense ..."

The content of this crime is linked to a phone or a goal, but if it exists and is in the form of other crimes, the situation becomes complex, meeting the requirements of a series of offenses, the offense of violation of secrecy of correspondence becomes infracţiune- middle.

3. Use the Offense of Violation of Secrecy of Correspondence as Offense-Means for committing other Criminal acts

Why I am qualified for this study crime of violation of secrecy of correspondence as offense-means for committing other criminal acts? - to define how this crime can be used to perform other criminal offense, thus achieving in this way a series of offenses charged perpetrators. Realization of offenses will outline creating a plurality of offenses, ie two or more crimes related legal entities through a personal connection or real (Boroi & Anghel, 2016, p. 85).

For the concurrence of offenses are necessary as more conditions are met, namely: to be committed at least two offenses by the same active agents (described in our case - the civil servant or official), and the latter can be criminal liability for at least two counts. In our study, we will analyze situations in which the crime of violation of secrecy of correspondence is put into the context explained above, is used as a weapon to commit another offense by a public official.

There will be confused whether the offense addressed in this study is the goal perpetrator pursued by the resolution of crime, committing a criminal offense to obtain information from private correspondence of a person - where the violation of secrecy of correspondence is an offense-purpose not an offense-means, being us but still under the influence of a series of offenses.

All crimes are committed through violation of secrecy of correspondence, from those against life and person (murder, manslaughter, battery or other violence, etc.), against property (burglary, theft, robbery, etc.) to crimes against forces army and state security, the latter qualified active subject with a leading role.

To narrow the range of offenses the violation of secrecy of correspondence is the USER as offense-means, we lean out several criminal active subject qualified person civil servant or official has the opportunity higher to act as follows: false identity, extortion and unjust repression.

→ false identity (art. 327 Criminal Code - is presented in the form of a variable type that consists in presenting under a false identity or assigning a false identity to another person presentation made by a public official or sent to a public body by illegally using a document or identification document, authorization to mislead a public servant in order to produce legal consequences for himself or for another, an alternative-compounded when the presentation identity false used a real identity of a person; a variant-treated in the custody of an act that is used without authorization to be used as (Dobrinoiu & others, 2016, p. 712)) - to define where that crime is a crime-purpose using violating the secrecy of correspondence as offense-means we bring into question the assumption that a public official of the National Agency for Fiscal Administration access information and correspondence of someone who wishes to revenge, with an iT operator within the same institution - the latter providing information from negligence, intentional or no guilt - and uses this information to create the account and the name of that false debts. In this case, the civil servant shall be liable for the crime of violation of secrecy of correspondence in competition with the offense of false identity. Regarding IT operator:

● Intent - accomplice to a crime contest between violating the secrecy of correspondence and false identity if he knew the intentions public official or other violation of postal secrecy only if it provides information knowing that it requires a civil servant is not right;

● fault - will be liable to disciplinary or will be subject to a lighter punishment;

● without guilt - not criminally responsible, and eliminating this competition offenses hypothesis presented initially as the sole active subject will be held criminally liable for the crime of false identity.

→ Blackmail (Article 207, Criminal Code - is presented as a variant-type consisting of coercion of a person to give something, do something, do not do something that normally would have done without coercion or suffer some everything in order to acquire unduly avail patrimonial, a variant-treated which is threatening to give the public or to a third false or real, compromising the person threatened or to a family member of that order get a non-economic use; one-compounded version of the previous embodiments in which the actions are employed in order to obtain a patrimony (Dobrinoiu & others, 2016, pp. 115-116)) - in this case we will bring into question the assumption that an officer working in the Romanian Intelligence Service, intercepts without right (without a warrant to intercept issued by a judge and a request from organuleor IP) electronic mail and calls a friend's family, threatening to provide information accessed if her husband will not get a steady amount of money or sexual favors. In this case, the officer will be criminally liable for the crime of violation of secrecy of correspondence in the competition with the aggravated offense of blackmail.

→ crackdown unfair (art. 283 Criminal Code - is presented as a variable type that is the initiation of criminal proceedings, the arrangement of preventive measures custodial or indictment of a person, knowing that it is innocent one embodiment, which consists in retaining worse, arrest or conviction of a person, knowing that innocent (Dobrinoiu & others, 2016, p. 472)) - also if the information obtained illegally by violating secrecy of correspondence by an intelligence officer or by an investigative body, are altered or modified to create fake reasonable suspicion of an offense that will lead to the initiation of criminal proceedings and detention of a person, will be retained in the offense of unfair competition repression of the crime of violation of secrecy.

Violation of secrecy of correspondence is an offense classified as an offense in the Criminal Code service, which has a correspondent in the previous Penal Code criminalized in Article 195 which appears in the current indictment novelty is the option even worse in qualifying active subject, making it is transferred from the category of offenses against personal freedom in the category of service offenses (Dobrinoiu & others, 2016, p. 590).

4. Case Studies of European Court of Human Rights Concerning the Violation of Secrecy of Correspondence by Officials

We focused attention on two case studies that have been brought before the European Court of Human Rights to address situations in which breached the fundamental right of privacy of correspondence, namely:

● Gagiu against Romania[1] (Prisoner died in prison. Responsibility death. State obligations - Application no. 63258/00 - Judgment Strasbourg February 24, 2009) - the Court exposure, the letter E shows that the version of the applicant, he complained that he was prevented correspondence to European Court of Human Rights by the civil prison asking him money (under the pretext that these services are not guaranteed to him by the free State - defendant is obliged to sell their food to buy stamps that can send letters) to facilitate the mail and keeps them letters. At point F, paragraph 39,

[1] http://jurisprudentacedo.com/Gagiu-c.-Romaniei-Detinut-decedat-in-penitenciar.-Responsabilitatea-decesului.-Obligatii-statului.html.

stated that the applicant submitted two complaints regarding the violation of secrecy of correspondence, they were dismissed as a result of death,

Among the many applications of the applicant in relation to the right to life and health officials violated prison notified the Court held in paragraphs 87-92 violation of Article 8 of the European Convention on Human Rights and decided regarding refusal of prison Aiud to allow the applicant needs to correspondence, to give it its right end.

● Petri Sallinen et against Finland[1] - brings a new perspective on the notion of trespassing. In this case, the applicant requested that the business premises of which were built HardDiskDrive sites after some searches may be regarded as the home because he spends most of his time in that location and not the one that figure as the home of law and the search must be conducted according to procedures home search. The Court granted the request and gave the plaintiffs.

Following the admission decision the applicant's complaint, the search warrant that the investigating authorities have enforced loses its effectiveness, their actions turning into trespassing and violation of secrecy of correspondence and the evidence and information collected in this no way are considered as obtained, can not be used as evidence in a court.

5. Conclusions

Following the analysis in this paper, bending us and the views of the European Court of Human Rights applied solutions given consider as beneficial regulation offense of violation of secrecy of correspondence, sanctions fair and having an effective displays the contents of association. However, we believe that the actions of prevention of this crime are poor, even after classification function DPO (Data Protection Officer - responsible for the protection of personal data) that has been newly introduced by the General Data Protection Regulation. Therefore we propose the establishment of autonomous bodies to supervise constant state agencies through their duties have access to and using personal data of citizens, developing public reports quarterly or annually to ministries related with proposals to amend the rules causing incidents, and their powers prosecution bodies competent to enter and notification in case of committing criminal offenses. Given these findings, we welcome the idea of establishing the Judicial Inspection as autonomous and independent body according to the draft amendment of the law on organization and functioning of justice.

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THE 13TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

The Usefulness and Proportionality of the Measures in Relation to the Restriction of Human Rights and Fundamental Freedoms

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Abstract: Once with taking into effect of the General Data Protection Regulation (GDPR), the notion of personal data is defined by art. 4 point 1 of this Act, as follows: "personal data" means any information relating to an identified or identifiable natural person ("the data subject"); An identifiable natural person is a person who can be identified, directly or indirectly, through an identification element, such as a name, an ID number, address, or more specific elements of his physical, physiological, genetically, psychical, economic, cultural or social identity." Romanian Constitution is a guarantor of personal values, liberty and safety of their citizens. The fundamental law and our Criminal Code are the protectors of human dignity and personal integrity. Personal data protection is an important subject to discuss nowadays because the evolution of society and technology had influenced private life of persons. Our Crime Code is penalizing the persons who violate the fundamental rights of another person.

Keywords: personal data; interceptions; surveillance technique; private life

1. Introduction

We proposed to approach this subject because of its great timeliness and the importance of the criminal process. The development of technology and human society, and have put its stamp in a way which is particularly on the private life of natural persons who are often topics of control and surveillance.

I've been watching the evolution of the Romanian system was adduced in the right, the manner in which the provisions of the Code of penal procedure were aligned to the European and I found that little by little is achieved improvement of the system of law and the rules that govern it.

In the course of penal process must ensure first find out the truth, in rem, with regard to the facts and circumstances of the case, as well as in Personam, in respect of the person faptuitorului. The truth in the criminal process represents an exact mirroring of objective reality in the depictions and the conclusions drawn by the judiciary separated them from the administration of the samples.

Technical supervision, ordered by the Court of rights and freedoms at the request of the prosecutor and under the careful to monitoring is a rather delicate procedure in the light of the diversity of human figures and the flow of personal information with which the components of criminal cerectare come into contact.Every person has the right to respect for his private life, cannot be subject to any interference in the intimate life, personal or family, nor in the domicile, habitual residence or

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correspondence, without his consent. The legislature has taken into account that the person subject to this proceeding, should be informed about this (art 144[1] C.P.P., art 141[2] of the C.P.P.).

Aslo, it shall be prohibited to use in any way to the correspondence any writings or other personal documents, as well as information on the private life of a person without his consent.

2. The Protection of Individuals with Regard to the Processing of Personal Data

In relation to the Constitution: that the fundamental law of the Romanian state, this has the role to protect its citizens and their rights1 (Article 1(3), to ensure the functioning in the harmony of the 3 powers governing the entire system[3] and the legal order. Individual freedom[4], intimate life and family values are also guaranteed by the Constitution[5], paradoxically they are often violated or civil servants or by other persons who become active subjects of crimes against the freedom of the person, regulated and punished under the Penal Code.

The definition of personal data is currently established by the law 677/2001 and shall include the following information - the personal data are information relating to a natural person, so data that can identify an individual, not about the data that can identify companies; - personal data may be any information leading to an identified or identifiable natural person.

If in the case of information referring to a person identified, they are more easily visible (for example, identified by the name and surname), as regards the information about individuals identifiable spectrum is much wider. This means that an identifiable person is that person who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his identity, physical, physiological, mental, economic, cultural or social.In other words, in

[1] The judge of the rights and liberties shall be pronounced in the Council, without summoning the parties, through the conclusion which is not subject to appeal. The original preparation is mandatory. (3) The total duration of the technical surveillance measures, with regard to the same person and the same deed, may not exceed, in the same question, 6 months, with the exception of the measure of video surveillance, audio, or by shooting in private spaces, which may not exceed 120 days.

[2] The authorization of certain technical measures for the surveillance by the public prosecutor (1) The prosecutor may authorize, for a duration of up to 48 hours, technical measures of surveillance when: (a) there is an emergency, and the mandate of survey under the conditions laid down in Article 140 would lead to a substantial delay of research, to the loss, alteration or destruction of samples or would endanger the security of a person aggrieved, the warning or members of their families; and (b) are fulfilled the conditions laid down in Article 139(1) and (2). (2) The Order of the prosecutor authorizing the surveillance technique must include the particulars referred to in Article 140(5). 3) The Prosecutor has the obligation to notify, within a period of not more than 24 hours after the expiry of the measure, the judge of the rights and freedoms of the Court which he would return the competence to judge concerned in the first instance or from the appropriate authority in its degree in whose constituency is the headquarters of the prosecutor's office of which the prosecutor who issued the decree, for confirmation of the measure, bouncing at the same time a minutes of play summary description of the technical surveillance activities carried out and the case-file.

[3] (4) The State shall be organized in accordance with the principle of separation and balance of powers - legislative, executive and judicial process - within the constitutional democracy. (5) In Romania, the observance of the Constitution, of its supremacy and of the laws is binding.

[4] Individual freedom: (1) individual freedom and security of person are inviolable. (2), detainment or arrest of a person shall be permitted only in the cases and under the procedure provided by law. (3) Detention may not exceed 24 hours. (4) placing into custody by the judge, and only in the course of penal process. (5) During the penal prosecution preventive arrest may be disposed of for not more than 30 days and may be extended by no more than 30 days without the total duration may not exceed a reasonable period of time, and no more than 180 days.

[5] Romanian constitution:

The Romanian State: (3) Romania is a democratic state governed by the rule of law, and social, in which human dignity, the citizens' rights and freedoms, the free development of the human personality, justice and political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution in December 1989 and shall be guaranteed.

a direct way we don't know who is a person, but it can be identified by means of user-friendliness of information from other sources (e.g.: various data bases).

Can be considered personal data: the number of series and ID, e-mail address, date of birth (in conjunction with other information may lead to the identification of the person, whereas there are a large number of people born in the same day, and that same year), the number of imnatriculare of a machine (for that can give information about the owner who has led the machine or drive the vehicle at a certain moment), the IP address.

The protection of individuals with regard to the processing of personal data by the competent authorities for the purpose of preventing, instigarii, detection and prosecution of criminal offenses or of protecting against threats to public safety and prevention, as well as the free movement of such data, subject to a specific legal act of the Union. Therefore, this Regulation, when they are used for these purposes should be governed by a legal act more specifically, namely the European Union (EU) Directive 2016/680/EC of the European Parliament and of the Council.

The Member States may entrust the competent authorities within the meaning of Directive 2016/680 (EU), tasks which are not necessarily met for the purpose of preventing, instigarii, detection and prosecution of criminal offenses or of the enforcement of penalties, including protecting against threats to public safety and prevention, such that the processing of personal data for other purposes, in so far as it falls within the scope of Community law, to fall within the scope of this Regulation.

3. Special Measure of Technical Supervision in Relation to the Restriction of Human Rights and Fundamental Freedoms

Special methods of supervision or research may be applicable only in the case of those persons on which bears the reasonable suspicion that are partase to committing crimes. These methods are covered in Article 138. C.P.P .and 139 CPP.

Obtaining the data generated or processed by providers of public electronic communications networks or service providers of publicly available electronic communications services, other than the content of the communication, adopted by them under the law relating specifically to the retention of data generated or processed by the suppliers of networks electronic communications service and the providers of publicly available electronic communications services.

The devices of interception (Dobrinoiu, 2016) may also be the subject of a crime regarding the invasion of privacy in the case in which are not legally installed.

By the interception of communications or any type of interception of communication means, access, monitoring, collection or recording of communications made by phone, computer system or by any other means of communication. By video surveillance, audio, or by means of persons shooting shooting, observation or record conversations, movements or other activities.

To obtain data on financial transactions of a person involves the pursuit of any of the operations carried out by this, aimed at increasing the awareness of financial transactions, fectuate content by means of a credit institution or other financial entities, as well as getting to a credit institution or other financial entity of documents or information in its possession relating to the transactions carried out by that person.

In Article 1391 of the Code of penal procedure, adopted by Law No 135 of 1 July 2010, published in the Official Gazette of Romania, Part I, No 486 of 15 July 2010, as amended by EGO no. 3 of 5 February 2014, published in the Official Gazette of Romania, Part I, no. 98/07.02.2014, is regulated, as a special method, technical supervision .

This is prepared by the judge of the rights and liberties:

- that the magistrate independently;
- when both of the following conditions are fulfilled:

There is a reasonable suspicion with regard to the preparation or committing an offense against national security provided for in the Penal Code and special laws, as well as in the case of drug traffic , traffic in arms traffic, acts of terrorism, money laundering, the falsification of the currencies or other values, the falsification of electronic payment instruments, against the heritage of blackmail, rape, deprivation of freedom, tax evasion, corruption offenses and infringements treated in the same way as infringements of corruption, criminal offenses against the financial interests of the European Union, of the person committing criminal offenses for which the information systems or by means of electronic communications networks, or in the case of other criminal offenses for which the law provides for the imprisonment penalty of five years or more;

The supervision of the technique can be ordered during the penal prosecution, for a period of not more than 30 days, at the request of the prosecutor, judge of the rights and freedoms of the Court which he would return the competence to judge concerned in the first instance or from the appropriate authority in its degree in whose constituency is the headquarters of the prosecutor‘s office of which the prosecutor who made the request. The request for the approval of the technical supervision shall be settled on the same day, the Council, without summoning the parties, but with the compulsory participation of the prosecutor. The conclusion whereby the judge of the rights and liberties shall decide on the measures of technical monitoring is not subject to appeal.

At the reasoned request of the person aggrieved judge, prosecutor may request the authorization of interception of communications or their registration, as well as any of the types of communication made by this by any means of communication, irrespective of the nature of the offense forming the subject of the research (Article (140). The prosecutor may authorize, for a duration of up to 48 hours, technical measures of surveillance when: a) there is an emergency, and the mandate of survey under the conditions laid down in Article 140 would lead to a substantial delay of research, to the loss, alteration or destruction of samples or would endanger the security of a person aggrieved, the warning or members of their families; (b) the conditions are met shown above (Article 141).

The prosecutor enforce the supervision of the technical times may provide that this should be carried out by the criminal investigation or specialised workers of the police or other specialized bodies of the state. Any authorised person who carries out the technical monitoring activities, on the basis of this Law has the potential to provide electronic signature of data resulting from the activities of survey, using a signature electronia extended based on a qualified certificate issued by a service provider certification accredited

Any person who is authorised to transmit data resulting from the activities of the technical supervision, on the basis of this law, has the possibility to sign the data transmitted using electronic signature and an extended based on a qualified certificate issued by a service provider accredited certification and identifying the unambiguous description of the person authorised, this being the iss such responsibility as regards the integrity of transmitted data. Any authorised person who receives data resulting from

the activities of the technical supervision, on the basis of this law, has the possibility to verify the integrity of data received and certify this by signing the integrity of data, using an extended electronic signature to be based on a qualified certificate issued by a service provider accredited certification and identifying the unambiguous description of the person authorised to do so.

4. Conclusion

We believe that the laws of Romania in the nature of the criminal procesual aligns with international regulations, respectively (EU) Directive 2016/680/EC of the European Parliament and of the Council of 27 April 2016 on the protection of individuals in relation to the processing of personal data by the competent authorities for the purpose of preventing, detecting, investigating and prosecuting criminal offenses or of the enforcement of penalties and on the free movement of such data.

Rapid technological development and globalisation have generated new challenges for the protection of personal data.The extent of the collection and exchange of data with personal character have increased significantly. This technology allows the processing of categories of data to an unprecedented level within the framework of the activities as well as the prevention, investigation, detection and prosecution of criminal offenses or the execution of penalties.

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THE 13TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

The "Joseni Case" - an Example of Effective International Cooperation in Solving a Case of Shooting Murder

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Abstract: Investigation of violent crimes is one of the most complex and interesting activities that could be done by the prosecutor and police officers and must be based on a special strictness. The most important aspects in the investigation of these offences, considered the most serious, consist in the crime scene investigation and the international police cooperation, for the files with foreign elements. "The Joseni Case" was about a homicide committed on 22th of April 2011, the victim CSALA ZSOLT, aged 42, was the deputy mayor of Joseni in Harghita County who has been shot by unknown perpetrators, in the cottage located on the edge of the village. The crime scene investigation was carried out with great attention and this led to the discovery a plenty of evidences that were subsequently exploited by performing genetic and ballistic expertise, with the support of specialists and experts of the Romanian Police. The efficient outcomes were corroborated with the information obtained from the investigations, as well as with an excellent international cooperation with the authorities of other states, through official channels. Among them are the identity of some DNA profiles discovered on the ammunition used, with the DNA profile of the author, also the finding of the Swiss origin of the weapon used to commit murder. To conclude, the professional conduct of the crime scene investigation, but also strengthening the exchange of information within international police and judicial cooperation, together an extremely professional and experienced team of investigators, represent the premises of a successfully solving the case by identifying the perpetrators of the serious crimes.

Keywords: Crime scene investigation; cooperation; investigation; DNA profile; weapon and ammunition; author

Investigation of violent crimes, especially those of serious violence, is one of the most complex and interesting activities that could be done by a police officer in his entire career. Acts of great violence are the most serious crimes, as they are the ones that have the worst result as the death of a person, the most important social value. The consequences produced by committing these serious crimes, but also the way and the violent means used by the authors require a proper reaction from the state authorities, which suppose the allocation of considerable resources to investigate these cases, until the punishment of the perpetrators and imprisonment for a long time.

As was mentioned, the investigation of these serious crimes must be based on a special strictness from the competent and designated investigation team and include a series of specific means and methods, stipulated by some legal provisions, especially criminal law and criminal procedure code.

Among the activities carried out by the police officers in the investigation of these cases we could mentioned the crime scene investigation, but also the international police cooperation in the context in which the opening of borders within the European Union has made criminals to travel from one

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country to another without barriers throughout Europe to commit crimes that are very difficult to prove without a constant cooperation between Member States.

For the beginning, the importance of the crime scene investigation must be emphasized, including the case which we will expose further.

The specialists know the fact that the crime scene, the place where the offence was committed is the richest in traces or information related to the criminal act and about the author. Moreover, there are a lot of discussions and opinion regarding what the crime scene term means. In case of a murder or other serious crimes where the result is the death of the victim, this crime scene investigation is the most important part of the criminal case. As Emilian Stancu says, "*Crime scene investigation represents the beginning of investigations into particularly dangerous offences like murders, rapes or robberies followed by the death of the victim, destruction, catastrophes or serious accidents, organized crime, etc."* (Stancu, 2010, p. 357)

It can be appreciated that in a very high percentage, this first activity is decisive for identifying the author and solving the case, through the way it is done, through the diligence and professionalism of those who participate. And this is why the crime scene investigation must be done with great responsibility -a principle that has always had the attention. American forensic scientist Geberth J. Vernon, a former homicide officer in New York with great experience in investigating murders, said about the crime scene investigation: *"Remember: Do it right the first time. You only get one chance"* (Vernon, 2006).

On Good Friday of 2011, a horrible crime shook the peaceful community from the Joseni locality, one of the bigger and cold villages in Romania, from the point view of temperatures, being located at the lower altitude of the country. In fact, the old name of this village is Alfalău, in translation "The lower village".

The victim was a significant member of the local community, namely deputy mayor CSALA ZSOLT, aged42, and was found shot in his cottage located in the Borzont village, a quiet place at the base of the mountain called" Putna by locals.

Police Harghita Dispatch has been notified on 22th of April 2011 at 19.55 by a person, a friend of the deputy that he found the body dead-alive when he arrived at the place of the crime and has announced the Police.

The victim had multiple injuries in the abdomen, the left leg, left buttocks and in the right dorsal area, all these injuries caused by gun shooting.

The autopsy of the body was performed on 23th of April 2011and the conclusions of the forensic examiners were the following - the death was violent and due to the acute cardio-circulatory insufficiency consequent to shot thoraco-abdominal wounds with massive internal hemorrhage.

Modus operandi used by the authors of the homicide, unknown at that time, and the quality of the victim and excessive publicity of the case led that a team of specialist police officers from the central structure of Romanian Police, Criminal Investigations Directorate were sent to support local investigators since the beginning of the investigations. Moreover, for the same reasons, the case was taken over from the Prosecutor's Office attached to the Harghita Tribunal in order to carry out the criminal investigation and identify the perpetrators by the Prosecutor's Office attached to the High Court of Cassation and Justice, Criminal Investigation and Forensic Section.

As it is written in the specialty books, from the very beginning the investigative hypotheses were elaborated, the main versions of the case being:

⇨ Authors could be people dissatisfied by the way property rights were respected during land restitution or other activities in which the victim was involved, as deputy mayor taking into consideration the long period he was in charge;

⇨ Perpetrators could be persons with whom the victim was in civil or criminal proceedings, litigation generated by the situation in the Joseni Compound, in whose organization there were interest groups developed, in an old state of conflict, with some threats to the victim;

⇨ Crime could be committed of jealousy because the victim's extramarital relations or even homosexual relationships with people around him.

Taking into consideration these hypotheses, as well as the data resulting from the ballistic and genetic expertise of the National Forensic Institute, the investigations and informative activities carried out in this case were complex and involved relevant logistical and human resources, within several structures of the Romanian Police, but also from other law enforcement authorities, such as the Romanian Intelligence Service, etc. All these activities were conducted and coordinated in a unique concept by the Criminal Investigation Directorate and the prosecutor in charge from the Prosecutor's Office attached to the High Court of Cassation and Justice.

For example, in the village of Joseni, almost 2.115 males were verified, about 400 people were taken statements and 760 DNA genetic samples were collected, several home searches were carried out by complex teams, were conducted many polygraph tests and a lot of request demanding information to the mobile operators.

To return to the main activities carried out in our case, the crime scene involved wide area for searching because the holiday house of the victim is a big one, its close surroundings of the lodge being checked thoroughly during two days (in total, the crime scene investigation lasted more than 14 hours).Thus, we investigated forensic all spaces in the lodge, but especially the technical room where the boiler was, located in the west and also the bottom of the hill, where it has been identified the place where the perpetrator fired at the victim (see photos no. 1, 2 and 3).

Photography 1.

Photography 2.

Photography 3.

Even in this case, the investigationof the crime scenehasledto many evidences and means of proof that will be very important in the whole process of probation, as we will see later. In addition to the numerous and classical fingerprints collected, it has been identified a lot of biological samples, pieces of metal from bulletsand other means of proof as sample.

Also, were found three cartridge cases coming from firearms ammunition and a bullet cartridge without percussion, all of this were caliber 7,5x55 mm (e.g.: photosno.4 and no.5).

Photography 4

Photography 5

Following the result of the crime scene investigation, were disposed more expertise to the Romanian Police experts, firstly, ballistic and genetic forensic expertise. The forensic DNA expertise of the means of proof found at the crime scene brought an extremely good result, somehow unexpected for the investigators, considering the fact that on the respective cartridges took place a destructive physical-chemical process by firing with the riffle and also because of the very low temperature in the Joseniarea at that time of the year.

Thus, in addition to other samples subjected to genetic analysis, the four cartridge tubes were treated int he Genetics Laboratory of Romanian Police, were identified micro traces consisting of epithelial cells whose genotyping highlighted a DNA genetic profile belonging to an unknown person. The genetic profile of a person unknown at that time was identified on three of the cartridges analyzed and on the fourth was found the same DNA profile in a mixture with another unknown person.

Subsequently, this profile, not assigned to a person, was compared in some genetic expertise with the genetic profile of many suspects, people mainly from the community in the area, a fairly large number (as mentioned above were taken around 760 biological samples, but not all of these reference samples were processed).

Also, the ballistic expertise disposed on ongoing investigation added a value to the file, the fact that all the ammunition elements were fired with the same weapon, the ammunition elements are most likely of Swiss origin, but also more important was the conclusion that the high probability that the firearm used for committing the crime is originally Swiss, a **Schmidt-Rubin** carbine type, or ZfK55 Sniper Rifle, BLEIKER, Swiss Stgw.57, Sauer model S205Phantom.

In this regard, were involved specialists from Directorate for Firearms and Ammunition specialized in this matter and it was established that in Romania there are eight persons who are legally owners of the fire arms with caliber 7,5x55 mm, but the checks and ballistic expertise conclude those persons could not be one of the suspects.

Thus, from the analysis carried out up to a certain point of the investigation, the conclusion was that **the ammunition elements are from Swiss production**, **were fired with the same weapon, probably made in Swiss** and **one similar DNA profile of an unknown male person** was identified on the cartridges, in fact, we'll see later, from the perpetrator himself.

Further on, an important point in the investigation was the discovery of a part of a firearm. The diopter was made available by the victim's family, sometime after the crime was committed. This disclosure accelerated somehow the investigation directing them in the right way. The weapon used in the homicide was equipped with a special sighting device (a diopter), manufactured by

WAFFENFABRIK BERN OF SWITZERLAND, a device not characteristic of the serial model, which seems to have been lost by the defendant, near the crime scene and was found at a moment after the on-site research- Photographyno.6 shows the identified part, Photographyno.7 presents images of some parts produced by the factory.

Photography6

Photography7

One other particularly important activity, in fact, one of the topics of this paper, was the cooperation and exchange of information with the Swiss authorities through the liaison officer (home affairs attaché) of Romania in Switzerland, the official channel of the International Police Cooperation Center.

Taking into consideration the information obtained from the beginning of the investigation about the ammunition used in the murder of Csala Zsolt, Swiss production ammunition and the probability of a Swiss riffle (at that time was unknown), it was intensified the correspondence with authorities from Switzerland (The Cantons Country), materialized in several operational messages and requests for police assistance, regulated by European directives.

As a result, data and information useful to the case come up, through which the first investigative hypothesis outlined from the beginning was confirmed, which finally will be led to the identification of the authors. The investigation benefited from a very open cooperation partner, willing to check every request coming from the Romanian policeman, mediated by the representative of Romanian police authority in Switzerland.

As we said, the data obtained strengthened the hypothesis of using a Swissfirearm to commit the murder of CsalaZsolt. The ammunition, 7,5x55mm caliber, identified at the scene, is used for type of weapons like Carabine **Schmidt-Rubin Model 1931-K31.** From information provided by Swiss authorities we found out that the riffle Schmidt-Rubin have equipped army Marinciu Doru Antonio, of Switzerland still in the last century, this type Carabine K31 has been used since 1931 (as shown by the sign)and the weapon Schmidt-Rubin-K31 was the private weapon for each soldier of Switzerland army, in the period of 1933-1958.Traditionally, Swiss military weapons were kept at home whilst the citizens were military active, also after retirement at age 55, all Swiss citizens have the right to keep weapons in family chest in their house. Weapons are mostly functional, but are not registered and there is no official register with the owners so they were unknown.

Finally, the Carabine K31 was replaced with the Sturmgewehr 57, an assault weapon and, by the end of the 1958, a number of 582.230 pieces of weapons had been produced. The latest weapon of this type was decommissioned in 1970 and since then has been used in sports as shooting gun.[1]

Regarding the discovered part, the data confirmed that it was a diopter specific to the Carabine weapon K31, it was produced in series mode, but without assigning an identification series.

We present inPhotographyno.8 the weapons **Schmidt-Rubin** which have been used by the Swiss army during the last century.[2]

Schmidt-Rubin Model 1889

Schmidt-Rubin Model 1897 Kadet Rifle

Schmidt-Rubin Model 1900 Short Rifle

Schmidt-Rubin Model 1905

Schmidt-Rubin Model 1896/11

Schmidt-Rubin Model 1911

Schmidt-Rubin Model 1911 (“K11”)

Schmidt-Rubin Model 1931 (“K31”)

Swiss Sturmgewehr 57

Photography 8

On the basis of this assumptions that became the main hypothesis, the investigation led to identify the witness Ming Peter Johann, a Swiss citizen residing in the Philippines. By hearing the witness Ming

[1]https://en.wikipedia.org/wiki/Schmidt%E2%80%93Rubin.
[2]http://www.swissrifles.com/sr/index.html.

Peter Johann, he stated he introduced in Romania, during the year 2000, two Schmit-Rubin K31 military weapons, caliber 7.5x55 mm together with 40 bullets of the same caliber, which he kept fora long time at the victim's house in Joseni village, until 2006, when Ming Peter Johannhanded them over to **LORINCZ ROBERT**, a 31 years old male, from Joseni, Harghita county.

The proof of the guilt of the author Lorincz Robert was largely based on the DNA expertise carried out in the case by the National Forensics Institute of Romanian Police.

As we have mentioned, starting from a crime scene investigation made very carefully and responsibly and investigating various suspects including defendant Lorincz Robert, geneticist specialists have concluded that DNA profile of the Lorincz Robert has the same formulas as the DNA profile obtained from micro traces identified on the cartridge found on the spot. *"The frequency of retrieving the genetic profile of the biological sample collected from the named Lorincz Robert, identical to those obtained from micro traces …in the Caucasian population, is 2,01x10^{-23} Population group in which this profile is unique is 4.9 X10^{22}nongeneticallyrelated individuals"*[1].

The author admitted he was guilty of committing the murder, from the first statement, but later, he denied and tried to invent a series of "stories" unlikely to be plausible, without any evidence and demonstrable reality.

It was established that the perpetrator took the weapon from the place where it was hidden and a number of five cartridges and moved with his friend Mészaros József, dressed in camouflage clothes, hood and gloves, to the edge of the forest near the cottage of Csala Zsolt, where he waited so that the victim would remain alone. He executed a gunshot on the victim, who managed to take refuge in a cottage, then he forced the access door and fired another two shots towards the victim, causing her death.

After the hearing of the author corroborated with the investigative data, we found out the motive for committing the homicide, was represented by two previous events:

- An incident at the Joseni City Hall in 2007-2008, when the victim sexually molested the defendant, on a state of alcohol intoxication of the two man;
- Situation regarding the change of the location of a land that belonged to the author within Borzont village, when it was found that the measured land area did not correspond to the tabulated one, less by 3.000 m, the border line passing through the middle of the cottage raised on its land, situation for which he found guilty the victim Csala Zsolt.

At the same time, the author led the investigators to the place where he buried the weapon of the crime (including the second weapon illegally held), on a vacant lot near his holiday house, on the boundary of the village Borzont (Photography no. 9 - the weapon used to commit murder, discovered within the village of Borzont).

[1] Personal archive –DNA genetic expertise report of the Forensics National Institute, founding the case file.

Photography 9.

These excellent results were obtained, as we said, by a considerable effort, common of all structures involved, but in this regard, it should be noted a number of difficulties faced, starting from performing the activities mostly in an area inhabited by a minority community, well-cohesive community which hardly was open to the needs of the investigators.

Because all investigations have an ending, and most often this is successful, according to the indictment issued in case by Criminal Investigation and Prosecuting Section of the Prosecutor. Office attached to the High Court of Cassation and Justice – *"The act of the defendant Lorincz ROBERT, which in period 2007-2011 held two weapons, Schmidt - Rubin K31 brand, without legal right, stored at his cottage in the Feher Patak area, Borzont village, Joseni, Harghita county and on 22.04.2011, based on the previous criminal resolution, he moved to the cottage of the victim Csala Zsoltin the Putna area, within the village of Borzont, Joseni, firing four shots at the victim, causing lethal injuries, are the constitutive elements of the crimes of aggravated murder, art. 174, art. 175 paragraph 1 letter a, in the Criminal Code and non - compliance with the rules governing weapons and ammunition, art.279 paragraph 3, subparagraph a of the Criminal Code, with application of art. 33 letter a of the Criminal Code."*[1]

For the other defendant, the accomplice József Mészáros, who helped the author to kill Csala Zsoltwas charged to the murder and non-compliance with the rules governing weapons and ammunition.

In conclusion, in all judicial legal matter, the end belongs to the court, therefor the defendant Robert Lorincz was sentenced for 22 years in prison by the High Court of Cassation and Justice (criminal sentence no 55 of 8th of February 2012 of the Harghita Court), on 29th of November 2012.

From the main body of this article we must conclude the importance and necessity to carry out in a highly professional framework all the activities for identifying the perpetrators of serious violent crimes. First of all, the crime scene investigation, certainly the most relevant of the seentire activities, but also international police and judicial cooperation, in the last few years.

The premises of a successful results, by identifying the authors of the serious crimes, definitely come up from the brief presentation of ***the "JOSENI" case***.

And the premises are, without a doubt, a very good and valuable crime scene investigation, strengthening the exchange of information on a well-structured and operative base, in case of involving foreign elements and, of course, an extremely professional and experienced team of investigators.

[1] Personal archive - Indictment issued in "Joseni" file no.452/P/2011.

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