JOURNAL OF CRIMINAL INVESTIGATION

Volume IV Issue 1/2011

The Magazine is published with the support of the Police Department from A.I.Cuza Police Academy

Semestrial publication under IPA Romania
Address: Bucharest, Şos. Olteniței, 158 – 160, Sector 4, 041323
Tel. 0213321754, 0213321756
www.iparomania.ro/ric
ISSN 2247 – 9503

CONTENTS

VI. REVIEWS

A 37-A CONFERINŢA A IEC ÎN BUCUREŞTI

18-25 Septembrie 2011

Discursul de deschidere al preşedintelui internaţional M. ODYSSEOS

Excelenţa voastră,
Distinşi delegaţi şi observatori,
Doamnelor şi domnilor,
Dragi prieteni,

Aş dori să-mi exprim mulţumirea şi aprecierea faţă de preşedintele IPA Secţia Română şi faţă de Comitetul Executiv Naţional al IPA Secţia Română pentru găzduirea celei de a 37-a Conferinţe IEC în acest oraş frumos şi istoric.

Bucureşti-ul este capitala României şi un centru cultural, industrial şi financiar. Este cel mai mare oraş, având o populaţie de aproape 2 milioane de locuitori, fiind situat în Sud-estul ţării pe malul Dâmboviţei. Oraşul oferă o gamă largă de facilitaţi convenţionale şi educaţionale, locuri culturale, magazine ăi zone de recreare.

La Conferinţa IEC participă delegaţi a 58 de Secţii IPA. Este o întrunire IPA foarte amplă. Aproape toate secţiile sunt reprezentate. Astfel am marea plăcere şi satisfacţie de a mă adresa tuturor celor care participă la această conferinţă şi la săptămâna prieteniei care va urma. Vă urez „Bun venit" şi vă doresc o şedere plăcută în această minunată ţară.

Secţia găzduieşte pentru prima oară o Conferinţă Internaţională IPA, dar având în vedere faptul că România a organizat cu succes multe evenimente internaţionale sunt încrezător în faptul că, colegii noştri au experienţa şi capacitatea de a organiza o conferinţă de mare succes. Ei vor oferi participanţilor oportunitatea de a învaţa mai multe despre istoria, cultura, ospitalitatea şi prietenia românilor.

Secţia Română a fost fondată pe 31 august 1992 cu sprijinul secţiei elene. În octombrie 1996 în timpul Conferinţei de la Brisbane, Australia a fost acceptată în unanimitate în sânul familiei IPA. Deşi, la început unele secţii au avut rezerve, Secţia Română s-a dovedit foarte curând a fi foarte activă iar astăzi se află pe locul doi având aproape 60 000 membri. Din momentul fondării, oficialii IPA au lucrat din greu pentru a promova idealurile IPA nu doar pe teritoriul României ci şi în Moldova. În 2008, acţionând ca secţie sponsor a lucrat din greu pentru a fonda o secţie în Moldova, acest lucru concretizându-se în 2010.

Dragi prieteni,

Anul trecut s-a caracterizat din nou prin violenţă şi nenorociri. În multe ţări continuă războaiele locale iar terorismul internaţional este în creştere, oameni nevinovaţi plătind cu viaţa. O lume în care oamenii pot trăi împreună în pace şi armonie încă pare a fi foarte departe. Pe lângă violenţă şi terorism internaţional, calamităţi serioase, cutremure, ţunami, inundaţii incendii şi uragane care au lovit multe ţări

şi au provocat pierderea a mii de vieţi şi distrugeri totale de proprietăţi. Din nefericire, membrii IPA şi membri ai familiilor acestora s-au aflat printre victime. PEB-ul ţinând cont de recomandările Preşedintelui ISC a activat procedura pentru ajutor în caz de urgenţă şi a lansat apeluri pentru donaţii. Membrii IPA au răspuns pozitiv şi au donat bani şi alte bunuri pentru a-şi ajuta colegii.

Este plăcut pentru mine să constat că idealurile prieteniei şi solidarităţii în rândul membrilor IPA de la toate secţiile aşa cum au fost introduse în 1950 de fondatorul nostru Arthur Troop sunt încă active în sânul familiei IPA. Asociaţia noastră s-a dezvoltat incredibil în cei 61 de ani şi evoluează încă foarte bine. Faptul că aceasta dezvoltare pozitivă s-a realizat nu numai prin publicitate directă dar şi prin contactele dintre poliţiştii din diferite ţări dovedeşte forţa din spatele acestor idealuri. Se pare că în ciuda disensiunii dintre oameni şi state mai este încă loc pentru prietenie şi solidaritate între frontiere.

Este la latitudinea fiecăruia să promoveze pacea, drepturile omului, libertatea de a respecta fiecare persoană şi de a asigura în mod constant legăturile sociale puternice deoarece omul trebuie să aibă grijă de fraţi şi surori fără discriminare. Niciun individ din comunitatea naţională nu ar trebui să fie exclus din motive de rasă, religie sau orice alte trăsături personale. Împreună, ca membri ai unor religii diferite, tradiţii şi culturi ar trebui să promovăm ceea ce onorează toate creaturile umane, un mesaj de iubire şi prietenie între indivizi şi oameni. Trebuie să ne asumam responsabilitatea ca tinerii noştri colegi care vor veni în urma noastră să se formeze în acest spirit.

IPA este astăzi cea mai mare organizaţie de ofiţeri de poliţie din lume. Am construit împreună o asociaţie pe fundaţii solide bazate pe idealuri şi pe viziunea fondatorului nostru. Toţi trebuie să ne simţim mândri şi sunt convins că lucrând împreuna cu prietenie şi solidaritate vom întări Asociaţia şi o vom face mai bună şi mai mare în anii care vor urma.

Crearea şi promovarea relaţiilor de prietenie şi dezvoltarea spiritului pentru ajutor mutual servicii şi asistenţă între ofiţerii de poliţie, familiile lor şi prietenii sunt factori care au efecte benefice pozitive asupra familiei poliţiei din toată lumea.

Acum, revenind la lucrările conferinţei IEC doresc să transmit din nou un salut cordial tuturor delegaţilor, observatorilor şi vizitatorilor şi sa vă doresc tuturor o şedere plăcută în această frumoasă ţară.

În numele membrilor PEB, delegaţilor, observatorilor şi vizitatorilor aş dori să-mi exprim mulţumirile şi aprecierea către preşedintele naţional IPA, către ceilalţi membri ai Comitetului Executiv Naţional, către preşedintele comitetului de organizare pentru munca depusă pentru pregătirea celei de a 37-a conferinţe a IEC în acest oraş istoric frumos. Sunt sigur că atmosfera va fi dominată de armonie în spiritul IPA sub mottoul „SERVO PER AMIKECO".

În concluzie, declar deschise lucrările conferinţei.

Mulţumesc !

37TH IEC CONFERENCE IN BUCHAREST

18 – 25 September 2011

Opening speech by the IP M. ODYSSEOS

Your Excellency
Distinquished Delegates & Observers
Ladies & Gentlemen
Dear friends

I would like to express our thanks and appreciation to the National IPA President and the NEC of IPA Section Romania for hosting the 37th IEC Conference in this beautiful and historical city.

Bucharest is the capital city, cultural, industrial and financial centre of Romania. It is the largest city with a population of nearly two million inhabitants, it is located in the Southeast of the Country and lies on the banks of Dambovita River. The City has a broad range of convention and educational facilities, cultural venues, shopping arcades and recreational areas.

The IEC Conferences is attended by Delegations from 58 IPA Sections. It is a large IPA gathering. Almost all IPA Sections are represented. Therefore it gives me great pleasure and satisfaction to address everyone attending the Conference and the friendship Week that will follow. I welcome you all and wish you a pleasant stay in this wonderful Country.

The Section is hosting for the first time an International IPA Conference, but having in mind that Romania successfully hosted many International events, I feel confident that our colleagues have the experience and capabilities to make the 37th IEC Conference a success. They will also give the opportunity to all participants to learn more about the history, culture, hospitality and friendliness of the Romanian people.

The Romanian Section was founded on 31st August 1992 with the help and guidance of the Hellenic Section. In October, 1996, during the IEC Conference in Brisbane, Australia, it was unanimously admitted into the IPA family. Although at the beginning there were some reservations from some Sections, the Romanian Section very soon proved to be very active and, today, is the 2nd largest IPA Section with nearly 60,000 members. From the date of its establishment the IPA officials worked hard to promote the IPA ideals not only in the territory of Romania but also at the neighbouring Country of Moldavia. In the year 2008 acting as the sponsor Section, worked hard for the establishment of an IPA Section in the Republic of Moldova which was achieved in 2010.

Dear friends,

The year under review has been characterised again by violence and hardship. In many Countries local wars continue and international terrorism is on the increase, costing the lives of innocent people. A World where people can live together in peace and harmony still seems far away. Besides the violence

and international terrorism, serious calamities, earthquakes, the tsunami, floods, fires and hurricanes struck many Countries, resulting in thousands of deaths and total destructions of property. Unfortunately IPA members, and members of their families, were among the victims. The PEB, based on the recommendations of the Chairman of the ISC, activated the Procedure for Emergency-Aid and launched appeals for donations. The IPA members responded positively and donated money and other goods for the relief of their colleagues.

It therefore pleases me to notice that the basic ideals of friendship and solidarity among IPA members in all Sections, as introduced in 1950 by our Founder Arthur Troop, are still very much alive within the IPA family. Our Association has had an incredible development over the past 61 years and that is something still going on to-day. The fact that this positive development has been achieved, not through direct advertising, but through personal contacts between police officers in different Countries, proves the strength behind these ideals. It seems that despite all dissention between people and States, there is still place for friendship and solidarity across the borders.

It is up to us all to be educators of peace, of human rights, of a freedom which respects each person, but also to ensure increasingly strong social bonds, because man must take care of his brothers and sisters without discrimination. No individual in the National Community should be excluded on the grounds of his or her race, religion or any other personal characteristic. Together, as members of different religions, traditions and cultures we are called to spread a teaching which honours all human creatures, a message of love and friendship between individuals and peoples. We are particularly responsible for ensuring that our young colleagues, who will take over from us, are formed in this spirit.

The IPA is, today, the largest organization of police officers in the World. We have built together an Association on solid foundations based on the ideals and vision of our Founder. All of us deserve to feel proud and I am convinced that working together in friendship and solidarity will strengthen our Association to make it bigger and better in the years to come.

The creation and promotion of friendly relationships, the development of a spirit of mutual support, service and assistance between police officers, their families and friends are factors that have positive beneficial effects on the police family all over the World.

Now, getting back to the works of the IEC Conference and the celebrations that will follow, I wish to extend once more a cordial greeting and warm welcome to all Delegates, observers and visitors and wish you all a pleasant stay in this beautiful Country.

On behalf of the PEB members, the Delegates, observers and visitors I would like to extend my sincere thanks and appreciation to the National IPA President, the other members of the NEC, the Chairman and members of the Organising Committee for the work done to prepare the 37th IEC Conference in this beautiful and historical City. I am sure we will meet in an atmosphere of harmony and in the spirit of the IPA under our motto "SERVO PER AMIKECO".

Concluding, I hereby declare the 37th IEC Conference open.

Thank you.

37e CONFERENCE DE L'IEC A BUCAREST

18 – 25 Septembre 2011

Discours d'ouverture de M. ODYSSEOS (IP)

Votre Excellence,
Chers délégués et observateurs,
Mesdames et Messieurs,
Chers amis,

J'aimerais remercier le président national et le NEC de la section IPA Roumanie pour l'organisation de la 37e conférence de l'IEC dans cette magnifique ville historique et leur faire part de notre reconnaissance.

Bucarest est la capitale du pays, mais aussi son centre culturel, industriel et financier. Avec près de deux millions d'habitants, elle est la plus grande ville et se situe dans le sud-est du pays, sur les rives du Dambovita. La ville offre un large éventail de structures éducatives ou pouvant accueillir des conventions, des locaux à vocation culturelle, des centres commerciaux et des lieux de détente.

58 sections IPA ont envoyé des délégués à cette conférence IEC. Il s'agit donc d'une grande manifestation IPA. Les sections de notre association sont presque toutes représentées. C'est donc pour moi une immense satisfaction et un très grand plaisir que de m'adresser à vous tous qui participez à cette conférence et à la Semaine de l'amitié qui la prolongera. Je vous souhaite à tous la bienvenue et un séjour agréable dans ce merveilleux pays.

C'est la première fois que la section accueille une conférence internationale de l'IPA mais, sachant que la Roumanie a déjà accueilli de nombreux événements internationaux qui ont été des succès, je crois que l'expérience et les capacités de nos collègues sauront faire de cette 37e conférence de l'IEC une réussite. Ils offriront également à tous la possibilité d'en savoir plus sur l'histoire et la culture, l'hospitalité et la gentillesse du peuple roumain.

La section roumaine a été fondée le 31 août 1992, grâce à l'aide et aux conseils de la section grecque. En octobre 1996, au cours de la conférence de l'IEC de Brisbane (Australie), la Roumanie a été unanimement accueillie dans la famille IPA. Malgré les réserves exprimées initialement par certaines sections, la Roumanie s'est vite révélée très active et elle est aujourd'hui la 2e section en termes de taille et compte près de 60 000 membres. Depuis la date de sa fondation, les officiels de l'IPA ont mis beaucoup de leur énergie dans la promotion des idéaux de l'association sur le territoire roumain, mais également dans le pays voisin, la Moldavie. En 2008, elle s'est investie en tant que section de parrainage dans la mise en place d'une section IPA en République de Moldavie, ce qui s'est concrétisé en 2010.

Chers amis,

L'année qui s'achève a une fois de plus été marquée par la violence et la détresse. De nombreux pays restent en proie à des guerres locales et le fléau du terrorisme international ne cesse de s'étendre au prix de

vies innocentes. Un monde où les citoyens peuvent vivre ensemble dans la paix et l'harmonie demeure un rêve éloigné. Outre les actes de violence et de terrorisme international, plusieurs pays ont été frappés par des catastrophes, des tremblements de terre, par le tsunami, par des inondations, des incendies et des ouragans qui ont fait des milliers de morts et laissé des milliers de personnes sans abri. Malheureusement, des membres de l'IPA sont à déplorer parmi les victimes. Le PEB, sur la base de recommandations du président de l'ISC, a enclenché la procédure d'aide d'urgence et lancé des appels aux dons. Les membres de l'IPA ont répondu à l'appel et envoyé de l'argent et des biens pour venir en aide à leurs collègues.

Je me réjouis donc de constater que les principes fondamentaux d'amitié et de solidarité entre les membres de l'IPA de toutes les sections, tels qu'introduits par notre fondateur Arthur Troop en 1950, sont toujours bien vivants au sein de la famille IPA. Au cours de ses 61 années d'existence, notre association a connu une évolution formidable qui se poursuit encore aujourd'hui. Cette avancée est le fruit non pas d'une publicité directe, mais des contacts personnels entre les officiers de police de différents pays, ce qui prouve que nos idéaux reposent sur des bases solides. Malgré toutes les dissensions entre les peuples et les États, l'amitié et la solidarité semblent avoir toujours une place au-delà des frontières.

Il nous revient à tous d'être des apôtres de la paix, des droits de l'homme, d'une liberté respectueuse de chacun, mais aussi de défendre une vie sociale toujours plus forte, car l'homme doit prendre soin de ses frères et sœurs, sans discrimination aucune. Nul ne peut être exclu de la communauté nationale du fait de sa race, de sa religion ou de tout trait distinctif. Tous ensemble, quelles que soient notre religion, nos traditions et notre culture, nous sommes appelés à diffuser un message qui honore toute créature humaine, un message d'amour qui rassemble les hommes et les peuples. Nous sommes tenus de faire en sorte que nos jeunes collègues qui reprendront le flambeau soient formés dans cet esprit.

L'IPA est aujourd'hui la plus grande organisation d'officiers de police au monde. Nous avons construit une association solide basée sur les idéaux et la vision de notre fondateur. Notre fierté est légitime et je suis persuadé qu'une collaboration empreinte d'amitié et de solidarité ne peut que renforcer notre association, la faire croître et s'améliorer au cours des années à venir.

La mise en place et la promotion de relations basées sur l'amitié, le développement d'un esprit d'aide, d'assistance et de soutien mutuels entre les officiers de police, leurs familles et leurs amis sont des éléments qui ont un effet bénéfique sur la famille de la police dans le monde entier.

Revenons maintenant sur les travaux de l'IEC et sur les célébrations qui suivront. Je tiens une fois de plus à saluer cordialement et à accueillir chaleureusement tous les délégués, observateurs et visiteurs et souhaite à tous un agréable séjour dans ce magnifique pays.

Au nom des membres du PEB, des délégués, des observateurs et des visiteurs, je voudrais également adresser mes sincères remerciements au président national, aux autres membres du NEC, au président et aux membres du comité organisateur pour le travail accompli dans la préparation de la 37^{e} conférence de l'IEC dans cette magnifique ville historique. Il ne fait pour moi aucun doute que cette conférence se déroulera dans l'harmonie et dans l'esprit de notre devise « SERVO PER AMIKECO ».

Le moment est maintenant venu pour moi de déclarer ouverte la 37^{e} conférence de l'IEC.

Merci.

37. IEC-KONFERENZ IN BUKAREST

18. bis 25. September 2011

Eröffnungsrede des IP M. ODYSSEOS

Eure Exzellenz,
verehrte Delegierte & Konferenzbeobachter,
meine Damen und Herren,
liebe Freunde,

ich möchte dem Nationalen IPA-Präsidenten und dem Nationalvorstand der IPA-Sektion Rumänien für die Ausrichtung der 37. IEC-Konferenz in dieser schönen und historischen Stadt unseren Dank aussprechen.

Die Hauptstadt Bukarest ist zugleich das Kultur-, Industrie- und Finanzzentrum Rumäniens. Es ist die größte Stadt des Landes mit knapp zwei Millionen Einwohnern; sie befindet sich im Südosten des Landes und liegt an den Ufern der Dambovita. Die Stadt verfügt über ein breites Spektrum an Konferenz- und Schulungseinrichtungen, Kulturstätten, Einkaufszentren und Erholungsmöglichkeiten.

An der IEC-Konferenz nehmen Delegationen von 58 IPA-Sektionen teil. Es handelt sich um eine der großen IPA-Versammlungen. Fast alle IPA-Sektionen sind vertreten. Daher ist es mir eine große Freude, mich an alle Teilnehmer dieser Konferenz und der darauf folgenden Freundschaftswoche zu richten. Ich heiße Sie alle herzlich willkommen und wünsche Ihnen einen angenehmen Aufenthalt in diesem wunderschönen Land.

Die rumänische Sektion ist nun erstmals Gastgeber der Internationalen IPA-Konferenz, und ich bin zuversichtlich, dass die 37. IEC-Konferenz dank der Erfahrung und des Geschicks unserer rumänischen Kollegen ein voller Erfolg werden wird. Immerhin sind in Rumänien bereits zahlreiche internationale Veranstaltungen erfolgreich abgehalten worden. Die Mitglieder der Sektion Rumänien bieten allen Teilnehmern die Möglichkeit, mehr über die Geschichte, Kultur, Gastfreundschaft und Freundlichkeit der rumänischen Bevölkerung zu erfahren.

Die Sektion Rumänien wurde am 31. August 1992 mit der Unterstützung und unter der Anleitung der griechischen Sektion gegründet. Im Oktober 1996 während der IEC-Konferenz im australischen Brisbane wurde sie einstimmig in die IPA-Familie aufgenommen. Obwohl es zu Beginn einige Vorbehalte vonseiten bestimmter Sektionen gab, zeigte sich die rumänische Sektion recht bald sehr aktiv und ist heute mit knapp 60 000 Mitgliedern die zweitstärkste Sektion. Vom Datum ihrer Gründung an arbeiteten die IPA-Beamten hart daran, die IPA-Ideale nicht nur auf dem rumänischen Staatsgebiet, sondern auch im Nachbarland Moldau zu fördern. Im Jahr 2008 setzte sich Slowenien als Patensektion für die Gründung einer IPA-Sektion in der Republik Moldau ein, die 2010 in die Tat umgesetzt werden konnte.

Liebe Freunde,

auch im vergangenen Jahr waren Gewalt und Leid wieder an der Tagesordnung. In vielen Ländern gibt es weiterhin lokale kriegerische Konflikte. Zugleich nimmt der internationale Terrorismus zu und fordert viele unschuldige Menschenleben. Eine Welt, in der die Menschen in Frieden und Harmonie zusammen leben können, scheint noch weit entfernt zu sein. Neben der Gewalt und dem internationalen

Terrorismus wurden zahlreiche Länder von schweren Katastrophen, Erdbeben, dem Tsunami, Überschwemmungen, Feuersbrünsten und Wirbelstürmen heimgesucht und hatten Tausende Opfer sowie Zerstörungen unvorstellbaren Ausmaßes zu beklagen. Leider waren unter den Opfern auch IPA-Mitglieder und deren Familienangehörige zu beklagen. Auf der Grundlage der Empfehlungen der ISC-Vorsitzenden leitete das PEB das Verfahren für die Katastrophenhilfe ein und rief zu Spenden auf. Die IPA-Mitglieder reagierten positiv und spendeten Geld und Sachmittel zur Unterstützung ihrer Kollegen.

Es bereitet mir daher große Freude festzustellen, dass die von unserem Gründer Arthur Troop 1950 eingeführten Ideale von Freundschaft und Solidarität zwischen IPA-Mitgliedern aus allen Sektionen heute wie damals in der IPA-Familie Bestand haben. Unsere Vereinigung hat in den letzten 61 Jahren eine außergewöhnliche Entwicklung durchlaufen, die bis heute anhält. Die Tatsache, dass diese positive Entwicklung nicht durch direkte Werbung, sondern durch persönliche Kontakte zwischen Polizeibeamten in verschiedenen Ländern erzielt wurde, beweist die Überzeugungskraft unserer Grundsätze. Es zeigt, dass es trotz aller Meinungsverschiedenheiten zwischen Menschen und Staaten noch immer Platz für grenzüberschreitende Freundschaft und Solidarität gibt.

Es liegt an uns, Werte wie Frieden, Menschenrechte, Freiheit und Respekt anderen gegenüber zu vermitteln, aber auch für stärkere soziale Bindungen zu sorgen, da jeder von uns für seine Brüder und Schwestern da sein muss, ohne dabei Unterschiede zu machen. In der nationalen Gemeinschaft darf niemand aufgrund seiner Abstammung, Religion oder aufgrund sonstiger persönlicher Merkmale ausgegrenzt werden. Als Anhänger unterschiedlicher Religionen, Traditionen und Kulturen ist es unsere gemeinsame Aufgabe, Respekt gegenüber allen Menschen zu lehren und eine Botschaft der Liebe und Freundschaft zwischen den einzelnen Menschen und ganzen Völkern zu vermitteln. Insbesondere tragen wir die Verantwortung dafür, dass unsere jungen Kollegen, die uns nachfolgen werden, in diesem Geiste geschult werden.

Die IPA ist heute die weltweit größte Organisation für Polizeibeamte. Wir haben zusammen eine Vereinigung geschaffen, die eine solide Basis hat und auf den Idealen und Visionen unseres Gründers beruht. Darauf können wir alle stolz sein, und ich bin überzeugt, dass unsere Association durch eine freundschaftliche und solidarische Zusammenarbeit in den kommenden Jahren noch erweitert und verbessert werden kann.

Freundschaftliche Beziehungen zu knüpfen und zu pflegen, ein Klima gegenseitiger Unterstützung zu schaffen sowie Hilfsbereitschaft zwischen Polizeibeamten, ihren Familien und Freunden zu beweisen, all dies schweißt die IPA-Familie auf der ganzen Welt zusammen.

An dieser Stelle möchte ich wieder auf die Arbeit der IEC-Konferenz und die anschließenden Feierlichkeiten zu sprechen kommen und heiße einmal mehr alle Delegierten, Konferenzbeobachter und Besucher herzlich willkommen. Ihnen allen wünsche ich einen angenehmen Aufenthalt in diesem schönen Land.

Im Namen des PEB, der Delegierten, Beobachter und Besucher möchte ich dem Nationalen IPA-Präsidenten, den anderen Mitgliedern des Nationalvorstands der Sektion, dem Vorsitzenden und den anderen Mitgliedern des Organisationskomitees für die geleistete Arbeit zur Vorbereitung der 37. IEC-Konferenz in dieser wunderschönen und historischen Stadt herzlich danken. Ich bin sicher, dass dieses Treffen in einer harmonischen Atmosphäre im Geiste der IPA unter dem Motto „SERVO PER AMIKECO“ ablaufen wird.

Abschließend erkläre ich die 37. IEC-Konferenz hiermit für eröffnet.

Vielen Dank!

37ª CONFERENCIA DEL IEC EN BUCAREST

18 – 25 de Septiembre de 2011

Discurso de apertura por el IP M. ODYSSEOS

Su Excelencia,
Distinguidos delegados y observadores,
Señoras y caballeros,
Queridos amigos:

Me gustaría expresar mi agradecimiento y consideración al Presidente Nacional de la IPA y al Comité Ejecutivo Nacional de la Sección de la IPA Rumanía por acoger la 37Ș Conferencia del IEC en esta hermosa e histórica ciudad.

Bucarest es la capital y el centro cultural, industrial y financiero de Rumanía. Es la ciudad más grande con una población de casi dos millones de habitantes, está situada en el sureste del país y se asienta en las orillas del río Dambovita. La ciudad tiene una gran variedad de instalaciones educativas y de reunión, centros culturales, centros comerciales y áreas recreativas.

En las conferencias del IEC participan delegaciones de 58 Secciones de la IPA. Es una gran reunión de la IPA. Casi todas las Secciones de la IPA están representadas. Por ello, es un gran placer y una satisfacción para mí dirigirme a todos los que participan en esta conferencia y en la próxima Semana de la Amistad. Les doy la bienvenida a todos y les deseo una agradable estancia en este maravilloso país.

La Sección acoge por primera vez una conferencia internacional de la IPA, pero teniendo presente que Rumanía organizó con éxito muchos eventos internacionales, estoy seguro de que nuestros compañeros tienen la experiencia y las capacidades para hacer que la 37Ș Conferencia del IEC sea un éxito. Asimismo, ofrecerán la oportunidad a todos los participantes de conocer más en profundidad la historia, la cultura, la hospitalidad y la simpatía del pueblo rumano.

La Sección de Rumanía se fundó el 31 de agosto de 1992 con la ayuda y la orientación de la Sección Helénica. En octubre de 1996, durante la Conferencia del IEC en Brisbane, Australia, fue admitida por unanimidad en la familia de la IPA. Aunque al principio algunas Secciones tenían sus reservas, la Sección de Rumanía demostró en poco tiempo ser muy activa y, hoy en día, es la segunda Sección de la IPA más grande con casi 60 000 miembros. A partir de la fecha de su creación, los oficiales de la IPA trabajaron duro para promover los ideales de la IPA no solo en el territorio de Rumanía sino también en el país vecino, Moldavia. En 2008, en calidad de Sección patrocinadora, se trabajó duro para la creación de una Sección de la IPA en la República de Moldavia, lo cual se logró en 2010.

Queridos amigos:

El año que estamos analizando ha estado una vez más caracterizado por la violencia y la miseria. En muchos países continúan las guerras locales y el terrorismo internacional va en aumento cobrándose las vidas de víctimas inocentes. Un mundo donde las personas puedan convivir en paz y armonía parece estar aún muy lejos. Aparte de la violencia y del terrorismo internacional, graves catástrofes, terremotos, maremotos,

inundaciones, incendios y huracanes asolaron varios países provocando miles de víctimas y la destrucción total de propiedades. Desafortunadamente, los miembros de la IPA y los miembros de sus familias estaban entre las víctimas. El PEB, de acuerdo con las recomendaciones del Presidente de la ISC, activó el procedimiento para la ayuda de emergencia y lanzó llamamientos para realizar donaciones. Los miembros de la IPA respondieron positivamente y donaron dinero y otros bienes para el consuelo de sus compañeros.

Por tanto, me complace comprobar que los ideales básicos de amistad y solidaridad entre los miembros de la IPA de todas las Secciones, establecidos en 1950 por nuestro fundador Arthur Troop, están todavía muy presentes en la familia de la IPA. Nuestra Asociación ha experimentado un gran desarrollo en los últimos 61 años, hecho que continúa dándose hoy en día. El hecho de que este desarrollo positivo se haya alcanzado, sin que medie el uso de publicidad directa sino mediante el establecimiento de contactos personales entre oficiales de policía de diferentes países, es una prueba de la firmeza de estos ideales. Parece que, a pesar de las diferencias entre las personas y los países, todavía hay lugar para la amistad y la solidaridad más allá de las fronteras.

Es nuestra tarea educar para la paz, los derechos humanos y la libertad de cada persona, pero también asegurar que los lazos sociales sean cada vez más fuertes, porque el ser humano debe cuidar de sus hermanos y hermanas sin discriminación alguna. Ningún individuo debe ser excluido en la Comunidad Nacional por motivos de raza, religión u otra característica personal. Juntos, como miembros de diferentes religiones, tradiciones y culturas, debemos difundir una enseñanza que honre a todas las criaturas humanas, un mensaje de amor y de amistad entre individuos y pueblos. Somos responsables principalmente de asegurar que nuestros compañeros más jóvenes, que van a ocupar nuestro lugar, estén formados con este espíritu.

La IPA es, hoy en día, la organización de oficiales de policía más grande del mundo. Hemos creado juntos una Asociación de cimientos sólidos basada en los ideales y la visión de nuestro fundador. Es legítimo que nos sintamos orgullosos y estoy convencido de que nuestra colaboración basada en la amistad y la solidaridad reforzará nuestra Asociación hasta hacerla más grande y mejor en el futuro.

La creación y la difusión de las relaciones cordiales, el desarrollo de un espíritu de apoyo, servicio y asistencia mutuos entre oficiales de policía, sus familias y amigos son factores que tienen efectos positivos beneficiosos en la familia de la policía en todo el mundo.

Ahora, volviendo a las tareas de la Conferencia del IEC y a las celebraciones subsiguientes, me gustaría una vez más expresar un saludo cordial y desear una calurosa bienvenida a todos los delegados, observadores y visitantes y desearles una agradable estancia en este maravilloso país.

En nombre de los miembros del PEB, los delegados, los observadores y los visitantes, me gustaría expresar mi más sincero agradecimiento y consideración al Presidente Nacional de la IPA, al resto de miembros del Comité Ejecutivo Nacional, al Presidente y a los miembros del Comité Organizativo por el trabajo realizado en la preparación de la 37Ș Conferencia del IEC en esta hermosa e histórica ciudad. Estoy convencido de que nos reuniremos en una atmósfera de armonía y bajo el espíritu de la IPA de nuestro lema «SERVO PER AMIKECO».

Concluyo y por la presente declaro abierta la 37Ș Conferencia del IEC.

Muchas gracias.

Excelențele Voastre,
Doamnelor şi domnilor,
Dragi prieteni,

Anul trecut, Parisul – capitala Franței – a găzduit Conferința noastră Internațională, cu toții păstrând amintiri minunate.

Astăzi, micul Paris, cum este cunoscut oraşul Bucureşti, vă primeşte ca oaspeți şi prieteni, cu cele mai alese gânduri.

De aici, din grandioasa clădire a Parlamentului României, cu emoție şi bucurie vă adresez un călduros bun venit, la cea de a 37-a Conferință Internațională a I.P.A.

Acest remarcabil eveniment internațional, la care participă delegați şi observatori din 58 de state ale lumii, se desfăşoară în momentul în care Secția Română a I.P.A. aniversează 15 ani de la recunoaşterea sa, înfăptuită în Australia, la Brisbane (octombrie 1996).

Procesul de formare a secției noastre, început în anul 1992, s-a desfăşurat cu sprijinul prețios şi consilierea Secției I.P.A. din Grecia şi a fostului Secretar General, Alan Carter, cărora le aducem mulțumiri şi pe această cale.

Secția Română a I.P.A. este o organizație tânără, dar puternică, având în prezent 153 de regiuni, cu peste 60 000 de membri: polițişti, jandarmi, pompieri, polițişti de frontieră şi ofițeri din sistemul penitenciare, capabili să dezvolte importante activități sociale, culturale şi profesionale în beneficiul acestora. Prezența noastră activă în marea familie a I.P.A. este pusă în evidență de organizarea în România a unei reuniuni a PEB (2000), a întâlnirii internaționale a tineretului (2005), precum şi a numeroase manifestări la care au participat prieteni din peste 30 de țări. {n acest context, subliniez activitățile pe care secția noastră le-a desfăşurat, sub conducerea atentă şi exigentă a Preşedintelui Internațional – Michael Odysseos şi a Secretarului General Internațional – Georgios Katsaropoulos, pentru formarea şi recunoaşterea internațională a Secției I.P.A. din Republica Moldova, care numără astăzi peste 900 de membri.

Comitetul executiv al secției noastre s-a preocupat pentru construirea primei case I.P.A. în anul 2000, având în execuție alte două imobile ce vor fi introduse în circuitul internațional în următorii doi ani.

Preocuparea noastră pentru domeniul profesional s-a concretizat în organizarea de seminarii şi conferințe, unele cu participare internațională, precum şi în editarea Revistei de Investigare a Criminalității, în colaborare cu Academia de Poliție şi Inspectoratul General al Poliției. Am sponsorizat cursurile de pregătire în domeniul limbilor străine pentru aproape 300 de tineri ofițeri de poliție.

Solidaritatea şi susținerea mutuală reprezintă o coordonată esențială a asociației noastre, materializată în acordarea de ajutoare materiale şi financiare pentru un important număr de polițişti şi pentru familiile acestora aflați în suferință datorită unor evenimente tragice (distrugeri de bunuri în urma inundațiilor, afecțiuni medicale grave, etc).

Secția Română a I.P.A. este, astăzi, cea mai mare organizație nonguvernamentală din România, care promovează prietenia, colaborarea între toți membrii săi, solidaritatea şi respectul desăvârşit față de valorile democrației şi ale drepturilor omului.

Dragi prieteni,

IPA reprezintă o stare de spirit, ancorată în idealurile minunate ale societății libere şi democratice, fundamentate pe încredere, respect, prietenie, morală şi lege.

Conferința Internațională şi Săptămâna Prieteniei vă vor oferi posibilitatea de a cunoaşte o parte din cultura, istoria şi civilizația noastră. Vom avea ocazia de a pune la punct noi acțiuni de colaborare şi schimburi de experiență.

Aici, în minunata sală a Parlamentului României, deviza noastră „SERVO PER AMIKECO" are o rezonanță aparte şi o semnificație extraordinară. Este mesajul nostru de pace şi înțelegere, de speranță şi încredere în idealurile organizației.

Mulțumesc tuturor autorităților şi prietenilor care ne-au sprijinit în organizarea Conferinței.

Urez succes lucrărilor Conferinței noastre şi o Săptămână a Prieteniei minunată pe traseele lui Dracula.

Prof. univ. dr. COSTICĂ VOICU
Preşedinte I.P.A. Secția Română

Your Excellency,
Ladies and gentlemen,
Dear friends,

Last year, Paris – the capital of France – hosted our international conference, all of us keeping in mind wonderful memories.

Today, Little Paris, as the city of Bucharest is known, receives you, as guests and friends, with the finest thoughts.

Hence, from the Romanian Parliament' s grand building, with emotion and joy, we address you a warm welcome to the 37th I.P.A.' s International Conference.

This remarkable international event, attended by delegates and observers from 58 states of the world, takes place when the Romanian Section of the I.P.A. celebrates 15 years since its recognition in Australia, in Brisbane (October 1996).

The process of foundation of our section, started in 1992, and evolved with the valuable support and counseling of the I.P.A. Section from Greece and of the former Secretary General, Alan Carter, and we would like to express our thanks in this way.

The Romanian Section of the I.P.A. is a young organization but a powerful one, with 153 regions and over 60 000 members: policemen, gendarmes, firemen, border policemen and officers from the penitentiary system, able to develop important social, cultural and professional activities in their benefit. Our active presence in the great family of I.P.A. is emphasized by the organization in Romania of a PEB meeting (2000), of an International Youth Gathering (2005), as well as various events attended by friends from over 30 countries. In this context, I emphasize the activities that our section has developed, under the careful and exacting management of the International President – Michael Odysseos and of the International Secretary General – Georgios Katsaropoulos, for the foundation and for the international recognition of the I.P.A. section from the Republic of Moldova, which counts today over 900 members.

The Executive Committee of our section was concerned to build the first I.P.A. house in 2000, and two other houses are being built and will be introduced in the international circuit in the following two years.

Our concern for the professional field has resulted in seminars and conferences, some of them with international participation, as well as in the Magazine of Crime' s Investigation in cooperation with the Police Academy and with the General Police Inspectorate. We offered sponsorships for the training courses in the field of foreign languages for nearly 300 young police officers.

Solidarity and mutual support is an essential coordinate of our association, materialized in financial and material aids for a significant number of policemen and their families suffering because of some tragic events (property damage resulting from floods, severe medical conditions, etc.)

The Romanian section of I.P.A. is the largest NGO in Romania promoting friendship, cooperation among all its members, solidarity and respect towards the values of democracy and of human rights.

Dear friends,

IPA is a state of spirit, rooted in the wonderful ideals of free and democratic society based on trust, respect, friendship, morality and law.

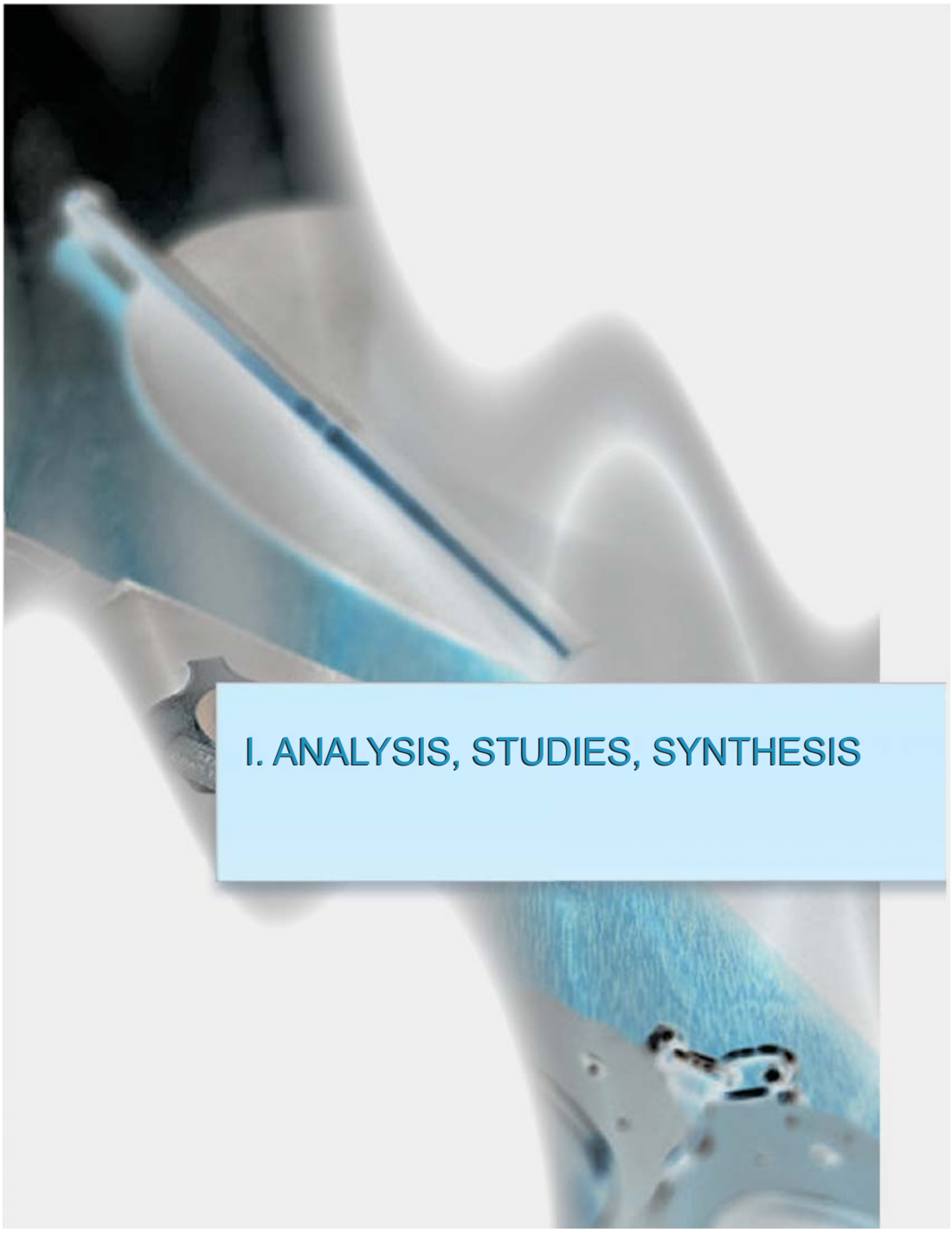
The International Conference and the Friendship Week will offer you the opportunity of knowing a part of our culture, history and civilization. We will have the opportunity of setting up new actions for cooperation and experience exchanges.

Here, in the great hall of the Romanian Parliament, our motto "SERVO PER AMIKECO" has a special resonance and an extraordinary significance. It is our message of peace and understanding, hope and faith in the ideals of the organization.

Let me express my thanks to all the authorities and friends who have supported us in organizing the conference.

I wish success to our conference and a wonderful Friendship Week following the trails of Dracula.

University Professor PhD COSTICA VOICU
President of I.P.A. Romanian Section



I. ANALYSIS, STUDIES, SYNTHESIS

THE PARMALAT CASE
- THE FALL OF A CRIMINAL CORPORATION

Prof. Ph.D, Costică VOICU

This article briefly examines a mega-fraude Italian authorities discovered and dealt with before the onset of the global economic crisis. Consider useful for practitioners, analyzing this type of economic and financial crime, ways to commit crimes is somewhat typical white-collar criminals.

Keywords: banking financial fraud, corruption, crime and economic-financial mafia, trans-national crime

In December 2003, the international financial and banking world has been taken aback by the news that the Italian diary producer giant, PARMALAT, has been declared bankrupt. The prosecutors and other law enforcement authorities who are currently investigating the case are in possession of the following evidence:

- the lack of records for approximately 4 billion euro, confirmed by the Bank of America which revealed the fact that Bonlat Financing Corporation, a branch of Parmalat from the Cayman islands, does not appear with any single cent in the banking registers although it has presented a fake document signed on March 6th 2003 which proves the existence of a liquidities deposit and checks worth almost 4 billions euro, opened on December 31st 2002 on the name of Bonlat.
- the lack of 500 million euro from the Epicurum Investment Funds accounts, also registered in Cayman islands. The Monetary Authority in these islands, the financial authority of the fiscal paradise which is in charge of approximately 4 000 mutual funds, has declared that Epicurum is not registered and as a consequence it doe nor fall under its area of control due to the fact that it is represented by less than 15 investors.
- direct theft of huge amounts of money (more than 500 million euro) and their use for personal gains, a fact which was recognized by the Parmalat leader, Calisto Tanzi (under arrest), who said that this money has been directed towards Parmatour, a tourism agency managed by his daughter Francesca.
- the existence of falsified documents which mislead the audit and control authorities and contributed to the growth of the bank assets and consequently to the influence of Parmalat.

The Parmalat giant produces and sales milk products, fruit based drinks and sweets and is the 7th milk producer in the world, present in over 30 countries and with 36 000 employees.

It is estimated that its debts are over 14 billion euro, out of which a third goes to banks from Italy and the rest to foreign investors and creditors. Parmalat has issued bonds worth more than 5 billion euro in the last four years, most of them being owned by investors outside Italy.

The fall of Parmalat has also influenced the life insurance sector in America, which was beginning to recover after the 24 milliard losses registered in 2001 and 2002, pursuing the thefts discovered ay World Corn, Tyco, Kmart or Dynergy. Thus, until not it has been established that four big American insurance companies (AFALC, Manulife Financial, American International Group and Prudent Financial) have directly invested approximately 1.6 billion dollars in financial bonds issued by Parmalat and its branches.

The investigators agree that it would be extremely difficult to get to the real situation of the company' accounts because the hundred of branches as well as the complicated links between them, doubled by the lack of transparency would necessitate long term investigations.

The first investigations have already come up with the fact that the Parmalat business is, for the American analysts, a typical Italian business, a family business, opaque and run after the mafia principle.

Parmalat was the 6th private company in Italy, with a good reputation on the international financial markets. Its fall has cost the Italian economy over 11 billion euro, that is 1% from the gross domestic product.

The most serious effects upon economy come from the bond markets. The investigations are focused on clarifying the role several bank

employees played in creating, together with the Parmalat owner, fake shares worth billions of euro.

Luca Sala, financial consultant, former director at the Bank of America, said, at the beginning of the investigation: Bank of America has been deceived by Parmalat. When you have a client like Parmalat, who brings you huge amounts of money and carries out activities worldwide, you cannot really ask them the show you the balance of the bank account.

Corruption, an element already classic in the area of financial and banking business, couldn't have been present in this case.

The first evidence of the investigation revealed that Tetra Pak, a multinational Swedish company, one of the biggest suppliers of milk and fruit based drinks packages has transferred funds in the Tanzi family accounts.

The money was a reward for the contracts offered to the Swedish company. Parmalat buys packages from Tetra Pak for a certain amount of money after which the Swedish offered sales to the Italian group. The discount was deposited in the Tanzi family accounts. Thus, between 1996 and 2003 the Tanzi family received 70 million euro from Tetra Pak.

Like Enron, Parmalat owned an impressive network of offshore branches. One of these, Satalux, was registered in Luxembourg and belonged to two companies owned by Tanzi family, whose addresses proved to be P.O boxes. It is interesting that the board of directors is made of three members: Eric Fort, lawyer for "Mercuria" (a branch of the biggest law firm in Luxembourg – A+M) which took care of registering the offshore company in Luxembourg; Nyte Investment, a company with the headquarters in Delaware, a fiscal paradise placed on the eastern coast of the USA; and an individual with a fake name in New York.

Through Satalux and with the help of the accountancy company Themis Audit (registered in another fiscal paradise – The Virgin Islands), the amount of 500 million dollars owned by Mutual Epicurum Fund has been diverted.

Another company, Third Millenium, set up by the same Mercuria, belonged to Fausto Tonna (financial director of Parmalat), and the closest and most important shareholder was Mutual Epicurum Fund.

Diabolical combinations specific to the type of Italian criminal organizations, supported by powerful actors in the world of finance and banks with world wide reputation. It is interesting in terms of climate and how such combinations take place, the statement given by Paul Monsel in Le Monde (January 8 2004), lawyer of the firm A+ M: when a well known foreign company comes in Luxembourg to set up a company in order to issue bonds and mediation is provided by a group of reputable banks, financial service providers do not ask any questions.

International Herald Tribune published an article in August 2005 saying that the prosecutors investigating the Parmalat collapse have evidence of 10 years of fraud. When the company went bankrupt, in December 2003, the debt was 14 billion euro. The credit banks, like J.P. Morgan, UniCredito, UBS and Deutsche Bank were aware of the situation and supported the fraud by supplying the funds so as the company may resist. UBS sold with 6 months before the fall 420 million Parmalat shares and Deutsche Bank 350 million shares.

Calisto Tanzi is considered one of the biggest criminal in the corporate area in modern Europe, with a huge influence in the political and banking area as well as upon the Catholic Church. He sponsored politicians and members of Parliament with over120 million dollars and received public contracts and huge credits from the state banks. His connections with Giovanni Goria (former prime minister) helped him place friends and associates in key positions at the state banks.

The cathedral in Parma was renovated due to Tanzi's sponsorship (over 2 million dollars). In 1990 Tanzi took AC Parma and the whole business was entrusted to his son Stefano and his nephew, Paola Tanzi.

The Parmalat business was eventually a typical mafia business with white collar criminals, structured on illegal business and embezzlement. the operational core was made of Calisto Tanzi, the president of Parmalat, his brother Giovanni, member in the administrative board, his daughter, Francesca, his son, Stefano, his nephew, Paolo and his closest collaborator, Fausto Tonna (financial director) and his wife Donatella.

Calisto Tanzi was a former marketer of meat products in 1965 and began to develop after purchasing the first technologies for milk products. From this moment on he becomes well known in town and starts making acquaintances in the political area. As a consequence, part of the money was used to built relations with political leaders who helped him with preferential credits at the state banks. Calisto Tanzi becomes a politician in 1970 as it was vital for him to built strong relations with influential politicians in decision making positions. The political system was prone to abuse. Most banks were owned by the sate and the management boards and the

crediting strategies were established by politicians. Within this context, Tanzi bought numerous state companies for milk processing and set up a strong company with credits taken from banks and organized crime groups interested in good investments.

In conclusion, Parmalat was a multinational mafia corporation, originally built and with mix a philosophy and strategy: elements specific to the culture of the mafia families and organizational traditionalism, American modernism which implies involvement in politics, luxury and an active public life.

Only in 1993 Parmalat bought 17 companies with the help of Bank of America. The accounting documents of the corporation covered damages worth 400-500 millions dollars annual. The investigations carried out after the company went bankrupt revealed corruption activities in the sense that Parmalat paid huge amounts of money to companies of external audit which declared as legal the illegal financial and banking operations. The investigators proved that Tanzi Calisto had direct access to the Parmalat cash desk, taking money without any justification and giving it to those who had to certify the fake accounting documents. The most shocking episode in this mega fraud is the discussion between the financial director of Parmalat, Luciano Del Soldato and Tanzi. The former was trying to tell Tanzi about the disastrous financial situation and immense fraud, saying that *Tanzi said to go on and assured me that Parmalat would receive new funds in a few days from a new investor, who never came.* In November 2003 Tanzi realized that he was going to go bankrupt and approached his rival Silvio Berlusconi in order to obtain credits from Italian banks. But the meeting didn't go as expected because Berlusconi was not willing to risk a relation with Tanzi. His last option was the money from the investments made in the Caymann islands which in fact didn't exist at all. On December 15th 2003 Tanzi resigned and went public that Parmalat didn't have ant cent in the 4,7 billion dollars account at Bank of America and the account balance was a fake that had never been discovered at the previous audits.

The picture of Calisto Tanzi is completed by the last episode with him still free. Before being taken into custody Tanzi leaves in a short vacation in Portugal and Ecuador, together with his wife, where it is presumed that he his a large amount of the stolen money. Aged 70 and sentenced to 15 years Calisto Tanzi asks himself what was the use of this crazy adventure ?

CONSIDERATIONS GENERALES CONCERNANT LA RESPONSABILITE PENALE DE LA PERSONNE MORALE

Ph.D. Lawyer Florin SANDU
Lecturer Ph.D. Marius PANTEA
Assist. Ligia STANCU
Académie de Police Bucarest

Sous l'influence des instruments juridiques et des recommandations de l'Union Européenne et d'autres instances internationales la responsabilité pénale des personnes morales a été consacrée dans la législation nationale de plusieurs États. Ainsi ont vu le jour deux systèmes importants quant à la détermination de l'étendue de la responsabilité pénale des personnes morales, celui de la responsabilité civile générale, où les personnes morales ont une capacité pénale similaire à celle des individus, pouvant commettre elles aussi toute infraction, et celui qui prévoit l'indication du législateur, pour chaque infraction, de la possibilité de son engagement à une personne morale. Dans cet article nous essayons de rassembler les questions législatives et pratiques les plus pertinentes, liées à la responsabilité pénale de la personne morale, au niveau national, européen et international.

Index de mots-clés: instruments juridiques, jurisprudence, responsabilité pénale de la personne morale, infractions, droit comparé

Introduction

Consécration de la responsabilité pénale de la personne morale dans les instruments juridiques et les recommandations internationales et européennes

Au niveau international et européen a été développée une série d'instruments juridiques et de recommandations traitant la responsabilité pénale des personnes morales. Sur ces points, comme un exemple:

1. La Résolution no. 28/mai 1977, concernant la contribution du droit pénal à la protection de l'environnement, recommande une réévaluation des principes de la responsabilité pénale des personnes morales afin d'examiner la possibilité de régulation de certaines affaires pénales des entités publiques et privées ayant de la personnalité juridique;

2. La Recommandation no. 12/1981 sur la criminalité des affaires prévoit la possibilité de la responsabilité pénale des personnes morales pour des infractions commises dans le domaine commercial ou la mise en pratique des mesures ayant le même but;

3. La Recommandation no. 15/1982 sur le rôle du droit pénal dans la protection du consommateur, considère qu'il convient d'établir dans le domaine visé la responsabilité pénale des personnes morales;

4. La Recommandation du Conseil de l'Europe no. 18/1988 sur la responsabilité des entreprises de la personne morale pour des crimes commis dans leur travail, adoptée par le Comité des Ministres du Conseil de l'Europe le 28.10.1988; cette recommandation formule plusieurs principes à prendre en compte quand il s'agit de la responsabilité pénale des personnes morales. Ces principes sont les suivants[1]:

- La personne morale peut être tenue responsable pour les crimes commis dans le cadre de son activité, même si ces crimes ne tiennent pas du domaine d'activité de l'entreprise et même si l'individu qui l'a commis a été identifié;
- La société doit être exonérée lorsque ses responsables ne sont pas impliqués dans l'infraction et ont pris toutes les mesures nécessaires pour l'empêcher;
- L'engagement de la responsabilité pénale de l'entreprise ne devrait pas conduire à l'exonération de la responsabilité de l'individu qui a commis le crime ou a participé à l'infraction - en particulier les personnes exerçant des fonctions de direction, elle devrait être responsable pour manquement à des obligations, omission qui a conduit à la commission de l'infraction;
- L'application des sanctions pénales devrait être faite seulement lorsqu'elles sont requises par la

[1] C. Voicu (coord.), M. Pantea, D. Bucur, etc., *„La sécurité financière de l'Union Européenne conformément au Traité de Lisbonne"*, Vol.II, Ed. Pro Universitaria, Bucarest, 2010.

nature de l'infraction, par la gravité de la faute de l'entreprise, par les conséquences pour la société et par la nécessité de prévenir de nouvelles infractions - d'où il résulte que pour les actes moins graves, il est indiqué l'utilisation d'autres formes de responsabilité que de responsabilité pénale, à savoir administrative;

- Dans la sélection et l'application des sanctions il devrait accorder une attention particulière aux objectifs non punitifs à savoir: la prévention des crimes et la réparation des dommages subis par les victimes de la criminalité.

5. La Résolution no. 1 en matière civile, administrative et pénale de la lutte contre la corruption adoptée à la Conférence des ministres européens de la Justice, tenue à La Valette (Malte) en 1994;

6. La Recommandation no. 8/1996 sur la politique pénale dans une Europe en transformation, adoptée par le Comité des ministres le 5 Septembre 1996, qui considère approprié l'adoption par les États membres des dispositions établissant la responsabilité pénale des personnes morales;

7. La Résolution no. 24/1997, sur les 20 principes directeurs dans la lutte contre la corruption, adoptée par le Comité des ministres le 6 Novembre 1997 - souligne la nécessité d'établir des mesures pour empêcher la transformation des personnes morales en protections quant à la dissimulation de l'infraction de la corruption.

8. Sur le plan de la jurisprudence, la Commission des droits de l'homme a statué que bien que la Convention européenne des droits de l'homme (CEDH) ne fait aucune référence à une éventuelle responsabilité pénale des personnes morales, elle n'est pas incompatible avec une telle responsabilité. Par conséquent, quand il ya une une accusation criminelle contre la personne morale, elle a le droit (la personne morale) à un procès équitable, conféré par l'art. 6 de CEDH. Cette jurisprudence est conforme à l'orientation de la doctrine européenne qui considère que l'art. 6 et 7 de la CEDH protège à la fois les individus et les entités juridiques[2].

La Convention pour la protection de l'environnement par le droit pénal (Strasbourg, le 4 Novembre 1998) stipule dans son préambule que les sanctions pénales et administratives imposées contre les personnes morales peuvent jouer un rôle efficace dans la prévention des dommages à l'environnement. Conformément à l'art. 9, al. 1 de la Convention, les États contractants s'engagent à adopter les mesures nécessaires pour établir la possibilité d'appliquer par les autorités ou de leurs représentants des sanctions et des mesures pénales ou administratives contre des personnes morales qui ont commis, un crime de ceux couverts par l'art. 2 ou 3 de la Convention. Le rapport explicatif sur cette convention montre qu'il y a une tendance internationale qui semble soutenir la reconnaissance générale de la responsabilité pénale des personnes morales.

9. La Résolution du XVème Congrès international de droit pénal (Rio de Janeiro, 1994), a approuvé la responsabilité pénale des personnes morales, en formulant une série de principes sur la façon d'exploiter ces principes;

10. La Convention pénale sur la corruption (Strasbourg, le 27 Janvier 1999), sous l'autorité du Conseil de l'Europe, prévoit à l'art. 18 l'obligation des États à inclure dans la législation nationale des sanctions applicables aux personnes morales qui commettent des infractions visées par la Convention. Ainsi, les États signataires sont tenus d'adopter les mesures nécessaires pour permettre l'engagement de la responsabilité pénale des personnes morales pour des délits de trafic d'influence, corruption et blanchiment d'argent, commis dans leur compte d'une personne physique;

11. La Convention sur la cybercriminalité - art. 12 (Budapest, le 23 Novembre 2001)[3].

La consécration de la responsabilité pénale des personnes morales dans les législations nationales

Sous l'influence des instruments juridiques et des recommandations susmentionnés, la responsabilité pénale des personnes morales a été consacrée dans les législations nationales de plusieurs États. La doctrine a estimé parfois que la responsabilité pénale des personnes morales doit rester une exception, limitée à des infractions commises dans le cadre des pouvoirs des conseils d'administration. De même, il a été considéré que les crimes contre la vie et l'intégrité physique ou de vol sont exclus de la responsabilité des personnes morales. Dans un autre avis, il est considéré que le seul crime que ces personnes peuvent commettre c'est la transgression des normes destinés à prévenir les abus dans le domaine économique, industriel et commercial et à assurer une protection des intérêts patrimoniaux de l'individu. D'autres auteurs,

[2] C. Voicu (coord.), M. Pantea, N. Ghinea, etc., „*Investigation des fraudes*", Vol. II, Ed. Sitech, Craiova, 2009.

[3] M. Pantea, „*La protection pénale de la propriété intelectuelle dans l'époque de la mondialisation*", Ed. Expert, Bucarest, 2008.

cependant, sont d'avis qu'il faut reconnaître une capacité générale des personnes morales, sans être limitée par le principe de la spécialité de la capacité d'utilisation. Cependant, il est reconnu qu'il ya des crimes qui, par leur nature, ne peuvent être commis par une personne morale, comme cela arrive en cas de viol, adultère ou bigamie.

De même, il a été démontré que si il ya des crimes qui peuvent être facilement commises par des personnes morales - abus de confiance, escroquerie, faux, etc. - il ya aussi des faits qui appartient au domaine de l'activité individuelle - inceste, bigamie, adultère - et qui ne peuvent avoir comme auteur qu'un individu. Il convient toutefois de souligner que dans le cas de ces dernières infractions la personne morale peut jouer un certain rôle, comme instigateur ou complice, alors il n'est pas possible de déterminer d'avance l'étendue des infractions susceptibles d'être commises par des personnes morales.

L'observation est en effet fondée, parce qu'il est presque impossible d'identifier un crime excluant *ab initio* l'implication d'une personne morale, au moins comme instigateur ou complice. Par exemple, si une personne morale ne peut pas déserter, elle pourrait sans problème inciter les soldats d'une unité à commettre le crime, surtout si la personne morale opère dans les médias.

Sur la base des opinions exprimées dans la doctrine, les lois de différents pays ont souligné deux grands systèmes de détermination de la portée de la responsabilité pénale des personnes morales. Dans le premier système - **celui de la responsabilité civile générale**, établi en Angleterre, Hollande, Belgique, Canada, etc. les personnes morales ont une capacité pénale similaire à celle des individus, pouvant donc commettre toute infraction. Le second système, mis en place par le Danemark, la Finlande et la Chine, **suppose l'indication par le législateur**, pour chaque infraction, de la possibilité que l'infraction soit commise par des personnes morales.

1. La responsabilité civile générale. La plupart des États appartenant soit au système *Common Law*, soit au système romano-germanique, admettent la responsabilité des personnes morales pour presque n'importe quel type de crime.

1.1. Royaume-Uni. En droit anglais, bien que la responsabilité globale reste la règle, il y a certaines limites de la responsabilité pénale des personnes morales. Premièrement, selon le principe *lex non cogit ad impossibilia*, les personnes morales ne sont pas responsables des infractions dont la seule sanction est l'emprisonnement, un tribunal britannique affirmant qu'il ne peut pas démarrer un procès à la fin duquel, en cas de condamnation, aucune sanction n'est applicable. Actuellement, il y a seulement deux infractions dont la seule sanction est l'emprisonnement: *le meurtre et la trahison*. D'autre part, selon le même principe, il est considéré que certains crimes ne peuvent pas être commis par une personne morale, soit en raison de la volonté expresse du législateur, soit en raison de leur nature. De la première catégorie relèvent les infractions pour lesquelles le Parlement a expressément prévu que la personne morale ne répond pas, a utilisé pour définir le crime la notion de personne physique - *particulier* - ou a utilisé certains termes incompatibles avec la personne morale. Par exemple, il a été décidé qu'une société ne peut pas commettre l'infraction de conduite sur les routes publiques d'un camion qui dépasse le poids maximum, parce que la personne morale ne conduit jamais un véhicule. De la deuxième catégorie appartiennent le crime et la bigamie, l'inceste, le parjure ou le viol, bien que certains auteurs contestent l'irresponsabilité des personnes morales pour de tels crimes. Suite à une décision antérieure, qui stipulait que les personnes morales ne pouvaient pas commettre des crimes de violence physique en raison de leur nature, pour quelque temps, les tribunaux anglais ont exclu du domaine de la responsabilité pénale des personnes morales les infractions de violence, décision qui a donné naissance à une vie dispute théorique dans la doctrine anglaise. Enfin, cependant, la jurisprudence a admis la possibilité que les sociétés puissent commettre le crime d'homicide involontaire, admettant à juger une compagnie maritime qui a causé un accident suite auquel t plusieurs dizaines de personnes sont mortes. Même si la personne morale a été acquittée - en raison de l'échec des exigences quant à la responsabilité d'entreprise, conformément à la théorie d'identification - la doctrine et la jurisprudence considèrent que cette limitation de responsabilité criminelle des sociétés a été supprimée.

1.2. États-Unis. Une société peut être condamnée en droit américain. Pour toute infraction, sa responsabilité est pratiquement aussi importante que celle d'un individu. Ainsi, il y a des condamnations, y compris pour les crimes contre lesquels de nombreux systèmes juridiques appliquent le principe de non-responsabilité: prostitution, vol, fraude ou outrage au tribunal, et les condamnations pour homicide involontaire sont devenues une habitude. Aussi, dans une fameuse affaire, Ford a été condamné pour une infraction

d'homicide involontaire - qui impliquait une forme de culpabilité proche de l'intention indirecte – commise suite à la conception erronée des véhicules d'une certaine série, aux erreurs de production et, surtout, à l'absence de décision de retirer de ventes, après la découverte de ces erreurs[4]. Il est à noter qu'il y avait même un cas où une société a été poursuivi pour meurtre sans être condamnée, mais sans que le tribunal juge que la condamnation serait impossible, dans un cas où un accident de travail mortel a été déterminée par de très graves violations des règles de sécurité. Il y a même des condamnations pénales pour vol, ce qui prouve que, pratiquement parlant, la responsabilité pénale des entreprises est illimitée.

1.3. Canada. De même, quant à la loi canadienne, les personnes morales peuvent être tenus responsables de toute infraction, y compris de celles qui sont notées, en général, comme incompatibles avec la nature d'une personne morale, comme le parjure.

1.4. Australie. En Australie, les personnes morales peuvent, en principe, commettre tout crime, même si une partie de la doctrine ancienne considérait qu'elles ne pouvaient pas être reconnus coupables de crimes contre la personne. Aujourd'hui, il y a des condamnations des entreprises pour des crimes de corruption, fraude, trouble de possession, de fausses déclarations, etc., y compris l'homicide involontaire. Une certaine limitation apparaît en ce qui concerne les infractions punissables d'un emprisonnement qui ne peut pas être appliqués aux personnes morales, mais, d'une part, la plupart des états fédéraux ont adopté des règlements qui stipulent l'application, dans de tels cas, d'une amende, et, d'autre part, ces infractions sont moins nombreuses et se produisent rarement dans le cadre de l'activité des personnes morales.

1.5. Afrique du Sud. Ni dans l'Afrique du Sud il n'y a pas de limitation de l'étendue de la responsabilité pénale des personnes morales. La responsabilité des entreprises est en principe aussi importante que celle des individus, existant, par exemple, des décisions de condamnation pour homicide involontaire.

1.6. Belgique. En droit belge, il est reconnu que la personne morale peut commettre n'importe quel crime, dans la mesure où il a été lié à la réalisation de l'objet d'activité ou il a été commis au nom de la personne morale (article 5, alin. 1 Code pénal).

1.7. Pays-Bas. Une solution similaire se trouve dans la loi néerlandaise, art. 51 du Code pénal indiquant seulement que les crimes peuvent être commis soit par les personnes physiques, soit par les personnes morales. Basée sur ce texte, la doctrine a admis qu'une personne morale peut commettre, en principe, tout crime, y compris des infractions contre la vie ou contre l'intégrité corporelle. Par exemple, on pourrait conserver une accusation d'homicide involontaire pour le compte d'une compagnie pharmaceutique qui commercialise un produit insuffisamment testé - ce qui provoque des effets secondaires et la mort d'une personne - ou pour le compte d'une entreprise de transport qui utilise des véhicules corrompus causant ainsi un accident. La jurisprudence est allée plus loin, en acceptant la possibilité d'un meurtre commis par une personne morale. Pour une telle décision, le tribunal a jugé que l'accusé - un hôpital – n'a pas fait le contrôle des appareils d'anesthésie, causant ainsi la mort d'un patient. Le tribunal a considéré que, ce faisant, l'hôpital a accepté la possibilité du résultat, car il n'existait pas de système organisé de contrôle et de maintenance de ces appareils, mais qu'un entretien occasionnel.

1.8. France. La loi française, réglementant pour presque une décennie la responsabilité pénale des personnes morales conformément au système de la clause spéciale, a rejoint - avec l'entrée en vigueur de la loi du 9 mars 2004, la famille des droits qui reconnaissent la responsabilité pénale générale des personnes morales. Ainsi, une personne morale peut être tenue responsable de toute infraction prévue en droit pénal français dans la mesure où elle a été commise après la date du 31.12 2005.

1.9. Suisse. Le droit suisse aussi a consacré une responsabilité générale des personnes morales, à leur charge pouvant être retenue toute infraction dans la mesure où elle a été commise dans l'exercice d'une activité commerciale en conformité avec les objectifs de l'entreprise. Toutefois, le législateur a limité le domaine de la responsabilité pénale des personnes morales aux infractions graves - crimes et délits – un engagement d'une telle responsabilité n'étant pas possible pour des contreventions.

1.10. Maroc. Dans le droit marocain, le législateur a prévu une responsabilité générale qui connaît une limitation drastique en termes des sanctions applicables aux personnes morales. Conformément à l'art. 127 du Code pénal, « Les personnes morales ne peuvent être condamnés qu'à des sanctions pécuniaires et des peines accessoires prévues dans les art. 5, 6 et 7 à travers de l'art. 36. Ils peuvent

[4] M. Pantea, D. Bucur, „*Méthodes et techniques d'investigation des fraudes*", Ed. Sitech, Craiova, 2009.

également être soumises aux garanties prévues par l'art. 162 ». À partir de ce texte, la doctrine a montré qu'il existe deux catégories de limitations concernant les infractions desquelles peuvent être tenues responsables les personnes morales. Les limitations directes résultent soit des sanctions spécifiées dans le texte d'accusation - lorsque la loi prévoit seulement une peine d'emprisonnement ou la peine de mort - l'infraction ne peut pas être attribuée à la personne morale - soit de la nomination par le législateur d'un individu qui va supporter une sanction pénale. Par exemple, dans la législation du travail, il y a des textes qui établissent la responsabilité pénale du chef de l'entreprise pour la violation par de la personne morale des règles quant à la protection et la sécurité du travail. Les limitations indirectes sont ceux données par l'existence d'un individu comme sujet actif particulier dans le texte d'accusation. Quand la règle pénale prévoit que l'infraction est commise par un « administrateur », « gérant », « intermédiaire » ou « toute autre personne agissant en tant que représentant d'une société », elle n'entraîne qu'une responsabilité pénale individuelle de la personne en cause. En outre, il existe des textes de mise en accusation, certains ultérieures au Code criminel, établissant des mesures de substitution de la responsabilité pénale des personnes morales - par exemple, la solidarité quant à payer l'amende appliquée à la personne morale, à l'exclusion donc de la possibilité d'une responsabilité pénale des personnes morales en vertu de la disposition générale du Code pénal.

2. La clause spéciale. On peut voir donc que le système de la clause générale de responsabilité des personnes morales, bien que susceptible de susciter des controverses dans la doctrine et la jurisprudence concernant la possibilité de l'existence de certaines infractions commises par des personnes morales, a l'avantage de permettre aux tribunaux de décider, pour chaque affaire, si pour certains faits c'est possible ou non une telle responsabilité. Une évolution de la jurisprudence que celle du droit néerlandais ne serait pas possible, dans la mesure où le législateur serait établi pour chaque crime si elle peut ou ne peut pas être commis par une personne morale, selon la proposition de certains auteurs[5].

2.1. France. L'exemple le plus connu de système juridique qui prévoyait la responsabilité pénale des personnes morales sur une clause spéciale a été, jusqu'en 2004, la loi française. Conformément à l'art. 121-2 du Code pénal dans sa première rédaction « Les personnes morales ... répondent pénalement ... *dans les cas prévus par la loi ou par la réglementation, pour des crimes* ... » (s.n.). Cette déclaration est essentielle et elle implique que, pour être engagée la responsabilité pénale des personnes morales, elle devait être précisée dans le texte de mise en accusation qui précisait que sujet de l'infraction peut être « toute personne » n'est pas suffisant pour permettre d'engager la responsabilité pénale des personnes morales. La doctrine a synthétisé au moins trois raisons qui pourraient être invoquées pour justifier le choix du corps législatif. D'abord, il a été démontré que le législateur français s'était trouvé dans la situation où il a pu choisir le modèle utilisé, compte tenant que l'introduction de la responsabilité pénale des personnes morales a été faite avec l'adoption du nouveau Code pénal de sorte que la liste entière des infractions a été reconsidérée et il a pu décider pour chacune si la responsabilité pénale des personnes morales est justifiée est justifiable ou non. À notre avis, l'argument ne peut pas être décisif pour plusieurs raisons. Premièrement, même pour le cas de l'introduction de la responsabilité pénale des personnes morales, dans un code en vigueur, rien n'empêche le législateur de faire cette évaluation et de dresser une liste des crimes susceptibles d'être commis par une entité collective. Par ailleurs, nous serions tentés de dire que la clause particulière paraît la solution la plus naturelle quand la responsabilité pénale des personnes morales a été établie premièrement dans les lois spéciales - comme ce fut le cas de la loi finlandaise et de Danemark - et puis elle a été consacrée en règle générale dans le Code criminel. Dans une telle situation, le législateur a déjà fait, dans diverses lois spéciales, un certain nombre d'options concernant les infractions desquelles les personnes morales peuvent être tenues responsables, de sorte que la solution naturelle est de continuer de la même manière. Enfin, même dans le droit français, la responsabilité pénale des personnes morales ne concerne pas seulement les crimes du Code criminel, mais aussi ceux des lois spéciales qui ont été adoptées avant la consécration de ces institutions.

On a ensuite montré que ce principe de spécialité propose quelques façons d'éviter certaines situations apparemment absurdes, comme celle d'établir la responsabilité des personnes morales pour agression sexuelle, meurtre ou violence intentionnelle. En fait, l'exemple du droit américain

[5] M. Pantea, *„L'investigation de la criminalité économique et finqncière"*, vol.I, Ed. Pro Universitaria, Bucarest, 2010.

ou hollandais, indiqué ci-dessus, montre qu'il n'y a rien d'absurde à retenir un crime de meurtre pour le compte de la personne morale, la pratique fournissant déjà des cas à cet égard. En outre, comme indiqué dans la doctrine française, il n'est pas inconcevable que les administrateurs d'une société ayant des activités dans le domaine du crime organisé embauchent quelqu'un pour assassiner un concurrent dans des conditions qui engagent la responsabilité pénale de la personne morale. Donc, même si il est évident qu'une personne morale ne peut pas commettre, comme auteur, une agression sexuelle ou un abandon de famille c'est de notoriété publique que certaines sectes religieuses incitent ses membres à commettre ces actes. Et, sans une clause permettant l'engagement de la responsabilité de la personne morale de tels actes, ce ne sera pas possible la sanctionner comme instigateur ou complice.

En même temps, même en supposant que certaines infractions seraient non attribuables à une entité collective, il est difficile d'identifier les inconvénients qui résulteraient de la consécration de la clause générale de responsabilité des personnes morales, laissant au tribunal la charge de constater que les infractions en cause n'ont pas été commises par la société de l'inculpé.

En fait, le législateur français lui-même, finalement, a aboli la justification du principe de spécialité, augmentant par la loi no. 2001-504 du 12/06/2001 la responsabilité des personnes morales aussi pour des crimes auparavant considérés comme impossible de les retenir pour leur compte comme: le meurtre, les agressions et les violences intentionnelles, les agressions sexuelles ou l'abandon de famille.

Il a été noté également que, sur la base des risques liés de l'activité du groupe, il est naturel que la responsabilité pénale des personnes morales ne soit susceptible que pour révéler des actions spécifiques du groupe de sorte que la règle de la spécialité imposée par la loi puisse entrer dans la logique de ces responsabilités[6].

Les critiques contre la règle de spécialité ont surgit même à partir des premières années d'application du Code pénal français suite à l'analyse de la liste des infractions pour lesquelles il est possible l'engagement de la responsabilité pénale des personnes morales qui a révélé de nombreuses erreurs de réglementation.

Ainsi, d'une part, on a constaté l'absence de certaines infractions souvent commises par les personnes morales, et, d'une autre part, l'inclusion injustifiée d'autres. Par exemple, dans la doctrine a été critiqué le non inclusion dans la liste fournie de certaines infractions prévues par le Code du travail (crimes concernant la sécurité du travail, l'empêchement du fonctionnement normal des organes représentatifs des salariés, etc.), des infractions prévues par la loi du 24 Juillet 1966 sur les sociétés commerciales, des infractions fiscales et douanières ou des délits quant aux transactions boursières. Au lieu de cela, on a prévu la responsabilité pénale des personnes morales pour des actes prévus par l'art. 17-1 de l'Ordonnance du 01.12 1986 sur la liberté des prix et la concurrence, bien que ce texte ne criminalise pas une infraction susceptible d'être commise par des individus, mais des actions d'administration liées aux pratiques anticoncurrentielles qui ne pourraient être commises que par des personnes morales et pour lesquelles il était déjà prévu des amendes administratives. Par conséquent, en 1994, ce texte a été retiré de la liste des infractions et susceptibles d'être commises par des personnes morales.

En même temps, il a été considéré par certains auteurs qu'il est presque impossible de fixer un critère qui soit à la base du choix des crimes pouvant entraîner la responsabilité pénale de la personne morale. Par exemple, il était difficile de trouver une explication logique pour l'exclusion de la responsabilité pénale des personnes morales pour l'infraction de corruption en matière judiciaire (art. 434-9 alin. 2 du Code pénal), dans les conditions de la consécration de cette responsabilité pour le cas du délit général de la corruption. De même, la personne morale pourrait être responsable pour les crimes de meurtre, agression sexuelle, menaces, mais pas pour privation illégale de liberté (article 224-1 et suiv.). Il n'est pas plus facile d'expliquer pourquoi le crime de discrimination prévu par le Code pénal attire la responsabilité pénale de la personne morale, mais le crime de discrimination prévu par le Code du travail est resté exclue du champ d'application de cette responsabilité.

Il est à noter le fait que, dans le contexte de ces critiques, la Cour de Cassation a compris parfois, dans des limites très larges, l'idée de clauses particulières, en admettant l'engagement de la responsabilité pénale pour des crimes pour lesquels cette clause, en réalité, n'existait pas. Par exemple, par une décision du 5 février 2003, la section criminelle de la Cour de Cassation a confirmé

[6] M. Pantea, *„L'investigation de la criminalité économique et finqncière"*, *op. cit.*, p. 61.

l'application, pour une personne morale, d'un texte du Code des douanes, qui ne prévoyait pas explicitement la responsabilité pénale de ces entités. La décision a été rendue en vertu de l'art. 399 du Code des douanes, conformément auquel „Ceux qui ont participé en aucune façon au délit de contrebande sont soumis aux mêmes peines que les délinquants auteurs" (s.n.). La Cour semble être de retour dans ce cas sur sa jurisprudence, constante jusqu'à ce jour-là, considérant désormais qu'une formulation large, comme dans l'art. 399, est suffisante pour désigner un individu, mais aussi une personne morale.

Enfin, le législateur français a compris les inconvénients de la clause spéciale et a renoncé à cette manière de réglementer la responsabilité pénale des personnes morales. Par la Loi du 9 Mars 2004 (art. 54) a été donc supprimée la référence à la clause spéciale de l'art. 121-2 du Code pénal, le système français se rattachant donc à la catégorie des législations qui admettent la responsabilité pénale générale des personnes morales.

2.2. Chine. La clause spéciale régissant la responsabilité pénale des personnes morales reste encore réglementée dans certaines législations. Ainsi, dans le droit pénal chinois, l'art. 30-31 du Code pénal (1997) énonce le principe de la responsabilité pénale des personnes morales, et dans la partie spéciale il est indiqué des cas des crimes spécifiques sont donnés pouvant être commis par les personnes morales.

2.3. Portugal. En droit portugais, la responsabilité pénale des personnes morales est spéciale, étant donné qu'il n'y a pas une disposition de principe dans le Code pénal, la responsabilité des entités collectives étant actuellement régie seulement par quelques lois spéciales. En même temps, le récent projet de loi modifiant le Code pénal prévoit une responsabilité pénale des personnes morales selon le modèle du système de la clause spéciale. Mais il est à remarquer aussi la modalité technique que les auteurs du projet ont proposée, c'est-à-dire l'indication des infractions susceptibles d'entraîner la responsabilité pénale des personnes morales n'existant pas dans la partie spéciale, mais dans la partie générale. Ainsi, l'art. 11, al. 2, régissant la responsabilité pénale des personnes morales, contient la liste des infractions prévues par le Code criminel qui peuvent leur être attribuées.

2.4. Finlande. En Finlande aussi, les réglementations légales sur la responsabilité pénale des entités collectives sont applicables uniquement aux infractions mentionnées expressément dans le texte législatif. Elles visent les crimes liés à la protection de l'environnement, à la sécurité publique, les crimes liés à la loi financière, celles relatives au commerce, à la corruption, etc.

2.5. Danemark. Conformément à l'art. 25 (ch. 5) du Code pénal danois, la responsabilité pénale des personnes morales est admise quand elle est expressément prévue. Des dispositions à cet égard peuvent être trouvés dans les nombreuses lois spéciales - il y en a environ 200 - mais pas dans la partie spéciale du code. Comme déjà noté dans les rangs précédents, la consécration de la clause spéciale dans le système de droit finlandais et danois est expliquée par la manière où la responsabilité pénale des personnes morales est parue dans ces législations. Contrairement au droit français, belge, roumain, etc. où la responsabilité pénale des personnes morales a été créée premièrement dans le code pénal, dans les deux pays la responsabilité des entités collectives s'est trouvé d'abord dans les dispositions de nombreuses lois spéciales, de sorte que beaucoup plus tard elle soit introduite comme réglementation générale dans le Code pénal. Dans ces conditions, à l'occasion de la préparation de chaque loi spéciale, le législateur a choisi les crimes pour lesquels il a décidé de consacrer la responsabilité pénale des personnes morales, donc l'inclusion d'une clause spéciale de responsabilité dans la réglementation du Code était destinée à fournir une continuité naturelle de la pratique législative précédente.

Le régime de la responsabilité pénale de la personne morale dans la législation roumaine

L'entrée en vigueur de la loi no. 278/2006 a marqué la consécration réelle de la responsabilité pénale des personnes morales en droit roumain. En termes de la chronologie des réglementations en matière, la loi no. 278/2006 n'est pas le premier texte normatif sur la responsabilité des personnes morales adopté par le législateur roumain[7]. Ainsi, la loi no. 299/2004 sur la responsabilité des personnes morales pour les infractions de contrefaçon de monnaye ou d'autres valeurs est entrée en vigueur depuis 2004, mais elle n'a pas pu jamais être appliquée en l'absence des dispositions de procédure en matière appropriées. À son tour, le nouveau Code pénal établit cette responsabilité. Par conséquent, on peut dire que seulement après l'entrée en vigueur des dispositions en matière de la

[7] F. Sandu, „*La criminalité des affaires*", Centrul de Studii Postuniversitare M.A.I. et Fundația Soros, 1998.

loi no. 278/2006 il y a pour la première fois dans notre droit une responsabilité pénale réelle des personnes morales.

Contrairement aux autres systèmes de droit où la consécration juridique de la responsabilité pénale des personnes morales a été précédée d'un débat vaste au niveau doctrinal sur la pertinence, l'utilité et le respect des principes fondamentaux du droit pénal de cette institution, la doctrine roumaine semblait moins intéressée par ce sujet. Par conséquent, il est difficile de dire si une action législative qui établit cette responsabilité intervient sur une base doctrinale favorable ou hostile à cette idée. Cependant, lors de l'adoption de la loi no. 278/2006, les efforts scientifiques liés à la responsabilité pénale des personnes morales doivent nécessairement changer leur sujet, abandonnant - ou au moins déplaçant dans le second plan - les arguments visant à soutenir ou à combattre cette forme de responsabilité en faveur d'une analyse complète quant à la façon où elle va fonctionner efficacement selon la réglementation existante.

Conformément à l'art. 19[1] du Code pénal, « les personnes morales, à l'exception de l'État, des autorités publiques et des institutions publiques engagées dans une activité qui ne peut être du domaine du privé, sont responsables pénalement des crimes commis dans la réalisation de l'objet d'activité ou de l'intérêt ou au nom de la personne morale, si l'acte a été commis dans la forme de culpabilité prévue par le droit pénal. La responsabilité pénale des personnes morales n'exclut pas la responsabilité pénale des individus qui ont contribué de toute façon à commettre le même délit. »

Comme on peut l'observer, la nouvelle loi établit un modèle de responsabilité pénale directe, conformément auquel la personne est responsable de sa propre action et pas pour l'action d'une autre personne. Ce type de réglementation – présente aussi dans le droit néerlandais, belge, etc. - est, à notre avis, un choix heureux du législateur, parce que notre système de justice pénale ne connait pas l'institution de la responsabilité indirecte.

1. Les conditions d'engagement de la responsabilité pénale des personnes morales. La doctrine et la littérature de spécialité[8] ont exposé trois conditions quant à l'engagement de la responsabilité pénale des personnes morales:

1.1. L'acte est commis par un individu qui a la capacité d'engager pénalement la personne morale. Nous avons présenté ci-dessus les controverses sur la possibilité d'engager la responsabilité pénale des personnes morales seulement pour des crimes commis par ses organes administratifs et les solutions adoptées par les lois de certains pays. À noter qu'à l'heure actuelle il y a une nette tendance à élargir le cercle[9] des organismes ou des personnes pour les actions desquels on peut engager la responsabilité pénale des personnes morales, afin d'éviter autant que possible l'apparition des situations d'impunité, profitant de différentes façons de contourner la loi. Conformément aux dispositions en vigueur, *le système choisi est celui de la responsabilité pénale des personnes morales pour les crimes commis par ses employés, qu'ils soient cadres ou des organes exécutifs.* Cette solution est plus moderne et peut couvrir avec plus de succès les caractéristiques organisationnelles de différentes catégories de personnes morales existantes dans le paysage juridique roumain.

En ce qui concerne le traitement juridique de l'individu qui engage la responsabilité pénale de la personne morale pour son acte, les législations ont évité d'établir des règles claires et on a laissé au juge de décider s'il est responsable pénalement ou non. Le Code pénal néerlandais, par exemple, prévoit que si une infraction a été commise par une personne morale les peines peuvent être prononcées soit contre la personne morale, soit contre les individus coupables, soit contre les deux. Cette façon de "résoudre" le problème donne lieu à des règles pénales permissives, ce qui est difficile à accepter. Il y avait des propositions pour résoudre ce problème d'une autre manière, mais dans notre législation pénale en vigueur actuellement le juge est celui qui doit choisir.

1.2. Le fait est attribuable à la personne morale. Comme nous l'avons indiqué, dans notre législation on a adopté le principe en vertu duquel la personne physique qui a la capacité d'engager personnellement la personne morale peut être n'importe où dans sa hiérarchie. Dans ces circonstances, il faut établir pour quels cas les actions de ces personnes peuvent être attribuées

[8] D. M. Costin, „La responsabilité de la personne morale dans le droit pénal roumain", Ed. Universul juridic, Bucarest, 2010, p. 343; A. Boroi, „*Droit pénal-généralités*", Ed. Ch. Beck, Bucarest, 2010, p. 152; F. Streteanu, R. Chiriță, „*La responsabilite penale de la personne morale*", ed. a II a, Ed. Ch. Beck, Bucarest, 2007, p. 390.

[9] J. Pradel, „*Droit penal europeen*", 1999, p. 363.

aussi à l'entité juridique[10]. C'est parce que lorsque l'acte est commis contre la personne morale, elle devient partie lésée et alors il est impossible que l'action lui être imputée, même si l'auteur est un de ses organes ou un de ses représentants. En vertu de l'art. 19^1 du Code pénal, « les personnes morales, autres que l'État, les autorités publiques et les institutions publiques engagées dans une activité qui ne peut être du domaine du privé, sont pénalement responsables des crimes commis dans la réalisation de l'objet d'activité ou de l'intérêt ou au nom de la personne morale, si l'infraction a été commise avec la forme de culpabilité prévue par le droit pénal. » Dans ces circonstances, nous apprécions que l'action puisse être attribuée à l'entité juridique dans l'une des hypothèses indiquées par le texte cité:

- *Elle est commise dans la réalisation de son objet d'activité.* Cette hypothèse est relativement facile à évaluer, car il peut être observé de l'acte constitutif de la personne morale, n'importe s'il s'agit d'une personne avec ou sans but lucratif, quel est son objet d'activité;
- *Elle est commise dans l'intérêt de la personne morale,* ce qui signifie, en général, que l'acte est commis pour obtenir un bénéfice ou pour éviter une perte pour la personne morale. À une première vue, il est difficile de comprendre comment est-il possible que cette personne agisse pour atteindre l'objet d'activité, mais sans que ce soit dans l'intérêt de la personne morale, ce qui remet en question la pertinence de l'existence de deux hypothèses différentes. Nous croyons que le législateur a eu à l'esprit les cas où, bien que l'organe ou le représentant de la personne morale ait travaillé en dehors du champ d'activité, il est sans doute dans son profit. Nous considérons, par exemple, la situation où le chef de la personne morale commet l'infraction de corruption de sorte que la personne morale obtienne un contrat, donc clairement dans son intérêt;
- *Elle est commise au nom de la personne morale,* hypothèse qui implique que la personne physique adopte un comportement illégal en considération de la position qu'il a, d'employé de l'entité juridique dont il engage la responsabilité et non comme un simple individu.

1.3. L'acte est commis dans la forme de culpabilité tel que requise par la norme d'incrimination. La dernière condition que le texte de l'art. 19^1 du Code criminel a à l'esprit est que le crime soit commis sous la forme de culpabilité prévue par le droit pénal. L'élément subjectif, pour le cas d'une infraction commise par une personne morale, a quelques particularités. Ainsi, il faudra être établi si l'infraction résulte d'une décision délibérée prise par la personne morale, ou s'il s'agit de la conséquence de la négligence dans ses structures, telles que: une organisation interne déficitaire, des mesures de sécurité du travail inadéquates, des restrictions budgétaires exagérées. Si l'infraction est commise par un tiers pour le profit de la personne morale, il devrait au moins qu'il en soit conscient ou spectateur passif ou le bénéficiaire du crime. Pour évaluer l'élément subjectif, pour le cas des personnes morales, le tribunal doit fonder sa décision sur l'attitude des organes administratifs.

2. Les pénalités applicables à la personne morale. Pour que l'institution de la responsabilité pénale des personnes morales puisse recevoir de l'efficacité pratique, dans le Code pénal de la Roumanie ont été indiquées aussi les sanctions qui peuvent s'appliquer à des entités collectives pénalement responsables. Ainsi, l'art. 53^1 du Code pénal établit que les pénalités qui s'appliquent aux personnes morales sont les pénalités majeures et les pénalités supplémentaires. La seule punition principale est une amende de 2500 lei à 2.000.000 lei. La solution a comme base le fait que la sanction pécuniaire a l'avantage d'atteindre directement la personne morale. Les peines complémentaires pour les personnes morales sont: *la dissolution de la personne morale, la suspension de la personne morale pour une période de trois mois à un an ou la suspension de l'une des ses activités dans le cadre de laquelle l'infraction a été commise pour une période de 3 mois à 3 ans, la suspension de certaines représentances de la personne morale pour une période de 3 mois à 3 ans, l'interdiction de participer aux procédures d'acquisition publiques pour une période de un à trois ans ou l'affichage ou la diffusion de la décision de condamnation.*

2.1. La peine principale de l'amende pour le cas de la personne morale. Contrairement au cas de la personne physique, pour lequel il y a plusieurs pénalités principales, pour le cas de la personne morale, le législateur a prévu une seule peine principale – l'amende de 2500 lei à 2.000.000 lei. L'article 71^1 du Code pénal stipule que la peine d'amende suppose le montant d'argent que la personne morale est condamnée à payer. Dans les cas où la loi prévoit pour l'infraction commise par la personne physique l'emprisonnement de jusqu'à 10

[10] F. Sandu, „*La criminologie théorétique et appliquée*", Ed. Universul Juridic, Bucarest, 2005.

ans ou une amende, l'amende minimale spéciale pour la personne morale est de 5.000 lei, et le maximum de l'amende est de 600.000 lei. Si la loi prévoit pour l'infraction commise par la personne physique l'emprisonnement à vie ou l'emprisonnement de plus de 10 ans, l'amende minimale spéciale pour l'entité juridique est de 10.000 lei, et le maximum de l'amende est 900 000 lei. Quant à la sanction principale, dans la littérature juridique on a soulevé le problème d'établir la manière où on fait son individualisation. Il a été remarqué à cette occasion que dans le système de *Common Law* il y a certaines règles de sanctionnement de l'entité juridique[11]. Par exemple on a présenté la situation du droit américain qui permet de réduire les amendes jusqu'à 95% pour les entreprises qui ont implanté des programmes de conformité à la loi et qui ont développé des structures spécialisées conçues pour développer des codes de conduite pour les employés et pour surveiller leur respect.

La doctrine européenne n'est pas d'accord avec ce système, parce qu'il autorise la personne morale à établir ses propres règles de conduite et à fixer les limites dans lesquelles ses actions ne peuvent être considérées comme illégales, ce qui, en termes de la politique du droit, n'est pas souhaitable. De plus, ce système a aussi un effet discriminatoire, conduisant à traiter sévèrement les groupes vulnérables financièrement, qui ne peuvent pas se permettre de supporter le coût de la conformité avec la législation.

2.2. Les peines complémentaires applicables à la personne morale.

1. En plus de la peine principale de l'amende peut être appliquée à la personne morale une ou plusieurs peines complémentaires prévues à l'art. 53^1 alin. 2 du Code pénal. Ainsi, il est prévu: *la dissolution de la personne morale, la suspension de l'activité de la personne morale pour une période de 3 mois à un an ou la suspension de l'une des activités de la personne morale dans le cadre de laquelle l'infraction a été commise pour une période de 3 mois à 3 ans, la suspension de certaines succursales de la personne morale pour une période de 3 mois à 3 ans, l'interdiction de participer aux procédures d'acquisition publiques pour une période de un à trois ans ou l'affichage ou la diffusion de la décision de condamnation.* Dans le chapitre V, Titre III on établit le régime d'exécution de ces sanctions complémentaires.

2. La peine complémentaire de la liquidation de la personne morale est la sanction la plus sévère de cette nature qui puisse être ordonnée contre la personne morale[12]. La dissolution de la personne morale peut être prononcée dans deux cas, conformément à l'art. 72^2 du Code pénal: le cas où l'entité juridique qui a été créée pour commettre des crimes et celui où, bien qu'initialement l'activité de l'entité juridique a été légitime, elle a été détournée en totalité ou en partie afin de commettre des infractions. La dissolution de la personne morale peut se produire aussi lorsque son objet d'activité a été détourné pour commettre des crimes. Le détournement suppose que l'objet légitime d'une personne morale n'est pas pleinement respecté, s'agissant d'un changement de l'objet réel.

Une condition d'application de cette sanction complémentaire est l'existence de l'élément intentionnel dans le crime. Dans la mesure où la dissolution est soumise à la création de la personne morale ou au détournement de son objet d'activité en vue de commettre des crimes, il est clair que les crimes commis ne peuvent être qu'intentionnels, une personne morale ne pouvant pas être créée pour commettre des crimes de négligence. On peut apprécier, par exemple, qu'une personne morale coupable pour le crime de blanchiment d'argent peut être dissoute. Par ailleurs, elle peut être dissoute, même si le but infractionnel n'a pas été le seul crime qui a conduit à l'apparition de la personne morale et même si certains membres de la société ne sont pas responsables de la perpétration du crime.

La dissolution de la personne morale a comme effet la liquidation conformément à la loi. Par la décision de dissolution de la personne morale, le tribunal nomme le liquidateur. Une copie du dispositif de décision de dissolution est transmise à l'organe qui a autorisé la création de la personne morale et à l'organe qui a enregistré la personne morale, pour prendre les mesures nécessaires.

La dissolution de la personne morale ne peut être appliquée à des partis politiques, aux syndicats, aux employeurs, aux organisations religieuses ou aux organisations des citoyens appartenant aux minorités nationales, établis conformément à la loi. La dissolution ne peut pas être appliquée aux entreprises opérant dans la presse ou dans la radiodiffusion. L'exclusion de ces entités peut être justifiée par leur participation à l'exercice des libertés publiques garanties par la Constitution.

[11] F. Sandu, *„La criminalité des affaires"*, *op. cit.*, p. 68.

[12] F. Sandu, *„La criminologie théorétique et appliquée"*, *op. cit.*, p. 204.

Dans la littérature de spécialité, on a expliqué les effets que l'amnistie a sur la sanction de dissolution. Ils ont été identifiés comme étant différents selon le moment où l'acte d'amnistie intervient. Lorsqu'il intervient après la dissolution, il n'aura pas comme effet la recréation de l'entreprise, et lorsqu'il intervient après le prononcé de la décision, mais avant l'exécution, il se traduira dans l'exécution de la décision.

Le casier des condamnations des personnes morales est fait en opérant des mentions dans les casiers spécialisés. Nous observons que la dissolution, comme la plus sévère peine supplémentaire qui puisse s'appliquer à la personne morale, ne peut plus être efficace si la personne morale, société commerciale en état d'insolvabilité, a été dissoute antérieurement, dans les conditions prévues par la loi no. 85/2006 sur les procédures d'insolvabilité.

3. La suspension de toute activité ou d'une des activités de la personne morale signifie l'interdiction des activités ou de l'activité de la personne morale dans l'exercice desquelles le crime a été commis. La mesure peut ordonner, pour le cas où elles n'ont pas été exécutées de mauvaise foi aussi, la peine complémentaire d'affichage ou de distribution de la décision de la condamnation. La durée, dans ce cas, est déterminée du moment où la peine d'affichage est exécutée, mais pas plus de 3 mois. Lorsque la période de grâce de trois mois expire, et la punition supplémentaire n'a pas été mise en exécution du tribunal, on dispose la dissolution de la personne morale. La suspension de toute activité ou d'une des activités de la personne morale peut être mise en œuvre pour une période de 3 mois à 3 ans. Une copie du dispositif de la décision de suspension est transmise à l'organe qui a autorisé la création de la personne morale et à l'organe qui a enregistré la personne morale, pour que les mesures nécessaires soient prises. Comme dans le cas de dissolution, il y a certaines personnes morales exemptées de cette mesure. Ainsi, la suspension ne peut être appliquée à des partis politiques, aux syndicats, aux employeurs, aux organisations religieuses ou aux organisations de citoyens appartenant aux minorités nationales, établis conformément à la loi. De même façon, l'activité dans la presse ou dans la radiodiffusion, ne peut pas être suspendue.

4. En vertu de l'art. 71^5 du Code pénal, une autre peine complémentaire de la fermeture de certains de ses débouchés. Elle concernait la fermeture d'un ou de plusieurs des débouchés appartenant à l'entité juridique à but lucratif, dans lesquels on a développé l'activité dans le cadre de laquelle le crime a été commis. De cette punition sont expressément exonérées les personnes morales qui opèrent dans la presse. En plus, de cette sanction sont exemptées les personnes morales de droit privé à but non lucratif: les associations, les fondations.

5. L'interdiction de participer aux procédures d'acquisitions publiques est une autre pénalité supplémentaire et suppose l'interdiction de participer, directement ou indirectement, aux procédures d'attribution des contrats d'acquisitions publiques requises par la loi pour une période d'un an à trois ans. La punition suppose l'interdiction de participer à un contrat signé par l'État ou par les institutions publiques, les collectivités locales ou d'autres entreprises contrôlées par l'État. Il interdit la participation directe et la simulation par interposition de personnes (la participation indirecte). Une copie du dispositif de décision par l'intermédiaire duquel la sanction a été appliquée est transmise immédiatement:

a) au Bureau du Registre du Commerce auprès le Tribunal, pour effectuer les formalités de publicité dans le Registre du Commerce;

b) au Ministère de la Justice pour effectuer les formalités de publicité dans le Registre national des personnes morales sans but patrimonial;

c) à d'autres autorités qui gardent la liste des personnes morales pour effectuer les formalités de publicité.

6. L'affichage de la disposition de condamnation ou sa diffusion est une peine complémentaire à effet intimidant significatif sur les entreprises, parce que cela affecte l'image de marque, la réputation commerciale, la position de la personne morale pouvant entraîner la perte de clients et la diminution de sa crédibilité. L'article 71^7 stipule que l'affichage de la décision définitive de condamnation sa diffusion est réalisée à la charge de la personne morale condamnée. Par l'affichage ou la diffusion de la décision de condamnation ne peut pas être divulgué l'identité de la victime, à moins qu'il y ait son consentement ou le consentement de son représentant légal. L'affichage de la décision de condamnation est réalisé en double exemplaire, en forme et lieu fixé par le tribunal, pour une période comprise entre un et trois mois. La diffusion de la décision de condamnation est réalisé en double exemplaire en la forme établie par le tribunal, par l'intermédiaire de la presse écrite ou audiovisuelle ou d'autres moyens de communication audiovisuelle désignés par le tribunal. Si la distribution se fait par la presse écrite ou audiovisuelle, le tribunal

détermine le nombre d'apparitions qui ne peuvent pas être supérieur à 10, et pour la diffusion par le biais d'autres diffuseurs, sa durée ne peut excéder 3 mois. Ainsi, les victimes potentielles de la personne morale sont mises en garde et alors peuvent devenir plus prudentes dans leurs relations d'affaires avec la personne morale concernée ou peuvent chercher d'autres partenaires.

De **l'analyse des dispositions de la loi no. 319/2006** de la sécurité et de la santé pendant le travail, on retrouve **les obligations** suivantes[13]:

1. Obligations générales (énoncées dans la Section 1 du Chapitre III):

- Assurer la sécurité et la santé des travailleurs dans tous les aspects du travail;
- Prendre les mesures nécessaires pour: assurer la sécurité et la protection de la santé des travailleurs, la prévention des risques professionnels, l'information et l'instruction des travailleurs; le fournissement du cadre d'organisation et des moyens nécessaires à la sécurité et à la santé dans le cadre du travail;
- Chercher à adapter les mesures mentionnées ci-dessus, en tenant compte des conditions changeantes, pour l'amélioration des situations existantes aussi;
- Mettre en œuvre les mesures énoncées ci-dessus sur le fondement des principes généraux de prévention suivants: éviter les risques, évaluer les risques qui ne peuvent pas être évités, combattre les risques à la source, adapter le travail à l'homme, en particulier en ce qui concerne la conception des emplois, choisir les équipements de travail, les méthodes de travail et de production pour réduire la monotonie du travail, le travail avec un rythme prédéterminé et la diminution de leurs effets sur la santé, s'adapter au progrès technique, remplacer le danger par le non-dangereux ou par ce qui est moins dangereux, développer une politique de prévention cohérente incluant les technologies, l'organisation du travail, les conditions de travail, les relations sociales et l'influence de l'environnement de travail, adopter en priorité les mesures de protection collective par rapport aux mesures de protection personnelle, donner des instructions appropriées aux travailleurs;
- Évaluer les risques pour la santé et la sécurité des travailleurs, y compris le choix des équipements de travail, des substances ou des produits chimiques utilisés et l'aménagement des lieux de travail;
- Et puis, si nécessaire, des mesures préventives et des méthodes de travail et de production mises en œuvre par l'employeur pour assurer et améliorer la sécurité et la protection de la santé des travailleurs et être intégrées dans l'activité globale de l'entreprise et/ou de l'établissement en cause et à tous les niveaux hiérarchiques;
- Examiner les capacités des travailleurs en termes de sécurité et de santé pendant le travail, quand il leur confie des tâches;
- S'assurer que la planification et l'introduction de nouvelles technologies fasse l'objet d'une consultation avec les travailleurs et/ou leurs représentants concernant les conséquences sur la sécurité et sur la santé des travailleurs, résultant du choix des équipements, des conditions et de l'environnement de travail;
- Prendre des mesures appropriées afin que, dans les zones à haut risque et spécifique, l'accès soit autorisé uniquement aux travailleurs qui ont reçu et ont acquise des instructions appropriées.

2. Obligations concernant les services de prévention et de protection (prévues dans la Section 2 du Chapitre III):

- Nommer un ou plusieurs travailleurs pour s'occuper des activités de protection et de prévention des risques professionnels de l'entreprise et/ou unité;
- Utiliser les services externes, si dans la société et/ou l'unité on ne peut pas organiser des activités de prévention et de protection à cause de l'absence de personnel compétent.

3. Obligations sur les premiers secours, les incendies, l'évacuation des travailleurs, le danger grave et imminent (comme prévu dans la Section 3 du Chapitre III):

- Prendre les mesures nécessaires pour accorder les premiers secours, la lutte contre l'incendie et l'évacuation des travailleurs, adaptées à la nature et à l'envergure des activités de l'entreprise et/ou de l'unité, tenant compte des autres personnes présentes;
- Établir les liens nécessaires avec les services spécialisés, notamment en ce qui concerne les premiers secours, les services médicaux d'urgence, de sauvetage et contre incendie;
- Désigner les travailleurs qui appliquent des mesures de premiers secours, de lutte contre incendie et d'évacuation des travailleurs;
- Informer, dès que possible, tous les travailleurs qui sont ou peuvent être exposés au danger

[13] Publié au Journal officiel n. 646 du 26 Juillet 2006

grave et imminent sur les risques possibles et sur les mesures prises ou à prendre pour leur protection;
- Prendre des mesures et fournir des instructions pour donner aux travailleurs la possibilité de cesser le travail et/ou de quitter immédiatement le lieu de travail et se déplacer vers un endroit sûr en cas de danger grave et imminent;
- Ne pas demander aux travailleurs de reprendre le travail dans la situation où il y a toujours un danger grave et imminent, à moins pour des cas exceptionnels et des raisons justifiées;
- S'Assurer, dans le cas d'un danger grave et imminent pour leur sécurité ou la sécurité d'autres, quand le supérieur hiérarchique ne peut pas être contacté, que tous les travailleurs sont en mesure d'appliquer les mesures appropriées conformément à leurs connaissances et avec les moyens techniques disponibles pour éviter les conséquences d'un tel danger.

4. Obligations relatives à l'information des travailleurs (prévues dans la Section 5 du Chapitre III):
- Prendre les mesures appropriées afin que les travailleurs et/ou leurs représentants reçoivent, conformément à la loi, toutes les informations nécessaires sur:
- les risques pour la sécurité et la santé pendant le travail, ainsi que les mesures et les activités visant à prévenir et à protéger au niveau de l'entreprise et/ou de l'établissement en général et au niveau de chaque poste de travail et de chaque fonction;
- prendre les mesures appropriées afin que les employeurs de travailleurs de toute entreprise ou unité extérieure, qui développent des activités dans leur entreprise ou leur unité, reçoivent des informations adéquates sur les questions qui ont été mentionnés ci-dessus, relatives à ces travailleurs;
- prendre les mesures appropriées pour s'assurer que les travailleurs ou les représentants des travailleurs, ayant une fonction spécifique dans le domaine de la sécurité et de la santé des travailleurs, pour exercer leurs fonctions conformément à cette loi, ont accès à:

a) l'évaluation des risques et les mesures de protection;

b) les dossiers et les rapports;

c) des informations sur les mesures de sécurité et de santé pendant le travail et des informations provenant des institutions de contrôle et des autorités compétentes dans le domaine.

5. Obligations sur la consultation et la participation des travailleurs (comme prévu dans la Section 6 du Chapitre III):
- Consulter les travailleurs ou leurs représentants et permettre leur participation aux discussions sur toutes les questions relatives à la sécurité et à la santé pendant le travail; cette obligation inclut: la consultation des travailleurs, le droit des travailleurs ou leurs représentants de faire des propositions, la participation équilibrée;
- Accorder aux représentants des travailleurs ayant des responsabilités spécifiques dans le domaine de la sécurité et de la santé des travailleurs du temps suffisant sans diminution de salaire, et leur fournir les moyens nécessaires pour être en mesure d'exercer leurs droits et leurs obligations découlant de cette loi.

6. Obligations sur la formation des travailleurs (prévues dans la Section 7 du Chapitre III):
- Offrir des conditions pour que chaque travailleur reçoive une formation suffisante et appropriée en matière de sécurité et de santé pendant le travail, en particulier sous forme d' instructions et d'informations de travail spécifiques au lieu de travail et à son poste: lors de l'embauche, du changement de travail ou du transfert, lors de l'introduction de nouveaux équipements de travail ou des changements de l'équipement existant, lors de l'introduction de toute nouvelle technologie ou procédure de travail, lors de l'exécution des travaux spéciaux;
- S'assurer que les travailleurs des entreprises et/ou des unités externes, engagés dans des activités dans l'entreprise et/ou dans leurs unités extérieures, ont reçu des instructions adéquates concernant les risques sanitaires et de sécurité du travail, pendant les activités.

7. D'autres obligations (prévues dans la Section 4 du Chapitre III):
- faire et être en possession d'une évaluation des risques pour la sécurité et la santé pendant le travail, y compris pour ceux des groupes particulièrement sensibles aux risques;
- décider les mesures de protection à prendre et, le cas échéant, les équipements de protection à utiliser;
- tenir les registres d'accidents de travail qui ont entraîné une incapacité de travail de plus de 3 jours ouvrables, des accidents légères des maladies professionnelles et des incidents dangereux;
- développer pour les autorités compétentes et en conformité avec les règlements juridiques des

rapports sur les accidents du travail subis par ses travailleurs;
- adopter, dès la phase de recherche, de conception et d'exécution des constructions, des équipements de travail et d'élaboration des technologies de fabrication, des solutions en conformité avec la législation en vigueur sur la sécurité et la santé pendant le travail, par l'application desquelles soient éliminés ou réduits les risques de blessure et de maladie des travailleurs;
- préparer un plan de mesures de prévention et de protection composé de mesures techniques, de santé, d'organisation et d'autres mesures fondées sur les évaluations des risques qui soit appliqué en fonction des conditions de travail spécifique de l'établissement;
- obtenir l'autorisation de fonctionnement de point de vue de la sécurité et la santé pendant le travail, avant toute activité, tel que requis par la loi;
- établir pour les travailleurs, par la description de tâches, leurs devoirs et responsabilités dans le domaine de la santé et de la sécurité au travail, selon les fonctions exercées;
- développer leurs propres lignes directrices dans l'esprit de cette loi pour compléter et/ou exécuter les réglementations de sécurité et de santé, tenant compte des particularités des activités et des emplois sous leur responsabilité;
- assurer et contrôler la connaissance et l'application par tous les travailleurs des mesures prévues dans le plan de prévention et de protection mis en place et des réglementations en matière par des travailleurs nommés suite à leur propre compétence ou par des services externes;
- prendre des mesures pour assurer les matériels nécessaires à l'information et à la formation des travailleurs, tels que des affiches, des pliants, des films sur la sécurité et la santé pendant le travail;
- fournir des informations à chaque personne avant de l'emploi sur les risques auxquels elle est exposée au travail, ainsi que sur les mesures de prévention et de protection requises;
- prendre des mesures pour autoriser l'exercice des métiers et des professions en vertu des lois spécifiques;
- engager que des personnes qui, après examen médical et, le cas échéant, après les tests psychologiques des compétences, correspondent à la tâche à exécuter et de fournir périodiquement un examen médical et, le cas échéant, un contrôle psychologique après l'embauche;
- connaître les zones de risque grave et spécifique;
- assurer un fonctionnement continu et correct des systèmes et des dispositifs de protection, des équipements de mesure et de contrôle et des installations pour la capture, la rétention et l'élimination des substances nocives émises dans le cadre de processus technologiques;
- fournir des documents et donner les relations exigées par les inspecteurs du travail lors de l'enquête ou des contrôles des événements;
- veiller à l'application des mesures prises par les inspecteurs de travail à l'occasion des visites de contrôle et d'évaluation des événements;
- désigner, à la demande de l'inspecteur du travail, les travailleurs qui participent à l'inspection ou à l'enquête sur les événements;
- ne pas modifier l'état de fait résultant d'un accident mortel ou collectif, sauf si le maintien de cet état conduirait à d'autres accidents ou mettrait en danger la vie des blessés et d'autres personnes;
- fournir des équipements de travail surs pour la sécurité et la santé des travailleurs;
- assurer les équipements individuels de protection;
- fournir obligatoirement un équipement de protection nouveau dans le cas de la perte ou la dégradation des qualités de protection;
- assurer obligatoirement des aliments surs et gratuits par les employeurs des personnes travaillant dans des conditions de travail l'exigeant et le déterminer par une convention collective et/ou contrat de travail individuel;
- fournir nécessairement des équipements sanitaires gratuitement.

Conclusions

La manière où il est réglementé la responsabilité des personnes morales dans le droit pénal roumain a deux inconvénients majeurs:
- la manque des détails quant à la responsabilité pénale des personnes morales – il est pratiquement un seul article, l'art. 19^1 du Code criminel qui établit cette forme de responsabilité;
- l'utilisation des termes généraux et assez vagues qui ne sont pas définis ni dans les règlementations pénales ou ni dans d'autres réglementations.

En ce qui concerne les conditions d'engagement de la responsabilité pénale des personnes morales,

en plus de ceux présentés ci-dessus, il est nécessaire de détailler et d'expliquer ces données, au moins par la loi de mise en œuvre du nouveau Code pénal.

Il est également souhaitable la mise en évidence spéciale des conditions nécessaires à l'implication de la responsabilité pénale de la personne morale dans l'hypothèse où l'infraction est commise par les organes de la personne morale et dans les hypothèses dans lesquelles l'infraction est commise par d'autres représentants/agents/intermédiaires.

Dans le même ordre d'idées, il est nécessaire l'institution d'une clause spéciale de suppression de la nature criminelle de l'infraction, par le manque de culpabilité, le cas où la personne morale, à travers ses organes, fait toute la diligence raisonnable pour empêcher la réalisation de l'infraction par ses intermédiaires.

Dans ces conditions, s'il est démontré que, d'une part, la personne morale a pris des mesures de prévention organisationnelles, fixant les responsables et les délais de résolution, statuant dans les règlements d'organisation et de fonctionnement des instructions sur la conduite des employés et des sanctions, et, d'autre part, ces instructions ont été effectivement mises en œuvre et on a poursuivi leur application, ne peut être tenue coupable la personne morale pour les actes commis par un intermédiaire, parce que une telle organisation ne peut être évalué comme déficitaire ou coupable.

Il est particulièrement important que l'employeur organise les activités d'accomplissement les obligations découlant de la législation en matière. Même s'il "fait appel à des services extérieures, il n'est pas dégagé de ses responsabilités dans ce domaine", conformément à l'art. 6. alin.1 et 2 de la loi no. 319/2006 de la sécurité et de la santé pendant le travail.

Dans ces conditions, c'est obligatoire d'initier des inspections périodiques inopinées pour vérifier la manière et le niveau de mise en œuvre des mesures établies par la loi.

Références choisies:

- **A. Boroi**, „*Droit pénal-généralités*", Ed. Ch. Beck, Bucarest, 2010.
- **C. Voicu (coord.), M. Pantea, D. Bucur, etc.**, „*La sécurité financière de l'Union Européenne conformément au Traité de Lisbonne*", vol.II, Ed. Pro Universitaria, Bucarest, 2010.
- **C. Voicu (coord.), M. Pantea, N. Ghinea, etc.**, „*Investigation des fraudes*", Vol. II, Ed. Sitech, Craiova, 2009.
- **D. M. Costin**, „*La responsabilité de la personne morale dans le droit pénal roumain*", Ed. Universul juridic, Bucarest, 2010.
- **F. Sandu**, „*La criminalité des affaires*", Centrul de Studii Postuniversitare M.A.I. et Fundația Soros, 1998.
- **F. Sandu**, „*La criminologie théorétique et appliquée*", Ed. Universul Juridic, Bucarest, 2005.
- **F. Streteanu, R. Chiriță**, „*La responsabilité pénale de la personne morale*", ed. a II a, Ed. Ch. Beck, Bucarest, 2007.
- **M. Pantea**, „*La protection pénale de la propriété intelectuelle dans l'époque de la mondialisation*", Ed. Expert, Bucarest, 2008.
- **M. Pantea**, „*L'investigation de la criminalité économique et finqncière*", vol.I, Ed. Pro Universitaria, Bucarest, 2010.
- **M. Pantea, D. Bucur**, „*Méthodes et techniques d'investigation des fraudes*", Ed. Sitech, Craiova, 2009.

SOME CONSIDERATIONS ON THE DOMESTIC LAW IN PUBLIC ADMINISTRATION SPECIFIC CRIME

Senior Lecturer Ph.D. Laurențiu GIUREA
"Alexandru Ioan Cuza"Police Academy

Article shall submit to the law last appearances on the issue of corruption in a substantial part of state activity. The approach is achieved gradually from the first legislative initiatives and their evolution over time. They make references and on the regulation of specific crimes and the state bodies empowered to prosecute them.

Keywords: Corruption, public administration, trading in influence, wire tapping.

Following the evolution of Romanian law, it is clear that the normative changes that occurred after 1990 led to an expansion of the scope of circumscribed civil offenses and thus the development of clear and precise definitions.

First, the concept of corruption has spread, an important step in defining the facts of this kind being conducted by Law no. 78/2000 on preventing, discovering and sanctioning corruption, as amended by Law no. 161/21.04.2003 on measures to ensure transparency in the exercise of public dignities, public functions and in business, prevent and punish corruption, and cover four categories of offenses that circumscribe the scope of corruption:

a) crimes of corruption;

b) offenses treated as proceeds of corruption;

c) offenses directly related to corruption or assimilated;

d) crimes against the European Communities' financial interests.

- The first category, namely the crime of corruption, includes criminal operations of the Criminal Code mentioned above, plus the provisions of art. 61 and 82 of Law no. 78/2000 and offenses in special laws.

As a novelty, it is highlighted the criminalization of the act of „ influence buyer". Also, by this law is punishable as a distinct crime active corruption on an official of a foreign state or an international organization. As the volume of international business has increased considerably in recent years, the last regulatory practice has undeniable importance, it represents also the harmonization of Romanian legislation with the international views, according to the OECD Recommendation from 27.05.1994 on corruption in international commercial transactions.

- The second category of crime is the similar criminal acts of corruption (art. 10-13). Privatizations are sanctioned, fraudulent breaches in credit, loans or grants for use of other purpose, private involvement in commercial activity by the person who has powers to control commercial operations incompatible with the position, abuse of non-public information, misuse management function in an organization.

Following a project initiated by the Ministry of Justice, in partnership with civil society, it was adopted the Law no. 521/2004 on amending and supplementing Law no. 78/2000. Scope of similar crimes was extended to abuse offenses against the public interest, abuse abuse against the people and abuse by restricting certain rights if the public official has obtained for himself or for another patrimonial advantage or prerogatives.

The third category consists of criminal offenses distinctly regulated by the Criminal Code or special laws, which are directly related to the crime of corruption or criminal operations (Article 17). Following the same legislative initiatives of the Ministry of Justice, it has been expanded the scope of crimes directly related to the offence of corruption or their equivalent which includes, in addition to abuse of office against public interests, and abuse of office against the interests of people and abuse in service by the restriction of certain rights, committed to achieving the goal and related offenses similar to those of corruption.

- The fourth category of criminal offenses is in relation to the economic interests of the European Communities (Article 18). The reason for criminalization of these acts with corruption is the fulfillment of obligations under the Convention on the protection of European Communities. (PIF-Convention 1995).

The new Criminal Code (adopted by Law no. 301/2004), which did not entered into force, provides corruption in Title VI "crimes and offenses

against public interests", chapter 1, "Crime and corruption crimes." In addition to the four crimes of corruption in the current regulation: taking bribes (art.308), bribery (art. 309), receiving undue benefits (art.310), trading in influence (Article 312), is introduced a new crime: unfair pay (art.311). Also, for the first time punishment is expressly provided to legal entity for crimes of bribery and trading in influence (Article 313).

The offense of bribery has been modified and supplemented from the legislation in force, meaning that the active subject (who received a bribe) must have an official public official or person exercising a public service, or person operating in foreign or international bodies, maintaining the same means of committing as in current regulation. If bribery has very serious consequences, the limits of punishment are increased from prison to detention strict impairment. The regulation of money or property confiscation that have been crime persists in its current form of the Criminal Code.

A new crime, unfair pay, is that an official who had supervision or control a legal person of private law and receives assignments paid to this, before three years to accomplish the termination of supervision and control. The penalty is an alternative: prison or days-fine. The heads of legal persons providing payment are considered accomplices in the crim.

Finally, the regulation of traffic of influence offense maintain previous regulations, but with some changes and additions. The purpose of this type of crime is completed with the purposes of influencing public official or officer and to delay or to do an act contrary to his duties. It also introduced a new indictment in accordance with the amendment of Law No. 78/2000 by 161/2003, that is the crime of the "the buyer of influence".

In the general part, under Title V "safety measures", the new regulation of special confiscation is in accordance with obligations under the international conventions (UN, Council of Europe), ensuring greater efficiency. The measure is the assets in their legal sense of being economically evaluated, susceptible of appropriation as a subjective right. Term of *"things "*has been dropped, which means a narrower class of objects with a material existence, outside. Another important change concerns the inclusion in the category of special confiscation of those who have acquired a different legal regime by the offense. Provisions governing the procedure for the prosecution and judge of corruption are found in the Code of Criminal Procedure and special laws..

(A) The main source of regulatory process such acts and acts of corruption is the Code of Criminal Procedure containing the rules governing for all the criminal offenses, including those of corruption, to the extent permissible by law. Recently, a new institution was introduced, namely "undercover investigators," which can be used in case of very serious crimes, including corruption.

According to Law no. 480/2004 amending and supplementing the Code of Criminal Procedure, it was set the compulsory sharing of office of the acts of authority issued by the prosecutor (resolution, ordinance) which contain a solution to prosecute, the filing, removal from criminal prosecution to all persons involved and interested. This provision ensures greater transparency in trial.

(B) As noted, the Law 83/1992 was the first special law governing prosecution emergency procedure and trial for certain corruption crimes, directly using this term. Currently implicitly repealed by Law no. 78/2000, the law made reference to the rules of procedure provided for in the Code of Criminal Procedure for flagrant corruption offenses, and established a special procedure for situations where these crimes were not flagrant.

(C) Law no. 78/2000 on preventing, discovering and sanctioning corruption, as amended by subsequent legislation, provided the legal framework for a coherent approach to corruption offenses. In addition to substantive rules of law, the law establishes the procedure applicable to corruption crimes.

For flagrant offenses the procedure of the Code of Criminal Procedure is applicable, the prosecution and trial otherwise being made according to common law process.

Persons with control duties are legally required to notify the prosecuting authority or, where appropriate, finding the body of any data to secure and preserve evidence. Also anonymous complaints can be taken into account, the prosecution body assuming to decide to what extent the information received, even from an anonymous source, are truthful and worthy of investigation.

As a rule, banking and professional secrecy shall not apply to the prosecutor after the prosecution nor the court. An exception is the lawyer's professional secrecy exercised under the law, which is guaranteed, according to the completion of Law no. 161/2003.

With the purpose of gathering evidence or identifying the perpetrator, the prosecutor may authorize certain measures, for a period of 30 days, which period may be extended for the same period, up to a maximum of 4 months for bank supervision, communications and access to information systems. Extension of these measures can be made during the trial by court reasoned conclusion. For the approval of these measures the provisions in Code of Criminal Procedure governing the interception and recording audio and video must be followed.

To track corruption, there was originally created Department for Combating Corruption and Organized Crime, which operated within the Prosecutor of the Supreme Court of Justice, the specialized structure at national level. With the establishment of National Prosecution Office against Corruption to take over the tasks, the department ceased to exist.

Judgments in the first instance is in panels, which in courts, tribunals and courts of appeal are made up of two judges.

Criminal Procedure Code provisions remain as common law, so the law is filled with them.

(D) The legislative act which regulated the activities of the National Prosecutor's Office was Government Emergency Ordinance no. 43/2002, to which were made subsequent changes and additions.

National Prosecution Office against Corruption has exercised its powers through special prosecutors in combating corruption. Alongside with them and under their leadership and coordination have worked judicial police officers and specialists in economic, financial, banking, customs, information and other areas - offering same premises today solving complex causes.

National Prosecution Office against Corruption competence had successive changes in practice required by the proven effectiveness of these provisions.

Thus, the text gives legal effect to the distinction between the power at central and local services, keeping the alternative criteria of damage value, or value of production of the object offense serious consequences on the one hand, or the quality of the have committed any of the offenses provided for in Law no. 78/2000, on the other hand, being thus established a unique material competence.

The remaining offenses under Law no. 78/2000 which were not given in the power of National Prosecution Office against Corruption prosecutors remain attached to the court jurisdiction, under the Code of Criminal Procedure.

Reports on corruption in Romania made over the years by the World Bank, Transparency International and Freedom House, stressed that although in recent years our country has made legislative trends and institutional capacity building to fight corruption it requires the application of concrete reforms and anticorruption measures, to strengthen the rule of law, to help raise living standards and sustainable development of Romania, "best practices" not yet institutionalized in the structure of the public administration of justice, police or customs .

Combating corruption in 2005 was an important objective of our state, which has taken prompt and resolute purpose.

Thus, for example, the Supreme Defence Council, by Decision no.17 of 28 February 2005, integrated corruption in national security strategy, as a risk factor and national security objective

Also, in March 2005, the Romanian Government approved the National Anticorruption Strategy 2005-2007, which includes two priority areas aimed, on the one hand, the spectrum of activities related to prevention of corruption and on the other hand, their activities themselves to fight corruption.

To achieve the commitments made by Romania for joining the European Union on 1 January 2007 there was reconsidered judicial reform strategy, to prevent and combat corruption in court representing a priority, because corruption in this field can affect the most important social values.

In the Action Plan to implement the National Anticorruption Strategy in 2005-2007 period there was provided, among other objectives, and on strengthening the institutional capacity of the National Anticorruption Department.

Thus, the Government Emergency Ordinance nr.134/2005, National Prosecution Office against Corruption was reorganized into the National Anticorruption Department. It operates as an autonomous structure with legal personality, the Prosecutor of the High Court of Cassation and Justice and it is independent in relation to courts and prosecutors' offices attached to them, and in relations with other public authorities. The Department is coordinated by the general prosecutor of the High Court of Cassation and Justice, through Chief Prosecutor of the department, just in terms of general guidance on measures to be taken to prevent and combat crimes of corruption, and requests for information on department activities.

National Anti-Corruption Department exercises its powers throughout Romania by prosecutors specialized in combating corruption. They carry out

criminal prosecution in cases provided by Law 78/2000, as provided by Article 13 of Government Emergency Ordinance nr.43/2002, and in case of crimes specified in Penal Code or special laws.

Government Emergency Ordinance no. 134/2005, the legislature has substantially amended the provisions concerning the jurisdiction of the National Anticorruption Department, Government Emergency Ordinance nr.43/2002, for this structure to handle large events only to combat corruption.

Under the new provisions, the National Anticorruption Department is competent to conduct prosecution of offenses under Law no. 78/2000, if the following conditions are met: a) the damage caused is greater than the equivalent in RON of 200,000 euros, or if there was a very serious disturbance of public authorities, public institutions or any other legal entity b) or asset amount that is the subject of the crime of corruption is higher than the equivalent in RON of EUR 10 000 c) the active subject of crime is expressly mentioned in the law quality (senator, deputy, member of the Government, etc.).

Given the obvious connections between corruption and organized crime and the need for strong defense funds of the European Communities there were given in the competence of the National Anticorruption Department all offenses against the European Communities' financial interests, as well as offenses under art.215 para. (1), (2), (3) and (5), art.246, 247, 248 of the Criminal Code, 175, 177 and 178-181 of the Customs Code of Romania and offenses under Law no. 241/2005 on preventing and combating tax evasion, if property damage is greater than the equivalent of one million Euros.

If there is probable cause for committing crimes under the jurisdiction of one of the National Anticorruption Department, prosecutors are able to use the law, the following special methods, to gather evidence and identify offenders:

- The surveillance of bank accounts and their related accounts;
- The surveillance, interception or recording of communications;
- Access to information systems;
- The use of undercover investigators or investigators with real identity.

They also may have to be disclosed documents, bank documents, financial or accounting.

National Anticorruption Department prosecutors also have the right to order specific measures to protect witnesses, experts and victims, according to the law.

An important piece of legislation in the area referred to is Law no. 161/19.04.2003 on measures to ensure transparency in the exercise of public dignities, public functions and in business, prevent and punish corruption, also known as "anti-corruption package". In Chapter I - "General Regulations for Preventing and Combating Corruption", the law contains provisions on transparency of information relating to overdue obligations (Title I), transparency in information management and electronic public services (implementation of National Electronic System - Title II), preventing and fighting cybercrime (Title III), conflict of interest and incompatibilities regime in exercising public dignities and functions (Title IV), economic interest groups (Title V).

Of particular importance is the conflict of interests and incompatibilities. Conflict of interest is when a person exercises one dignity or a public official has a personal interest to financial, which might influence the performance of its duties objectively.

The law obliges members of the Government, Secretaries and Under Secretaries of State, the prefects and sub-prefects not to issue an administrative act or not to sign a legal document, and not to take a decision not to participate in the exercise of public office authority that produce a material benefit for himself, his spouse or relatives of degree I.

In addition to amendments to the law no. 78/2000 on preventing, discovering and sanctioning of corruption, Book II contains the following changes and additions to legislation: Law no. 115/1996 on declaring and control of the wealth of dignitaries, magistrates, civil servants and persons with managerial functions, Law no. 26/1990 regarding trade register and Law no. 188/1999 on the status of civil servants.

In turn, nr.7/2004 Law on Civil Servants Code of Conduct governing rules of professional conduct of civil servants, aimed at increasing the quality of public services, better governance in achieving the public interest, eliminate bureaucracy and corruption in public administration.

There was considered necessary as the other staff, designated under the name of contract staff, to benefit from the provisions of this law framework. Law no. 477/2004 Code of Conduct for contractual staff of public authorities and institutions, was adopted as there wes reported lack of integrity in the conduct of officials and advisors. The objectives of the Code of Conduct are increasing the quality of public service, a good administration for the public interest, and cutting corruption in public administration.

Bibliography:

- **Alatas Huseein Syed** „*Corruption: Nature, Causes and Functions*", Aldershot, U.K. şi Brookfield VT.: Averbury, 1990.
- **Alexandru Ioan, Gorjan Ilie, Ivanoff Ivan Vasile, Manda Cezar Corneliu, Nicu Alina-Lavinia, Săraru Cătălin Liviu** „*Drept administrativ European*", Lumina Lex Publishing House, Bucharest, 2005.
- **Ardelean Virgil** „*Corupția – univers, prevenire, combatere*", Sincron Publishing House , Cluj-Napoca, 2004.
- **Banciu Dan, Rădulescu Sorin**, „*Corupția şi crima organizată în România*", Continent Publishing House XXI, Bucharest , 1994.
- **Bauman Zygmunt**, „*Globalizarea şi efectele ei sociale*", Antet PH, 1999.
- **Ciuncan Dorin**, „*Jurisprudența şi doctrina penală în materia corupției*", Lumina Lex PH, Bucharest, 2004.
- **Coolidge Jacqueline şi Susan**, „*High Level Rent Seeking and Corruption in African regimes*". Lucrarea de cercetare 1780 referitoare la politici, edited by Banca Mondială, Washington, D.C. de Speville, Bertrand. 1995. Strategic Control of Corruption: A Quiet Revolution over Two Decades. Lucrarea prezentată în sesiunea plenară la cea de-a şaptea Conferință Internațională Anticorupție, Beijing, october1997.
- **Dobrinoiu Vasile**, „*Corupția în dreptul penal roman*", Atlas Lex PH , Bucharest, 1995.
- **Ivan Virgil C.** „*Combaterea corupției publice în Statele Unite ale Americii*", Pro lege 1PH, 1994.
- **M. Pantea**, „*Investigarea criminalității economico-financiare*", vol.I, , Pro Universitaria Publishing House, Bucharest, 2010.
- **P. Alan**, „*Empirical Knowledge on Strategies for Corruption Control*". In Proceedings of the 5th International Anti-Corruption Conference.
- **Tanzi Vito**, „*Corruption Governmental Activities and Markets*". Document de lucru FMI. Fondul Monetar Internațional, Washington, D.C., 1994.

DIE KÖRPERSCHAFTEN RUSSISCHER OLIGARCHEN

Lektor Dr. Adriana Camelia VOICU
Nationale Nachrichtenakademie „Mihai Viteazul"

Der vorliegende Artikel befasst sich mit der Emergenz einer neuen beruflich-kriminellen Gruppe im postkommunistischen Russland. Nach dem Fall der Berliner Mauer und der Wende in Russland, bewilligte Boris Jelzin, derzeitiger Präsident der Russischen Föderation, die Empfehlungen des Internationalen Währungsfonds und der Weltbank, eine freie Marktwirtschaft einzuführen, die praktisch die Privatisierung der Staatskaktivien vorsah. Die erste Privatisierungswelle bestand, wie in Rumänien, in der Anbahnung einer massiven Kouponsstrategie gegen Ende des Jahres 1992.

Die Bereicherungsstrategien die während der „Kouponaffaire" (d.h. der ersten Privatisierungswelle) zum Vorschein kamen, führten zur Kristallisierung einer finanziellen Eliteschicht. Anhand des Werdegangs russischer Oligarchen (Boris Berezovsky, Roman Abramowitsch, Michail Chodorkowski) wird gezeigt, welche mafiöse Korporatistenstrategien (unähnlich der einschlägigen italienischen Vorgangsweise) für die russischen Verhältnisse spezifisch und erfolgreich waren.

Stichwörter: Russische Mafiakörperschaften, russische Oligarchen, Privatisierung von Staatskaktivien, „Kouponaffaire", Boris Berezovsky, Roman Abramowitsch, Michail Chodorkowski.

Der Fall der Berliner Mauer (1989) und die Auflösung der Sowjetunion (1991) stellten außergewöhnliche Gelegenheiten dar, um die mafiaangehörigen, körperschaftsähnlichen Organisationen auf die Bühne wieder zu bringen und die Großkriminalität der **russischen Oligarchen** zu generieren.

Der Aufstieg der russischen Oligarchen ereignete sich mit Leichtigkeit; diese entfalteten sich in einem Kontext der Realität Russlands und der ehemaligen Sowjetrepubliken, der sich dadurch charakterisierte, dass erhebliche Schwierigkeiten seitens des Staates in der Vermarktung seiner riesigen Bodenschätze (Erdöl, Gas, selten anzutreffende Erze) begegnet, sowie auch der reale Armutszustand der Bevölkerung, verfielfacht durch einen chronischen Mangel an Liquiditäten im Banksystem, zum Vorschein kamen.

Im Jahr 1991, zufolge eines spektakulären Besuchs in den Vereinigten Staaten, akzeptierte Boris Jelzin, damaliger Präsident der Russischen Föderation, die Empfehlungen des Internationalen Währungsfonds und der Weltbank, eine freie Marktwirtschaft einzuführen, die praktisch die **Privatisierung der Staatskaktivien** einplante.

Die erste Privatisierungswelle bestand - wie in Rumänien - in der Anwendung einer massiven Kouponsstrategie gegen Ende des Jahres 1992, zufolge der jeder russische Bürger Koupons in der Gesamtsumme von 10 000 Rubeln (ungefähr 30 Dollar, d.h. die Entsprechung des durchschnittlichen Monatsgehalts) bekam. Die erstandenen Koupons konnte man gegen Aktien an jeder sich privatisierenden Gesellschaft austauschen.

Von diesem Punkt aus setzte ein erblühender Kouponhandel ein: unbemittelte Personen, die Geld brauchten, verkauften, gegen viel kleinere Preise, Koupons an Entrepreneure, die zukünftigen Oligarchen.

Zwei Jahre nach der Auslösung der „Kouponiade", hatten nur 8% der RussInnen ihre Koupons zwecks Aktienankauf an ihren arbeitgebenden Gesellschaften verwertet. Diejenigen, die Koupons zum halben Preis ergattert hatten, kauften gesamte Unternehmen und starke Gesellschaften im Bereich des Erdöls, der Gase, der Energie und des Bergbaus, zu lächerlichen Preisen. Über 20 Giganten des Staates wurden von einer begrenzten Gruppe von Unternehmern gekauft, die hiermit die Grundlage für das entsetzlichste Kriminalsystem schafften, das die russische Politik unter Jelzins Führung diktieren sollte.

Das politische, soziale, wirtschaftliche und geistige Millieu Russlands hat die Emergenz einiger Leader dieser Welt der schattigen Geschäfte gestattet; sie entstammten hoher Schichten der Gesellschaft, waren gut angesehene Graduierte der Staatsuniversitäten (Mathematiker, Ingenieure, Wirtschaftler, Juristen), sowie auch qualifiziertes Personal der Sicherheitsdiensten, der Polizei und der hohen Verwaltungssphäre.

Die represäntativste Gestalt, die sich in dieser Periode ausgezeichnet hat, war **Boris Berezovsky**

(B.B.); geboren im Jahr 1946, war er ein regelrechtes Wunderkind der Mathematik und später ein Wissenschafler (Mitglied der hochangesehenen Russischen Akademie für Wissenschaften). Sein erstes Geschäft bestand in der Einfuhr von genutzten Mercedes Personenkraftwagen und deren Wiederverkauf zum drei- oder vierfachem Preis in Russland.

Die zweite geschäftliche Initiative bestand in der Einrichtung der ersten Vertretungsketten der Firmen Mercedes, Volvo und Fiat in Russland. Der Moment war aus B.B.s Sicht nicht sehr vorteilhaft, da der Automarkt von der Tscheteschnischen Mafia kontrolliert war (B.B. selbst war das Angriffsziel eines ihrer Attentate im Jahr 1994). B.B.s Verdienst ist jener, dass er sich weder vor der Mafia, noch vor der politischen Gewalt geneigt hat.

Der dritte Schritt bestand in seinem Hochstart im Flugzeugeschäft: er ließ sich zwei Fluggesellschaften in der Schweiz errichten, die der Gesellschaft „Aeroflot" (dem Russischen Staatsunternehmen) finanzielle Unterstützung geben würden. Dieses Unternehmen wurde durch die Korrumpierung der höchsten entsprechenden Entscheidungsfaktoren zu Stande gebracht, die derzeit in Kreml bequeme Amtlichkeiten bekleideten. B.B.s Anstieg in der dynamischen Welt der Geschäfte verdankte sich seiner Beziehungen in Kreml und seiner sehr geprägten Freundschaft mit Präsidenten Jelzin. B.B. hat bemerkenswerterweise die Schwächen der „Tsars" intuitiv erkannt, indem er sich bereit erklärte, die Veröffentlichung seines Memoirenbandes zu fördern (der Band erschien im Jahr 1994). Die Anzahlung wurde im Konto einer wohlbekannten Bank in London gemacht, der B.B. über 3 Millionen Dollar überwies.

B.B.s Großzügigkeit wurde prompt durch Jelzins Geste belohnt – der Präsident erließ ein Dekret, laut dem 49% der ORT - Aktien (der wichtigsten Staatsfernsehgesellschaft) in B.B.s Besitz traten, wobei eine gesetzlich vorgesehene Versteigerung unterlassen wurde (die Summe belief sich auf mehr als 300 000 Dollar).

Auch ohne Versteigerung und zu lächerlichen Preisen erlangten B.B. und zwei weitere seiner Kreisangehörigen (einer von ihnen war der zukünftige Milliardär Abramovitsch) die Erdölgesellschaft Sibneft, die sechstgrößte Gesellschaft dieser Art in Russland. Der von den drei Unternehmern ausgezahlte Preis betrug nicht mehr als 100 Millionen Dollar. Dieser Vorfall fand im Dezember des Jahres 1995 statt und stellte einen Wendepunkt für B.B. dar, hinsichtlich seiner Auseinandersetzung mit Abramowitsch, der 50% der Aktien dieser neuen Aquisition behielt.

Roman Abramowitsch (R.A.), geb. im Jahr 1966, war Verkehrsweseningenieur, wobei seine Ansatzgeschäfte das klassische „Kleingeschäft" mit westlichen Luxusparfums, Zigaretten und Kleidungsstücken, fortgesetzt durch den Verkauf von Plastikspielzeugen und wiederverwerteten Reifen, ausmachten.

Nach 1991, gründete er eine Erdölhandelfirma; er bezog Großprofit aus dem Erdölwiederverkauf zu vergleichsweise riesigen Preisen (im Durchschnitt, dreißigmal höher).

R.A. lernte B.B 1994 zu Silvesterabend, an Bord einer Luxusyacht kennen, deren Besitzer ein wohlhabender Bankier und ehemaliger Minister, war. In diesem Kontext, rekrutierte B.B. R.A. als voraussichtlichen Partner im Ankauf von Sibneft zusammen mit B.P. (einem großer Geschaftsmann, der für fünfzig Prozent der Finanzierung sorgte).

Schematisch, lief die Operation nach den folgenden drei „Punkten":

- **B.B.**, Inhaber des ORT und anderer Geschäfte, übernahm die Aufgabe, Kreml politisch unterzuordnen (hier wurde entschieden, wer eine Versteigerung gewinnen sollte);
- **R.A.** musste die neue Gesellschaft Sibneft übernehmen und sie auch im Namen der weiteren zwei Aktieninhaber verwalten;
- **B.P.** übernahm die ORT -Verwaltung.

Im Jahr 1998, als der Russische Staat, der 51% von Sibneft besaß, das Darlehen an die drei Unternehmer nicht tilgen konnte, geschah die völlige Übernahme von Sibneft. R.A. besaß den Großteil des Erdölgiganten, ein Verhältnis das seine Auseinandersetzung mit B.B. auslöste.

Fachleute behaupten, dieses Moment die große Konkurrenz zwischen den zwei russischen Oligarchen ausgelöst habe.

In der russischen Oligarchie, wird der Name **Michail Chodorkowski (M.C.)** mit prägnanter Häufigkeit erwähnt. Erstens, weil er sich zurzeit (2011) im Gefängnis befindet, wo er eine 15-jährige Haftstrafe absitzt; zweitens, weil seine Entwicklung innerhalb der Welt der Mafiageschäfte mit sensationellen Episoden belebt ist.

Graduierter der Fakultät für Chemie im Jahr 1981, wurde M.C. zum markanten Mitglied der Organisation der Kommunistischen Jugend (Komsomol), innerhalb derer er sich für die Verwaltung der Besitztümer und ihres Budgets verantwortete. Schon vor 1990, hatte er beträchtliche Konten in Fiskusparadiesen, und baute

sich, zur Folge - zur Jelzins Zeit - eine Strategie zwecks Aufstieg zum regelrechten Oligarchen. Im Jahr 1991, wurde er Ratgeber des Prämierministers, nachträglich - stellvertretender Minister der Energie, und trat in den Besitz der Bank „Menatep", die er für die Entwicklung der am Horizont erschienenen Großgeschäfte benutzen würde. Es handelte sich, zum Beispiel, um die Privatisierung der Großerdölgesellschaft „Inkos" (Siberien), bei der M.C. seine eigene Bank benutzte, um jedwelche Konkurrenz abzuschalten; er eignete sich die Firma (78%) zu lediglich 300 Millionen Dollar an, wobei „Inkos" zwei Prozent der Welterdölreserve einnehmen würde. Zwei Jahre später, wuchsen die „Inkos" Aktien am Börsenmarkt dreißigfach an. Die Bank „Menatep", aufgelistet an einem Postamt in Gibraltar, repräsentierte das Zentrum der finanziellen Operationen M.C.s, wodurch komplexe, sich auf monatliche hunderte Millionen Dollar belaufende, Geschäfte geführt waren. Im Wesentlichen, wurden in diese Bank, die aus den „Inkos"-betriebenen kollosalen Geschäften resultierenden Summen M.C.s überwiesen, wobei ihre Rolle darin bestand, diese Fonds von den Beschlagnahmemaßnahmen der russischen Regierung zu verwahren. Um völig sicher zu sein, musste M.C. eine regelrechtes Off-Shore Netz entstehen lassen, ein Ziel, das er mit Hilfe eines Anwalts in London zu Stande brachte. Letzter wurde zum Bewahrer und Protektor der „Inkos" und „Menatep" Aktivien, einer Fassade hinter der M.C. Milliarden Dollar durch in Gibraltar, den Kaymaninseln und der Man Insel geöffneten Konten, manövrierte.

Der Großteil der aus Erdölausfuhr resultierten Einkommen „Inkos" kursierten duch Gesellschaften in der Schweiz, Irland und Liberien und bezweckten die Steuerhinterziehung in Russland.

Bis zum Machtaufstieg Wladimir Putins zum Präsidenten der Gemeinschaft Unbhängiger Staaten, hatte sich M.C. ein diabolisches Finanzreich unter Miteinbeziehung von Fiktivfirmen in hoch angesehenen Finanzzentren der Welt (Luxemburg, der Schweiz, Großbritannien, Panama, den Bahamas, Südafrika) zusammengestellt, in denen aus dem Erdölhandel entstandene riesenhafte Summen verwaltet wurden.

Indem er intuitiv erkannte, dass Putins Regime völlig unterschiedlich von Jelzins sein werde, schlug M.C. eine neue Strategie ein, markiert durch Korrektheit und Transparenz. Zu diesem Zweck, überwies er einen Teil des Kapitals nach Russland; er begann, Steuer zu zahlen, den Profit neu zu investieren, und wurde zum Muster korporatistischer Transparenz, durch Umgestalung der Buchführung und durch Abzahlung der Dividenden. Durch diese Maßnahmen, wollte er der westlichen Geschäftswelt signalisieren, dass Firma „Inkos" an der Börse in London oder New York zugelassen werden sollte.

In seinem Buch „Londongrad", erklären die Autoren Mark Hollingsworth und Stewart Lansley *(2009)*: „Im Juli 2001, wohnte Chodorkowski an seinem Sitz, in einer Moskauer Villa aus dem 19. Jh, worauf folgender Spruch thronte: *Redlichkeit, Offenheit, Verantwortung*; gleichzeitig erzählte er den New York Times Journalisten von seiner Bekehrung zur geschäftlichen Transparenz. Nachdem er einen Aktienbesitz an „IUKOS" und „Menatep" geleugnet hatte, gab er Einzelheiten zu seinem Hauptkapital preis und veröffentlichte seine Konten in internationalen Handbüchern. Chodorkowski hatte amerikanische und französische Direktionsbevollmächtigte aus westlichen Erdölgesellschaften und Banken sowie auch angesehene Politiker in Führungspositionen angestellt. Er hatte eine berühmte amerikanische Lobbyfirma angeheuert, die er mit einer Erstgebühr im Betrag von 4 Millionen Dollar, wie auch mit einer monatlichen Vorrauszahlung von 25 000 Dollar und einem Jahreshonorar von 90 000 Dollar honorierte; die obige Firma war vom US Präsidenten George W. Bush bevorzugt." *(ebda, S.164)*

Die weltkluge und raffinierte Handlungsweise von Chodorkowski nach dem Aufstieg Wladimir Putins kommt u.a. durch die Gründung, in London, der Stiftung „Offenes Russland" zum Vorschein, deren Zielsetzung es war, „eine neue Infrastruktur ins Leben zu rufen, aus der die zukünftige Anführergeneration Russlands hervorkommen sollte." Dieselbe Stiftung wurde im Jahr 2002 in den Vereinigten Staaten eingeführt, und warb als Mitglieder angesehene Persönlichkeiten der politischen und finanziellen Neuen Welt, einschließlich den namhaften Lord Rotschild und den Politiker Henry Kissinger. Das Profil dieses korporatistischen Mafiaanhängers wird dadurch abgerundet, dass er mit pathologischer Hartnäckigkeit den Einfluss der amerikanischen und britischen Großpolitiker durch Riesensummen zu erkaufen ersuchte. Die aufdringlichen Vorgehensweisen waren von seiner Furcht vor Wladimir Putin motiviert, der nicht nur vor der riesigen Dimension seines durch Raub und Betrug gesammelten Vermögens, sondern auch von seiner Anwesenheit und den ausgeübten Einfluss auf großzügig gesponserte britisch-amerikanische politische Millieus sichtlich missvergnügt war.

Im Jahr 2003, begann M.C., die Kreml Macht zu kritisieren, wobei die relevanteste

Auseinandersetzung mit Putin in einer seiner Sitzungen mit den russischen Großunternehmern stattfand; zu diesem Anlass, sagte M.C. dem Präsidenten: „Deine Bürokratie wird von Bestechlichen und Dieben ausgemacht." In unserer Analyse ist es dienlich, dass wir auf dieses Ereignis beharren, um die Persönlichkeit dieses Mafiamitglieds aufzuzeigen, der ein Korporatistenreich anführte und sich in völliger Sicherheit dank der den Großmächten angebotenen „Schmiergelder" und seiner soliden Beziehungen mit der internationalen Großfinanz fühlte. Im Wesentlichen, handelt es sich um die primitive Verhaltensweise eines Kriminellen, der sich oberhalb der Staatsbehörde plaziert und sich dazu fähig fühlt, einen jeden abzukaufen und der davon überzeugt ist, dass ihm hierbei volle Immunität gesichert wird.

In einem im Journal "Foreign Policy" Nr.16/2010 erschienenen Artikel, erwähnen die Journalisten Susan Glasser und Peter Baker *(S.76-77)* Folgendes*:* „ Er [Chodorkowski] bestrebte es, den Großteil des Parlaments zu kontrollieren und empfand selbst die Begierde, Premierminister zu werden. Er hat seinen Sicherheitsstatus überschätzt, einschließlich als sein wichtigster Geschäftspartner – Platon Lebedew – verhaftet wurde und ihm hiermit ausgerichtet wurde, das Land zu fliehen." Er hat es ostentativ abgelehnt, eine Geste, die ihn seine Freiheit kosten würde (im Oktober 2003 wurde er verhaftet). Wenn man den Konflikt zwischen M.C. und Wladimir Putin schematisch darstellen würde, darf man behaupten, dass sich hierin der **reichste** Mann Russlands mit dem **mächtigsten** Mann Russlands im Krieg befanden. Der reichste Mann Russlands hat die Oppositionsparteien Putins finanziell gefördert, die Regierung hart kritisiert und nicht davor gescheut, zu behaupten, dass er die oberste Funktion in Russland anstrebte. Darüber hinaus hat er Russland in internationalen Verhandlungen für die Baut von Erdöl- und Gasleitungen engagiert, ein Sachverhalt, der ernsthaft gegen die Verfassung Russlands verstieß.

Gemäß der Ansicht zahlreicher Analysten, wurde Chodorkowski von den Großmächten (den Vereinigten Staaten und Großbritannien) dazu ermutigt, eine Haltung und ein Agieren gegenüber den legitimen Behörden Russlands zu bestimmen. Er hatte seinen Anhängern garantiert, dass er die Kontrolle der wichtigsten Entscheidungszentren in Russland (Parlamentarier, Minister, Geheimdienste usw.) inhatte und ignorierte einen wesentlichen Aspekt: die Macht seines Opponenten.

Erst nach Putins Mahnung in Februar 2003, hegte M.C. im Geheimen einen Plan, durch den er sich der Verhaftung entziehen konnte. Zu diesem Zweck, beauftragte er seinen Strategen (L.N.), einen detailierten Plan auszulegen, durch den die Oligarchen-Elite, einschließlich M.H., in den Internationalwassern auf einem von keiner Staatspolizei antastbaren Schiff, Zuflucht finden könnte. Der Plan konnte nicht mehr durchgeführt werden, weil M.C. verhaftet wurde; hiermit war das gesendete Signal sehr klar: der Staat ist mächtiger als die Oligarchen.

Michail Chodorkowski (M.C.) begann seine kriminelle Aktivität innerhalb der zweitrangigen Staffel der Sowjetischen Kommunistischen Partei, des Konsolmons, der sich einer Generation mit Geschäftssinn und Wunsch zum üppigen Leben anpasste. Er fühlte sich fortwährend von seinen Vorgesetzten geschützt; er wusste sie mit wertvollen, der allgemeinen Bevölkerung nich gegönnten Waren (fremde Artikel, Feiern mit Prostituierten und ausgelesenen Speisen, bezahlte exotische Reisen usw.) zu besorgen. Jetzt gewinnt er Einsicht darin, dass Geld alle Probleme behebe, dass er durch Korrumpierung der obrigsten Staffel alles erzielen kann, was er wolle. Er war ein guter Kenner des Systems in dem er gelebt hatte, benutzte die dem tiefgreifenden Wandel entsprungenen sozialen Vorteile und baute sich, auf den Koordinaten der Selbstsucht und Verachtung gegenüber eines ihn ehemaligen, ausprägenden Millieus, ein Verhalten der maximalen Habsucht, für sich und seine Gruppe; hihgegen, wenn er die Gefahr der Rechtsordnung als imminent verspürte, bekannte er sich zur Demokratie, Rechtschaffenheit und Transparenz.

Der Fall Michail Chodorkowski und die der anderen Oligarchen betonen den Unsegen der beiden, ins Extreme geführten Großideologien: der kommunistischen, egalitaristischen und der kapitalistischen, geld- und selbstsüchtigen.

Der Übergang von der einen Ordnung zur anderen setzt zwei obligatorische Komponenten voraus: die Kriminalität und die Mafia. Jeder Großbesitz ist auf den Koordinaten der Kriminalität konstruiert. Zu bemerken ist, dass die russischen Oligarchen, die nach der erschütternder Wende der Jahre 1990 aufgetaucht waren, kein Überraschungselement für das westliche Großkapital darstellten. Dieses wartete mit ungeringer Ungeduld auf die Enthauptung Russlands. Sowohl die Vereinigten Staaten, als auch Großbritannien haben mit riesiger Großzügigkeit die Kapitale der Russen verwaltet, die Hunderte Milliarden Dollar nach hoch angesehenen Finanzzentren (London, New York, Chicago, Los Angeles, Österreich, der Schweiz,

Luxemburg) und den sichersten Fiskusparadiesen überwiesen haben.

Die Invasion der russischen Oligarchen in den Vereinigten Staaten und Europa war ein transparentes, von der Macht in Moskau gebilligtes Phänomen, das in den Jahren 1992-1995 ansetzte. Eine merkwürdige Erscheinung machte sich bemerkbar. Die Macht zwang diejenigen dazu auf, die Diebstahl begangen, Russland zu verlassen, sich ihres erworbenes Reichtums anderswo zu erfreuen, um den Machthabern keine Unnanehmlichkeiten zu bereiten.

Die Aufforderung ausnützend, überwiesen die nicht durch Ehrgeiz motivierten Oligarchen ihr ganzes Hab und Gut von ungeheuren Außmaßen, in die Vereinigten Staaten, Kanada, Großbritannien und in die Fiskusparadiese.

In London, hat die Anwesenheit der russischen Oligarchen das hektische Metropolenleben geprägt, da die Geschäftsleute Tausende von repräsentativen Immobilien in mittel- und großbürgerlichen Vierteln ankauften, die sie mit einigen Milliarden Pfund bezahlten.

Alle Oligarchen hatten Luxusyachts, Flugzeuge und Wagen in ihrem Besitz, von prestigeträchtigen Firmen hergestellt, regelrechte Armeen im Wachpersonal, die den körperlichen Schutz dieser Personen und ihrer Familienangehörigen sicherten. Luxusgeschäfte wurden von Gattinnen und Geliebten der reichen Russen abgesucht, um Juwelenschmuck und Kleidungsstücke zu unerschwinglichen Preisen zu erwerben.

„Aber hinter der Fassade des Glanzes und des Reichtums verbirgt sich eine andere Seite der russischen Invasion. Ihre Ankunft hat London finanziell umgewälzt und damit die Metropole in ein dunkles Bastion Moskaus verwandelt. Obwohl die Großreichen unter Beifall der Bankiere, der Luxusartikelhersteller und der Hauptimmobillienmakler empfangen worden sind, kann nicht behauptet werden, dass sie eine solidäre Gemeinschaft bildeten. Hinter riesigen Ausgaben verbirgt sich eine viel düstere Welt der persönlichen Konflikte. Viele Russen stehen miteinander, als auch mit dem Russischen Staat, im Konflikt und ehemalige Freunde oder Geschäftspartner wurden Todesfeinde." *(Mark Hollingsworth und Stewart Lansley – a.a.O., S. 29-30).*

Das Hauptanliegen der russischen Oligarchen bestand nicht im Bezug riesiger geschäftsgebundener Einkommen, sondern in der Geldwäsche rechtswidrigen Kapitals unter Vermittlung der Fiktivfirmen in exotischsten Örtlichkeiten (Gibraltar, den Britischen Jungferninseln, der Insel Man, den Kaymaninseln). Diese Geldwäscheoperation setzte die Anstellung von Experten im Bank-, Finanz- und Kommerzwesen voraus, als auch die von Spezialisten und Rechtsanwälten, die ausgeklügelte Schemen und Kreisläufe kreieren und verwalten sollten, die ihrerseits Riesenfonds garantierten und vor jedwelchen Ermittlungen der Staatsbehörden geschützt sein könnten.

Die großen russischen Mafiakörperschaften, die mehr als die Hälfte der Wirtschaft Russlands kontrollieren, sind unidentisch in ihrer Gestaltung mit den italienischen. Sie weisen eine unterschiedliche Struktur auf; ihre Hauptwaffe besteht in der Korrumpierung der politischen und verwaltungsmäßigen Strukturen, die ihnen den Zutritt zur Ausbeutung großer Erdöl-, Gas-, seltener Erzstoffe-, Nickel-, Aluminiumreserven usw. sichern. Ein weiteres Element, das die zwei (d.h. die italienischen und die russischen) Mafiakörperschaftstypen voneinander unterscheidet, besteht in der Tatsache, dass die russischen Oligarchen hochgestellten Millieus entstammen und öfters prominente öffentliche Personen sind: Parlamenarier, Gouverneure, Minister, Bankdirektoren, Fernsehen- und Rundfunkbesitzer, Presseinhaber. In diesem Sinne, behauptete Pino Arlacchi *(a.a.o., S. 203)*: „...es ist eine weltoffene, geschulte, gebildete Welt, die mehrere Fremdsprachen spricht und aktiv in der Öffentlichkeit lebt."

Die innere Struktur einer russischen Mafiakörperschaft ist von jedwelcher anderen Körperschaft unterschiedlich, da die illegalen Aktivitäten (insbesondere, die Steuerhinterziehung) eines professionellen geschäftsfachlichen Schemas bedürfen, zwecks Herstellung, Verkauf, Bankbearbeitung, Geldwäsche, Ausbau scheinbar rechtsmäßiger Geschäfte und Sicherung einer Partnerschaft mit der politischen Macht.

Die russischen Mafiakörperschaften werden, deutlich sichtbar, mit Öffentlichkeitspolitiken und Erfüllung politischer Betreben bezahlt. Sie befassen sich nicht mit dem Drogenhandel, dem Menschenhandel oder der Kreditkartenfälschung.

Sie haben das Organisierungs- und Handlungssystem der großen kriminellen Körperschaften aus den Vereinigten Staaten (Rockfeller, Rotchild, Morgan usw.), aus Großbritannien und anderen europäischen Ländern aufgenommen und ausgebaut.

Die Mafiakörperschaft stellt die höchste Form der Kriminalität in Russland und der ganzen Welt überhaupt dar. Sie steht nicht isoliert von der massiven und vervielfachten Front der traditionellen organisierten Kriminalität da, mit der sie effizient kommuniziert; sie wird von Magnaten für Schutz-, Prostituiertenanschaffungszwecken,
Qualitätsdrogen, Drohungen, Erpressungen oder Auftragsmorde herangezogen.

Die russischen Oligarchen beziehen riesigen Profit aus den Geschäften, die während der Zeit der Privatisierung und der „Kouponaffaire" eingeleitet wurden. Ihr Einkommen ist gewährleistet; ihr einziges Anliegen ist, nicht in Konflikt mit den russischen Behörden zu treten. Der Rest ist mit ihrer Extravaganz, Geld auszugeben und ihren leiblichen Schutz zu sichern, verbunden. Die westliche Presse in Frankreich, in der Schweiz, Großbritannien, in den Vereinigten Staaten, berichtet zur Genüge von schockerregenden Episoden zur Art und Weise wie große Geldsummen für die Unterhaltung dieser Magnaten, in exotischen Urlaubsorten in der Schweiz, der Côte d'Azur, Sardinien oder der Küste Spaniens, verschwendet wurden.

Bevölkert von Luxusprostituierten, Gästen der Musikindustrie, exzentrischen kulinarischen Gerichten und Unmengen von teuem Sekt und Störeneiern, belegt dieser Lebensstil die unglaublichen Ausschweifungen der russischen Magnaten, deren Vermögen durch Raub und Betrug, Diebstahl und Gewalt entstand.

INDUSTRIAL PROPERTY RIGHTS. FEATURES AND CHARACTERISTICS OF TECHNICAL CREATIONS.

Student Ph.D. Mihai DINCĂ
Student Ph.D. Marioara NAE

Resourcefulness and creativity are the essential traits that contributed to differentiating the human entity – along its evolution – from all other living creatures. The ability to put these traits to a productive use remains essential within the social and economic structures of the human society. Survival of each human individually, of every enterprise, organisation or even nation definitely depends on their ability to permanently keep in touch with development and progress on all levels.

Keywords: intellectual property, industrial property, invention patent, trademarks, geographical indications.

The Concept and Characteristics of Industrial Property

Just like the other creations that are protected under the somewhat more appropriate name of 'intellectual property', creations that are subject to protection under industrial property are products of human creation activities, the fruit of human thinking, knowledge, reasoning, the result of human capacity to invent and grasp concepts and operate abstract notions. Unlike copyright and connected rights, under which both creations of form and creations of substance are protected, "*industrial property*" protects intellectual creations of substance, applicable in the industry, which are called "*utility creations*"[14].

Industrial property has been recognized and used especially by industrialised countries – and it is a significant tool for technological, economic and social development. With a view to protecting the benefits that industrial property generates, most countries have established normative documents that rely on two justifications: first, there is a need to give a statutory expression to patrimony and moral rights of creators over their own creations; the other motivation is the need to promote – in a deliberate government policy action – creativity, dissemination and implementation of its results, and encourage fair trade, which contributes to social and economic development[15].

Industrial property includes all rights over creations of human genius that pertain to: inventions; utility models; industrial sketches or models; manufacture marks, trade marks or service marks; integrated circuit topography; plant species; trade names; origin indications or names; protection against unfair competitions[16].

Industrial property includes monopoly rights granted by the normative documents in the field, giving the owner the right to use the object of protection and forbid such use by third parties. Industrial property rights are exclusive, and with these rights, the owner may forbid third parties to exploit an item protected under industrial property such as a valid invention patent, trademark certificate, etc.

For the industrial property right to be recognised, the formal procedures for registration with an Industrial Property Office have to be followed, with the protection terms being smaller and depending on payment of certain fees to keep them valid.

As for industrial property, the creation is protected exclusively on the territory of countries within the jurisdiction of the Industrial Property Office.

Industrial property includes technical creations (inventions, utility models) and aesthetical creations (industrial sketches and models; distinctive product marks; trade mark and name; geographic indication), as well as protection against unfair competition; industrial property rights are obtained through registration and examination with an intellectual property office. [17]

[14] V.Roş, O.S.Matei, D.Bogdan, „*Dreptul proprietăţii intelectuale. Dreptul proprietăţii industriale. Mărcile şi indicaţiile geografice*", All Beck Publishing House, Bucharest, 2003, p.2.

[15] R.Pârvu, L.Oprea, M.Dinescu, „*Introducere în proprietatea intelectuală*", Rosetti Publishing House, Bucharest, 2001, p.59.

[16] G.Bucşă, T Popescu, „*Dicţionar ilustrat de proprietate intelectuală*", OSIM Publishing House, Bucharest, 2003, p. 209.

[17] Ş. Cocoş, „*a,b,c – ul protecţiei şi valorificării proprietăţii industriale*", Rosetti Publishing House, Bucharest, 2004, pg. 7

The doctrine defines the juridical institution of industrial property as the 'totality of legal norms regulating relations regarding creations applicable in the industry, as well as distinctive marks of such activity" [18]. Subjective industrial property rights were defined as 'the possibility that the law recognizes for the owner of this right – natural or legal entity – to use exclusively an intellectual creation that is applicable in the industry or a distinctive mark of such industrial activity" [19].

The key characteristics of industrial property rights are as follows: The industrial property right is generated by deployment of an intellectual creation activity and compliance with formalities to license or register the creation with an Industrial Property Office. An exception to this rule is confidential information, for which protection is achieved by *de facto* means. Another characteristic trait is that the industrial property right is exerted on creations that are applicable at an industrial level, namely in industry, farming, trade, services, production of any kind, etc., or on distinctive marks used at industrial level.

With regards to territoriality and period of application of industrial property rights, we would deem that, with some exceptions, industrial property rights are limited in space and time. The exceptions from the rule fall in the category of distinctive marks, which can be protected indefinitely, as long as extending protection is of interest for the owner of the rights, who pays the fees envisaged by the law; another category of exceptions is confidential information.

Protection of industrial property rights is not an obligation, but an option, a possibility recognised by the normative documents in force for the owner of the rights, who may be a natural or a legal entity.

Industrial property rights have a comprehensive content that gives the creator certain moral rights, while the owner of the exploitation right (the holder of the license or registration certificate) receives a right of exclusive use – a patrimonial right, opposable *erga omnes*, transmissible through documents between living entities, for cause of death or, in some cases, by effect of the law[20].

Protection of Technical Creations

History of protection of inventions in Romania. The first categories of rights in the field of industrial property that were protected on the territory of Romanian countries were known in the official documents and publications of the time by names as *new finding, new invention, new insight, new imagination or new trade.* The documents of the times certify that the history of protecting new technical creations on Romanian territory starts in the XIV century – a period of development for trades. At the same time we see the first documents by which the rulers or the church gives the guilds the right to exploit a trade, as a result of the services brought to the ruler's court or to the church. Such rights are found in documents under the form of „*danie*" [beneficence], „*miluire*" [alms] or „*întărire*" [consolidation] and represent the beginnings of protection of technical creations on Romanian territory or an imperfect form of the protection system, based on '*privileges*'. The beneficence given for exploiting a trade or a technique is an imperfect form of protection, as it does not include the prerogative of forbidding third parties to practice the respective trade or technique, but only tackles on trading with such products.

Some examples in this sense:

- the complaint filed with ruler Matei Corvin by the Bistrița guild of blacksmiths in 1489, asking that sales of blacksmith products be forbidden on their territory
- in 1492, the same guild asks king Vladislav to take action so that, in the future, Bistrita blacksmiths are no longer stopped from selling their products at the fairs in Reghin and Buza
- the Cluj blacksmiths guild files an application with the city council in 1548, asking – and being granted – that "*no man from outside the guild may produce blacksmith items*"
- in 1580, the guild of tin workers in Braşov was obtaining from the Transylvania Saxon Community the right to forbid tin workers who did not belong to the respective guild importing products of this trade from Germany and selling them in this city, against punishments through which the goods would be seized and money should be paid as fines

By the documents of the time, the first exclusive right was granted in 1291 by king Andrei in Transylvania to the craftsmen in Rimetea, to use the iron ore extraction and processing trade, as well as the trade of casting and processing the iron. In 1462, the articles of association of the Bistrița guild were

[18] A. Petrescu, L. Mihai, „*Drept de proprietate industrială. Introducere în dreptul de proprietate industrială. Invenția .Inovația*", Bucharest University, 1987, p. 11.
[19] M. Pantea, „*Protecția penală a proprietății intelectuale în era globalizării*". Expert Publishing House, Bucharest, 2008, pag. 48.
[20] V. Roş, „*Dreptul proprietății intelectuale*", Global Lex Publishing House, Bucharest, 2001, p.287

stipulating that „*no toolmaker should make axes or other such items*".

In 1573, prince Stephen Bathory grants a true privilege to the city of Sibiu, through which the guild had the right to build a '*paper mill*' that would manufacture and sell its production anywhere in the country[21].

In Țara Românească, Mircea cel Bătrân granted the Tismana Monastery the right to exploit a mill, through a document issued on September 1, 1391.

In Moldova, Alexandru Voevod granted the Moldovița Monastery the right to exploit a beer-brewing installation (*saldnița*) through a document issued on December 31, 1402.

Significant documents of the time are those granting the right for exploitation of "*black oil*" and "*mineral wax*". Among these, we will mention here the document issued on August 30, 1733, through which ruler Grigore Ghica grants the Sinaia monastery "*the right to look after and own three black oil sources and a hole in the earth where the black oil to be processed*"[22].

As the time goes by and industry develops, in the second half of the XVIII century the idea of privilege appears; privileges were granted by the ruler to certain people, for exploitation of a machine, installation or procedure. The first exclusive right privilege was given in Țara Românească on May 28, 1800 by ruler Alexandru Moruzi, to build and exploit "*a kerchief factory*" – textile factory making headwear and scarves – at the Mărcuța Monastery in Bucharest; the right was granted for a 15-year period, with anyone else being forbidden to produce or manufacture such products. This privilege is applicable in the field of inventions, but also in the field of industrial sketches and models. Namely, the documents of the time mention that the „*calap*" – technical means for imprinting drawings on the toil, together with the drawings themselves – were protected through the privilege granted to the owner of the factory.

Another privilege that Romanian rulers have granted was through the Record on September 20, 1826, where ruler Grigore Dimitrie Ghica grants the privilege to Teodor Mamelegioglu for "*a new trade*", respectively a procedure for washing, cleaning and dyeing of clothes and fabrics.

The first pieces of information regarding protection of inventions in the Romanian Countries are mentioned in the Note of the Vienna Aulic Court to the Governor of Transylvania, issued on September 25, 1810, showing that the exclusive privilege is being granted only for inventions in the field of chemistry and mechanics[23]. On January 23, 1818, Georg Christian Hornbostel, a silk manufacturer from Vienna was receiving a 9-year privilege in Transylvania, for the "*the loom in which the thread is woven by itself*" – document no. 2075 on March 16, 1818 in Cluj. On July 3, 1818, Johann Thornton, manager of the spinning factory in Pollendorf, was receiving a 10-year privilege for the "*spinning machine*" he had invented – document 2107 on October 8, 1818, in Cluj.

After unification of the Princedoms on December 6, 1859, ruler A. I. Cuza removes the privileges granted and proposes that a law be developed to regulate inventions. On February 15, 1860, Constantin Steriade submits to the Council of Ministers the first draft law "*on invention licenses*". Two other draft laws on protecting inventions were submitted under Cuza's rule, in 1861 and 1865 respectively, but the political situation at that time didn't allow for these drafts to be promoted.

Provisions regarding factory and trademarks, as well as industrial sketches and models can be found in the Convention signed with Austro-Hungary in 1875 and in the Trade Convention signed with Germany in 1877. Further on, in 1879, at the proposal of the "*Ministry of Agriculture, Trade and Public Works*", the Parliament passes the Law on factory and trade marks.

The documents of the time[24] certify that industrial sketches and models, as well as factory and trade marks, have made the object of bilateral agreements between Romania and:

- France, in 1889 – issued in the Official Gazette no. 19 on July 31, 1889, regulating on protection of industrial sketches and models
- Great Britain, in 1892 – issued in the Official Gazette no. 27, May-June 1892, regulating on

[21] In this sense: M. Pantea, „*Protecția penală a proprietății intelectuale în era globalizării*". Expert Publishing House, Bucharest, 2008, pg. 49 and „*Monografia ilustrată a OSIM*", issued in electronic format in 2003.

[22] M. Pantea, „*Protecția proprietății intelectuale. Abordări teoretice şi practice*", Sitech Publishing, Craiova, 2009, pag. 50.

[23] In this sense: M. Pantea, magazine article „*Protecția penală a drepturilor de proprietate industrială*", Pro Patria Lex Journal, Bucureşti, 2006.

[24] M. Pantea, magazine article *„Criza globală şi implicațiile asupra protecției drepturilor de proprietate intelectuală",* Journal of Criminal Investigation, year I, Nr.2, Sitech Publishing, Craiova, 2008.

protection of factory or trade marks and industrial sketches and models

- Italy in 1903 – issued in the Official Gazette on February 27, 1904, regulating bilateral protection of factory and trade marks

The first Invention License was granted by ruler Alexandru Ioan Cuza to Mr ***Paul Iacovenco***, for a "*tank for exploiting and preserving black oil*", through the Decree issued in the Official Gazette of the United Romanian Princedoms, no. 232 on October 21 – November 2, 1865. We should mention that there was no law regulating in this field in the Romanian Princedoms at the time when the decree on protecting the invention was issued.

The first law that regulates on and grants protection to invention licenses appeared as a result of the initiative of I. Lahovari – Minister of agriculture, trade and domains at the time; its title was "*Law on Invention Licenses*" and it was passed through Royal Decree 102 of January 13, 1906 and issued in the Official Gazette no. 229 of January 17, 1906. According to the provisions of the law, Regulations for applying invention licenses were developed and approved through Decree no. 1577 of April 12, 1906, issued in the Official Gazette no. 16 of April 21, 1906. The law was in force, with small amendments, for a period of 60 years, until December 30, 1967; it included 42 articles structured within nine chapters: *General provisions; Duration of License; Effect of the Invention License; Formalities to comply with in order to obtain the invention license; License fees; The licensing service; On null and void actions; On fakes, prosecution and punishment of fakes; Particular and transitory provisions.*

As the first law regulating protection of inventions was coming into force, applications for protection of industrial sketches and models have been filed with the Service for Industry and Licenses, for which protection has not been granted. By decision of the Ministry of Industry and Trade in year 1910, the special registration office for applications for protection of factory and trade marks and industrial sketches and models was established for these specific fields.

Further on we provide a list of the normative documents that amended the first law on licenses, between 1950-1967[25]. Thus, Decree 214 and respectively Decision no. 943 of the Council of Ministers, both issued in 1950, rule for setting up the Committee for Inventions and Discoveries and approve the Committee's functioning regulations; subsequently, in year 1952, Decree no. 86 / April 17, 1952 on granting and cancelling licenses for inventions, improvements and imports has been issued, establishing that licenses would be granted or cancelled by Decision of the Council of Ministers, by proposal of the State Technical Committee. Decree no. 120 of April 21, 1955 provides for setting up the State Office for Standards and Inventions (Oficiul de Stat pentru Standarde şi Invenții, OSSI); the prerogatives of the Office are established in Decision no. 718 / 29 April 1955 of the Council of Ministers. With setting up the General Directorate for Metrology, Standards and Inventions along the Council of Ministers, Decree no. 65 and Decision no. 210/1957 of the Council of Ministers provides for setting up the State Office for Inventions (Oficiul de Stat pentru Invenții, OSI); its tasks are regulated by the Organising and Functioning Regulations of the General Directorate for Metrology, Standards and Inventions, approved by Decision no. 1164/19 August 1958 of the Council of Ministers.

The inventions were not the first field that was regulated in the matter of industrial property, as there have been drafts for protecting industrial sketches and models as well[26]. In 1921, a commission within the Ministry of Industry and Trade proposed a "*Draft Law on Industrial Sketches and Models*", published in the Official Gazette of Industrial Property, but not passed.

In the matter of factory and trade marks, the first law that regulates this field was approved by Decree no. 879 of April 14, 1879, published in the Official Gazette no. 86 of 15/27 April 1879; Decree 1193/28 May 1879 was passed to regulate implementation of the law. The first Romanian law protecting marks was the eighth law passed in this matter in the world, after the laws in France in 1857, Austro-Hungary in 1858, England in 1862, Italy in 1868, the US in 1870, Germany in 1874 and Belgium in 1879.

In the field of origin indications and name, documents indicate that protection in this field starts in year 1893, when a Convention for repressing false indications on the origin of goods has been signed with Great Britain. Also, an Arrangement to repress false indications on the origin of goods was signed with France in 1895, and a 'Trade Convention' was signed with Turkey in 1897. In our country, the first attempts to give origin names to products have materialised by passing the law on wine yards and

[25] In this sense: M. Pantea, „*Protecția penală a proprietății intelectuale în era globalizării*". Expert Publishing House, Bucharest, 2008, p. 53.

[26] *idem*

wine in 1936. Protection of the trade name (company) sources from the Commercial Code of Law of January 1, 1840. The first law that registers the companies, titled 'Law on company registration', was passed through Royal Decree no. 865 of March 15, 1884, issued in the Official Gazette no. 276 of 18/30 March 1884, with the regulations for implementation published on April 8, 1884.

Unfair competition, a concept appeared in the XIX century, was recognised as belonging to the industrial property field for the first time in 1900, at the Brussels Diplomatic Conference on reviewing the Paris Convention for protection of industrial property. In our country, the first law on repressing unfair competition was issued in the Official Gazette no. 113 of May 18, 1932, and was expressly cancelled during the Communist regime through Decree 691 of 1973[27]. Romanian creators permanently stood out in the international technical and scientific community.

In 2001, following participation at the International Invention Salon in Geneva in 2001, our country ranked second after the Russian Federation, which participated with 75 inventions. Over 1000 inventions were presented in Geneva from various countries. Romania presented 63 inventions, all of which received awards (26 gold medals, 20 silver medals and 17 bronze medals). The 63 inventions presented in Geneva were selected out of 250 inventions submitted at national level. The jury of the Geneva Invention Salon especially appreciated the achievements of our country, which also received the Gold Medal of the Geneva International Invention Salon for its "*exceptional contribution in promoting inventions and services to inventors*". The fact that all the inventions presented by our country at the Geneva Invention Salon this year have received awards is definitely a positive aspect that we should be pleased with. However, isn't it possible that the ever-decreasing levels of research and development in Romania over the past 10 years also resulted, for example, in the fact that the inventions presented in 2001 have not been 'special' (and I wouldn't want anyone to take this as an offence), but rather in the range of cosmetic and pharmaceutical moisturising creams, jelly creams, new methods for obtaining autologous implants by use of in vitro cellular engineering, etc. There has been some technology, of course, but nothing that would revolutionise science – and we know that the Romanian creative potential also stood up for such creations of international relevance. One significant example in this sense is the most recent special Romanian invention, coming from Dr. phys. Eugen Pavel, who has invented a technology for a new type of three-dimensional optical memory, the „Hyper CD-ROM", which includes procedures for realising specific inorganic materials (photosensitive fluorescent glass and vitro-ceramics), three-dimensional writing/reading procedures going to thousands of layers of depth, as well as the procedure for multiplying the newly created information support. It is the place to mention that the most advanced methods known for three-dimensional writing/reading at this time are limited to maximally 20 layers. The technical-scientific accuracy of the invention, as well as the feasibility of the technical solutions conceived are confirmed by the 4 invention patents obtained in Romania, the two invention patents obtained in the US, as well as the international documenting reports obtained from examination of the 5 applications for international patents under the PCT (Pact Cooperation Treaty) procedure. Mr Eugen Pavel's invention has received reinforced international recognition at the 48th World Salon for Innovation, Research and Technological Novelty 'Eureka 99' in Brussels (November 1999), where it was awarded the International Award of the World Periodicals Organisation, alongside a distinguished gold medal.

The creative activity in general and the creative activity that manifests through applications for invention patents in particular has increased constantly everywhere in the world. The formal figures point out that the number of applications for patents registered in the EU countries increased by 16% in 1989-1996, which means 2.14% growth per year.

Manners of granting protection for technical creations. Invention patents. The law in force does not provide a definition of inventions as such, but considering the Romanian practice in the field, we could define invention as being a technical or scientific creation representing a technical solution given for a technical problem[28]. For an invention to benefit from the protection available under the norms in force, it needs to be available for patenting – respectively, it needs to have an object that can be patented and comply with the following requirements cumulatively:

[27] OSIM's monograph with illustrations, issued in electronic format in 2003.

[28] *Ştefan Cocoş,* "a,b,c–ul protecţiei şi valorificării proprietăţii industrial", Rosetti Publishing House, Bucharest, 2004, op.cit., p. 20

- *Novelty*. It should be new, not previously accessible to the public on the date when the invention is registered for receiving a patent
- *Usefulness.* It should be applicable for industrial use, or, in other words, the object of the invention can be used in at least one field of activity, respectively industry, farming or any other field, and it can be duplicated with the same characteristics whenever necessary
- *It should not be of obvious nature.* It should be the result of a creative activity, respectively it shouldn't be obvious for a specialist based on the knowledge available to the public on the time when the invention is registered for patenting
- *Disclosure of the invention.* After an invention patent is obtained, the invention can be disclosed to the public

A patent is actually a monopoly that the state grants to an inventor for a period of time, in exchange for disclosing the invention, so that other people can benefit from the advantages that the respective innovation would bring about. In our opinion, disclosure of the object of an invention patent to the wide public is a key aspect in any patent-granting procedure. [29] The following can be patented:

- *products* (items that can be obtained as a result of a labour process), such as systems, installations, machines, devices, subsets, elements, components, substances, raw matter, materials, etc; or, in other words, any object that can be used as such or with a view to making other items that would be used as such.
- *procedures* (a sequence of stages and operations that take place in specific conditions and have a material result)
- *methods* (a sequence of stages and operations that take place in specific conditions and have an immaterial result)

According to the provisions in force, the following cannot be patented: inventions that are contrary to the public order and good morals, or which do not solve a technical problem or represent a technical solution to a technical problem, such as: mathematical methods, economic or organising solutions, game rules, urban systems, systematisation plans and methods, aesthetical realisations, ideas, software as such, education and training methods, culinary recipes. Other things that cannot be patented are results of efforts represented by scientific discoveries, physical phenomena, etc. Inventions enjoy the protection provided by national[30] and international regulations only by patenting, and the protection bond for an invention is the invention patent. The duration of protection for a patented invention is 20 years, counting from the date when the national deposit of the invention patenting application was set up, subject to payment of fees to keep the patent in force. Romanian natural or legal entities can protect their inventions on the territory of other states, by using: the national path[31]; the provisions of the Treaty of Cooperation in the Field of Patents[32], or the provisions of the Agreement between the Romanian Government and the European Patent Organisation, regarding co-operation in the field of patents.

Patenting of new breeds is possible according to the legislation in force[33]; an invention regarding a new breed can be patented if it is new, distinct, homogenous and stable, and if it preserves its homogeneity and stability of relevant characteristics after repeated reproduction, at the end of each reproductive cycle, and if it has not been traded or offered for sale. A breed represents a group of animals that belong to a known species or variety of the lowest rank, meeting the requirements for an invention patent to recognise an improver. The improver is the person who created or discovered and developed a breed, while the maintainer is in charge with maintaining the new breed. The invention patent for a new breed is given for a period of minimum 20 years.

New plant species are patented by a species patent being issued according to the legal provisions[34] in force. The species is a group of plants belonging to a known botanical taxon[35] of the lowest rank, which can be defined by the expression of characteristics resulting from a certain genotype or

[29] Ştefan Cocoş, *„a,b,c – ul protecţiei şi valorificării proprietăţii industriale*", op.cit., p. 20.

[30] Law no. 64/1991 on invention patents, amended and complemented until 01.05.2011.

[31] On the grounds of the Paris Convention, with over 140 countries being members of this Convention at the present time

[32] PCT, currently over 90 states are members of this Treaty

[33] Art.7 par. (3) and art.11 of Law no. 64/1991 regarding invention patents, amended and complemented until 01.05.2011.

[34] Law no. 255/1998 on new plant species, re-issued in the Official Gazette, Part I, no. 65 of 26/01/2007, until 01.05.2011.

[35] TAXÓN *n.* system category in the classification of plants and animals, which includes populations having the same origin

combination of genotypes[36], is distinct from any other group of plants and is deemed as an entity (based on the possibility of replicating it as such). According to the legal provisions, a species can be patented if the requirements regarding novelty, distinctiveness, homogeneity, stability are met, and if it has a name that allows for it to be identified. Patents are in full proliferation and have become more and more profitable. In 2005, IBM received 3,248 patents from the American patenting office[37]. Actually, IBM is the absolute champion in this field, as it has been granted the largest number of patents over the past 12 years. Until recently, Microsoft has not expressed any interest in patenting its technologies, and it relies on the weaker protection provided for trade secrets. This changed now, and Bill Gates announced that getting patents is now a priority for the company. More over, the American giant hired the person who had developed IBM's patenting technology, to do the same thing for Microsoft. In the same year, Romania had an outstanding performance at the Geneva Invention Salon, where 31 of its 32 inventions have received awards[38]. The Salon brought together inventors from 42 countries, with more than 1000 inventions. Most Romanian inventions are in the field of chemistry, pharmacy, medicaments, medicine, machine construction, electronics, electrotechnics. Some of the inventions that received gold medals in Geneva are: the marine environment-friendly electro-plant; the individual anti-earthquake protection module, or the virtual laparoscopic simulator. The marine environment-friendly electro-plant[39] could perform as an alternative in the energy crisis if square kilometres of such installations were built in all the seas and oceans in the world. Another Romanian invention that received gold is the individual anti-earthquake protection module[40], which can be kept in a flat and takes up very little space. The virtual laparoscopic simulator[41] enables virtual medical interventions to be performed. Through a 'forced feedback' system, the simulator gives the user the feeling of touching the organs on which he intervenes. The invention is meant for surgery practice in the laboratories of hospitals and universities.

The utility model. Just as the invention, it belongs to the category of technical creations and represents a technical solution given to a technical problem; in order to enjoy protection, it needs to meet the requirements related to novelty, non-obviousness and industrial applicability. The difference between an invention and a utility model is in the simplified way in which novelty is assessed in the case of a model. The industrial property field also knows the utility model as the 'small invention', and efforts are put together everywhere in the world to harmonise the legislation in this field. Our country does not offer protection through legal norms for this category of creations.

Selected references:

- „*Monografia ilustrată a OSIM*", edited in 2003.
- **G.Bucşă, T Popescu**, „*Dicționar ilustrat de proprietate intelectuală*", OSIM, Bucharest, 2003.
- Law no. 64/1991, on patents, modified and completed by 01.05.2011.
- Law no. 255/1998, about new plants, republished in the Official Magazine Part I from 26/01/2007, until01.05.2011.
- **M. Pantea**, „*Protecția penală a proprietății intelectuale în era globalizării*", Expert PH, Bucharest, 2008.
- **M. Pantea**, „*Criza globală şi implicațiile asupra protecției drepturilor de proprietate intelectuală*", Journal of Criminal Investigation, Year I, No.2, Sitech, Craiova, 2008.
- **M. Pantea**, „*Protecția penală a drepturilor de proprietate industrială*", Pro Patria Lex Magazine, Bucharest, 2006.
- Petrescu, L. Mihai, „*Drept de proprietate industrială. Introducere în dreptul de proprietate industrială. Invenția .Inovația*", Bucharest University, 1987, pag. 11.
- **R.Pârvu, L.Oprea, M.Dinescu**, „*Introducere în proprietatea intelectuală*", Rosetti PH,Bucharest, 2001, pag.59.
- **Ş. Cocoş**, „*a,b,c – ul protecției şi valorificării proprietății industriale*", Rosetti PH, Bucharest, 2004

[36] GENOTYPE *n.* the totality of inherited factors (genes) that determine the characteristics of an organism
[37] Patents. Smart Assets. The Economist, February 19, 2005.
[38] Săptămâna Financiară, no.45, Monday, 23 January 2006
[39] Invented by Dr Ion Corbu
[40] Belonging to inventor Mircea Manolescu
[41] Invented by Best Soft Expert

- **V. Roş**, „*Dreptul proprietăţii intelectuale*", Global Lex, Bucharest, 2001, pag.287
- **V.Roş, O.S.Matei, D.Bogdan**, „*Dreptul proprietăţii intelectuale. Dreptul proprietăţii industriale. Mărcile şi indicaţiile geografice*", All Beck, Bucharest, 2003.

THEORETIC CONSIDERATIONS REGARDING EVALUATION OF INTANGIBLE ASSETS IN ACCOUNTANCY

Senior accountant Student Ph.D. Alina-Elena ANDREI (DĂNĂILĂ)

The international assessment standards show that the assessments of intangible assets can be required for various uses including: purchases and sales of entities, parts of entities or an asset, merging.

The assessment model based on the historical cost, doubled by the application of the principle of prudence, is harshly criticized for its approximate, and therefore subjective, estimates, especially when it comes to depreciation of assets. The authors of these critiques support in exchange the virtues of fair value counter, which lead to a higher objectivity and neutrality, because such an accounting model of assessment would be free of the influences and the opportunism present at certain account caretakers.

1.The vision of the international accounting referential regarding the evaluation of intangible assets

A. The initial evaluation of intangible assets

The evaluation of intangible assets depends on the way these were acquired: separate purchase, purchase within a joint venture, own production.

Separate purchase

IAS 38 specifies that the price paid by an entity in order to acquire separately an intangible asset will reflect the expectations regarding the probability that the future economic benefits of the intangible asset will flow towards the entity. The recognition criterion is always considered as fulfilled by the separately acquired intangible assets. Also, the cost of an intangible asset acquired separately can usually be measured reliably. The cost includes the purchase price, including the import duties and the irredeemable acquisition taxes, together with any cost directly attributable to the preparation of the asset for the foreseen use. If the payment for an intangible asset is deferred beyond the normal credit times, its cost is equivalent to the price expressed under liquid form, the difference between this amount and the total payments is accounted for in financial expenses, during the loan, except for the situation in which this difference is included in the cost of the asset, according to the other authorized processing of standard 23.[42]

Purchase within a joint venture

According to IFRS 3 Joint ventures, if an intangible asset is acquired in a joint venture, the cost of the asset is the fair value at the acquisition date. The fair value reflects the market expectations regarding the probability that the expected future economic benefits incorporated in the asset will flow towards the entity. The entity estimates an entry of economic benefits, even if the placing in time or the value of the entry is unsure. The fair value can only be determined, easily, when there is an active market for the evaluated asset. By active market one understands that the trade involves homogenous articles, that buyers and sellers can be identified at any time, and that the practiced prices are available to public.

In the absence of an active market, the intangible asset must be evaluated at the amount that the company would have paid for it, at the acquisition date, on the occasion of a transaction between well-informed parts that act in conditions of normal competition. For determining the specific amount, the company must take into consideration the result of the most recent transaction for similar assets.[43]

Own production

IAS 38 specifies that sometimes it's difficult to appreciate if an intangible asset internally generated fulfills the necessary conditions in order to be accounted. For the recognition of the intangible assets resulting from the development phase were imposed supplementary recognition conditions. Without taking into consideration the fulfillment or non-fulfillment of these conditions, IAS 38 specifies that the brands created by the company must not be accounted as intangible assets.[44] This rule is based

[42] L. Feleagă, N. Feleagă – FATHOMED FINANCIAL ACCOUNTANCY, Elements of accountancy engineering in the context of the international referential, InfoMega Publishing House, 2005, pp. 115

[43] N. Feleaga,L. Malciu, The challenges of the international accountancy at the turn of the millennium: Models of assessment and immaterial investments , Economic Publishing House, Bucharest, 2004, p.181

[44] International Financial Reporting Standards: IFRS: official norms issued at January 1st 2009, CECCAR Publishing House, 2009, p.2002

on the conviction according to which the expenses for creating a brand cannot be distinguished from the cost of development of the activity as a whole. The international frame adopts a prudent position, placing reliability on the first place. No intangible asset resulted from the research area can be recognized. The research expenses must be recognized as an expense, when it is engaged.

Example

A company, producing cars, has a research department that develops, during exercise N, two projects:

- project 1: designing a gear shifter that would respond to driver's voice command,
- project 2: designing an electronically controlled blowpipe.

In the case of project 1, the company cannot yet demonstrate its reliability. Regarding though project 2, this one fulfills even from the start of exercise N the conditions for the recognition of a development expense.

In exercise N, the department expenses were the following:

Information	General Expenses	Project 1	Project 2
Material expenses and services	600	6.000	4.000
Staff expenditures:			
- direct	-	5.000	2.000
- the salary of the department's leader	1.000	-	-
- administrative staff	3.000	-	-
General expenses:			
- direct	-	2.000	1.000
- indirect	800	600	400

The department leader consumes 20% of the working time for project 1 and 10% for project 2.

For project 1, the developed activity is afferent to research and, in consequence, all expenditures afferent to this Project affect the result of exercise N.

For project 2 the development expenditures will be capitalized at a production cost of:

4.000+2.000+10%*1.000+1.000+400 = 7.500 lei

Asset exchanges

An intangible asset can be acquired within an exchange or a partial exchange with a different intangible asset or with another active asset. The cost of this active asset is evaluated at the fair value of the received asset, with the following exceptions: the exchange transaction has no commercial substance or the fair value of the exchanged assets cannot be reliably measured. In such cases, the received asset is evaluated at the accounting value of the given asset.

B. The assessment ulterior to the initial accounting of assets

After its initial accounting, an intangible asset must be accounted at its cost, minus depreciation amount and the amount of value loss.[45] This represents the reference treatment from IAS 38. The authorized alternative treatment is the revaluation, through which an intangible asset must be accounted at the level of its revaluated measure, according to its fair value at the date of the revaluation, minus the ulterior depreciation amounts and the ulterior amounts of value loss. The revaluations done require that the fair value should be determined by reference to an active market. Revaluations should be made with sufficient regularity so that the carrying amount may not differ materially from that which would be determined using fair value at closing date.

An active market may exist for taxi licenses, fishing licenses or production quotas. In exchange, there is no active market for brands, newspaper titles, commercial brands or patents, because each of these active assets are unique. Although the intangible assets are sold and bought, the contracts are negotiated between individual buyers and sellers, and transactions have a relatively small frequency. The price paid for an asset may not supply a sufficient indication of the fair value of another asset.

If an intangible asset is revaluated, all the other assets from its category must be revaluated, on the condition that there is a market for the respective assets.

If an intangible asset belonging to a category of revaluated intangible assets cannot be revaluated, because there is no active market for that good, the asset must be accounted at its cost minus the depreciations amount and the amount of value losses. When the accounting value of an intangible asset is increased due to a revaluation, the increment leads concomitantly to the growth of the equity, revaluation reserves section. A positive revaluation must be accounted in revenues, if it compensates a negative revaluation of the same asset, previously accounted in expenses. Still, a negative revaluation must be directly imputed on the correspondent revaluation reserve, if the decrease doesn't

[45] International Financial Reporting Standards: IFRS: official norms issued at January 1st 2009, CECCAR Publishing House, 2009, p.2006

overcome the value accounted in the revaluation reserves section, under the same asset's name.

Example

A company owns a category of intangible assets acquired at the closing of exercise N-2 with 50.000 m.u.. The assets are amortized linearly, starting with January 1st N-1, on a 55 year duration. At December 31st N, the management board of the company decides the revaluation of the intangible fixed assets. The fair value of these is estimated at 15.000 m.u.. At December 31st N+1, considering the changes suffered by the market, the assets are, again, revaluated. The fair value is estimated at 60.000 m.u.. The used revaluation procedure is the cancellation of the cumulated amortization and the revaluation of the net worth.

The cost of the purchase of the intangible fixed asset: 50.000 m.u.

The annual amortization: 50.000 m.u./5 years = 10.000 m.u.

The net accounting value at 31.12..N: 50.000 – 2*10.000 = 30.000 m.u.

The fair value at 31.12.N: 15.000 m.u.

The unfavorable value difference = 30.000 = 15.000 = 15.000 m.u.

At 31.12.N the unfavorable value difference is accounted at expenses:

"Expenses with provisions for assets depreciation"	=	"Provision for the intangible fixed assets depreciation"	15.000 lei

The annual amortization, starting with N+1: 15.000 m.u./3 years = 5.000 m.u.

The net accounting value at 31.12. N+1: 15.000 – 5.000 = 10.000 m.u.

The fair value: 60.000 m.u.

The favorable difference of value: 60.000 – 10.000 = 50.000 m.u.

At 31.12.N+1:

a) an income is accounted to compensate the expense admitted at 31.12.N:

"Provision for depreciation of intangible fixed assets"	=	"Incomes from provisions for depreciation of intangible fixed assets"	15.000 lei

b) the amortization cumulated in exercises N-1, N and N+1 are cancelled and the entry value of the assets is diminished:

"Provision for depreciation of intangible fixed assets"	=	"Incomes from provisions for depreciation of intangible fixed assets"	15.000 lei

c) the net worth value of the intangible fixed assets is revaluated:

"Intangible fixed assets"	=	"Revaluation reserves"	35.000 lei

If the company would have proceeded to revaluating the gross value of assets, at 31.12.N+2, after accounting an income of 15.000 lei, the following operations would have been done:

- calculation of the report between the fair value and the accounted net worth value of the intangible fixed assets:

60.000 /(50.000 – 25.000)= 2,4

- revaluation of the net value of the intangible fixed assets and of the cumulated amortization, which leads to:

Revaluated cost of assets: 50.000 x 2,4 = 120.000 lei

Revaluated cumulated amortizations: 25.000 x 2,4 = 60.000 lei

In this variant, the revaluation operation will be accounted as following:

"Intangible fixed assets"	=	%	70.000 lei
		"Amortization of intangible fixed assets"	35.000 lei
		"Revaluation reserves"	35.000 lei

The cumulated size of the revaluation reserves, included in equity, can be directly transferred to undistributed results, when the revaluation reserve is realized. The reserve may be made in full at scrapping or transfer of assets. Still, a part of this revaluation reserve can be realized while using the asset by the company. In this case, the size of the realized revaluation reserve is equal to the difference between the amortization based on the revaluated accounting value of the asset and the amortization that would have been accounted based on the historical cost of the asset. The transfer of the revaluation reserve to undistributed results does not pass through the profit and loss account.

In the previous example, the annual amortization of the intangible fixed assets, starting with exercise N+2, will be of 60.000 lei/2 years = 30.000 lei, and the amount transferred annually to reserves 35.000 lei/2 years = 17.500 lei.

At 31.12.N+2 we have:

a) the amortization of the intangible fixed assets:

"Operating expenses regarding the amortization of intangible assets"	=	"Amortization of intangible fixed assets"	30.000 lei

b) the transfer of a part from the revaluation reserve to reserves:

"Revaluation reserves"	=	"The reported result representing the surplus realized from revaluation reserves"	17.500 lei

2.The assessment of the intangible assets according to OMFP 3055/2009 for the approval of accounting regulations harmonized with European directives

According to Romanian accounting regulations, at the date of entering an entity, the goods are evaluated and accounted at *the entry value*, which is established as follows[46]:

a) at purchase cost – for goods procured by onerous title;

b) at production cost – for goods produced inside the entity;

c) at the input value, established after evaluation – for goods representing a social capital input;

d) at fair value – for goods obtained with a free title or found in plus at the inventory.

In the cases of goods representing an input to social capital and of goods obtained with a free title or found in plus at the inventory, the input value and, respectively, the fair value, are substituting the purchase cost.

The fair value means the amount for which the asset could be exchanged freely between the knowingly parties in a transaction at the price objectively determined.

The fair value of assets is determined generally by the evidence of market data through an assessment carried out, usually, by professional evaluators.

Where there aren't any data on the market on fair value because of the specialized nature of assets and reduced frequency of transactions, the fair value can be determined by other methods typically used by evaluation professionals.

Evaluation of intangible assets at the financial year-end inventory is done when, according to the law, the general inventory takes place. The evaluation of intangible assets is done at the actual value of each element, known as inventory value. *The inventory value*[47] is established depending on the good's use, on its state and on the market price.

When determining the inventory value one applies the principle of prudence, according to which one has to take into consideration all value adjustments due to depreciations or losses of value. In the case in which the inventory value is bigger than the value with which the asset is accounted, in the inventory lists will be written the accountancy values. In the case in which the inventory value of the goods is smaller than the accounted value, in the inventory lists will be written the inventory value.

The evaluation shall be done by respecting the principle of the permanence of methods, which states that the evaluation rules and models are to be maintained, in order to ensure the comparability in time of the accounting information.

The correction of the value of intangible and tangible assets and bringing them to the inventory value is done, depending on the existing type of depreciation, either by recording a supplementary amortization, in the case where an irreversible depreciation is noted, or by constituting or supplementing the depreciation adjustments, in the case where a reversible depreciation of these is noted.

In determining impairment losses may be taken into account, except for factual findings during the inventory, some external and internal sources of information.

As external sources of information may be considered aspects like:

- the market value of the intangible asset decreased visibly, more than expected, in report with the time passing or with its use;
- in the environment where the entity develops its activity there have been major changes, with a negative effect on itself, or such changes will take place in the near future, etc.

In the category of internal sources of information may be considered the following:

- there may appear signs of wear of the asset;
- during the period there have been significant modifications, with a negative effect on the entity, or such modifications will take place in the near future, with regard to the degree or the manner in which the asset is used or is expected to be used. Such modifications include: the situations in which the asset becomes non-productive, the plans for restructuring or for interruption of the activity to which the asset is dedicated, as well as the planning of the cession of the asset prior to the date previously estimated;

[46] Order 3055/2009 for the approval of Accounting regulations harmonized with the European directives

[47] OMFP no.2861/2009 for approving the Rules on the organization and inventory of assets, liabilities and equity

- the internal reports indicate signs regarding the fact that the economical results of an asset are or will be lower than the foreseen ones, like: the visible depreciation of the operating result generated by the asset compared to the one foreseen in the budget; the necessary cash flow for purchasing a similar asset, for operating or maintaining the current asset, is much bigger than the one originally foreseen in the budget; the operating profit generated by the asset is inferior compared to the one foreseen in the budget, etc.

There can also be the situation in which the loss, due to depreciation admitted in the previous periods for an intangible asset, is no more or is reduced. At such an evaluation will be taken into calculus different external and internal sources of information[48].

As external information sources may be considered the following:

- the asset's market value recorded a major increase during the period of time;
- in the environment in which the entity develops its activity took place significant modifications, with a favorable effect on this one, or it is estimated that such changes will happen in the near future, etc.

As internal sources of information may be considered the following:

- during the period of time major changes happened, having a positive effect on the entity, or such modifications will happen in the near future with regard to the degree or the manner in which the asset is used or is expected to be used. These modifications include the expenses done during that period of time in order to improve and to increase the performance of the asset or for restructuring the activity to which the asset belongs;
- the inner reports prove the fact that the economic performance of an asset is or will be better than initially foreseen, etc.

Assets are presented in the balance sheet at net book value respectively *fair value*[49], this one being represented by the acquisition cost, the production cost or any other value that substitutes the cost, minus the amortization cumulated up to that date for the depreciable assets, as well as with losses accumulated from impairment.

The carrying amount at the balance sheet date is determined based on rules of further evaluation of the initial recognition.

When there is loss of value for intangible assets and is expected to permanently reduce their value, assets should be evaluated at their lowest attributable value at the balance sheet date.

3.Controversies regarding the evaluation of intangible assets

There are various divergences of opinion regarding the value of the recognized intangible assets in the financial situations. As for the separate purchase of those, things are clear, the researchers in the field concluded that these are evaluated and recognized at fair value. There are also controversies regarding the paid price, price that doesn't reflect, in some researchers' opinion, the real value of the intangible assets.

Within the clusters there is controversy about Severability of marks, some researchers believing that brands have certain characteristics that can not separate them from the goodwill, their value can not be reliably determined. [50]

Internally generated business brands have generated most debates, with pros and cons regarding their recognition in the balance sheet.

The multitude of methods, models and techniques of recognition and measurement of intangible goods is determined by the complex and special character and the typological diversity of those. A first criterion of classification, analysis of methods, refers to the *scope*[51] of intangible assets, which assumes the distinction between:

- *the holistic method,* in the sense of unitary analysis of the entire system of intangible assets of a company or branch in which there is a multitude of interdependencies. Holistic methods[52] proposed in the specialty literature and in the business practice are IC – Index, Market-to-book Value, VAIC- Value Added Intellectual Coefficient , Knowledge Capital Earnings, EVA, Calculated Intangible Value, IAMV, AFTF. In the Romanian translation, where it was possible, these methods were given the consecrated denominations from the English

[48] Order 3055/2009 for approving the Accounting rules harmonized with the European directives

[49] Order 3055/2009 for approving the Accounting rules harmonized with the European directives

[50] N. Feleaga,L. Malciu, The challenges of the international accountancy at the turn of the millennium: Models of assessment and immaterial investments , Economic Publishing House, Bucharest, 2004, p.175

[51] http://en.wikipedia.org/wiki/P/B_ratio

[52] http://en.wikipedia.org/wiki/P/B_ratio

language, so that it would make it easier for them to be accessed on the internet.

- *The atomistic method,* or the partial method, which means the analysis and evaluation of a single intangible asset. The used atomistic methods are: Value Chain Store Borrad, Skandia Navigator, Balanced Store Card, Intangible Assets Monitor, Human Capital Intelligence, Citation-Weighted PPatents, HRCA, Inclusive Valuation Methodology, Technology Broker, TVC, The Value Explorer, Intellectual Assets Valuation.

From the point of view of determining the intangible assets in value and non-value terms, the specialty literature proposes:

- non-monetary methods, that approach the intangible assets in the terms of the qualitative analysis (for example Value Chain Score Board, Intangible Assets Monitor, Balanced Score Card)
- monetary methods (for example: Market-to-book-Value, Knowledge Capital Earnings, VAIC, EVA, Calculated Intangible Value etc.)

In the economical are used most frequently eight methods, as follows:

- four monetary and holistic methods: Market-to-book Value, Tobin's Q, Economic Value Added, Knowledge Capital Earnings proposed by Lev B.
- four non-monetary and atomistic methods: Skandia Navigator (Edvisson & Malow), Intangible Assets Monitor (Sveiby), Balanced Score Card (Norton & Kaplan), Value Chain Scoreboard (Lev B.)
- From the point of view of the strategic management of the company, specialists present the following groups of methods which, practically, represent a regrouping of the previously presented methods, as follows:

a. *methods based on stock capitalization*[53]: Tobin's Q coefficient, The indivisible balance

- Tobin's Q coefficient represents the ratio between the market value of a publicly traded company and the replacement value of its tangible assets
- The indivisible balance represents the difference from the market value of the company and the net asset accounting.

b. *Methods based on the profitability of assets*[54]: Economic value added (EVA), Market value added (MVA), Total intangible value, Capitalization of knowledge generated profit.

- The EVA reflects the net residual profit or the economic profit existing only in the case in which the difference between the return on invested capital and the weighted average cost of capital is positive. The formula for calculating it is:

EVA = (ROIC – cmpc) * initial value of the invested capital, where ROIC = return on invested capital, cmpc = weighted average cost of capital.

- Market value added (MVA) is calculated as the difference between the market value of a company and the subscribed capital, loans and unallocated profits.
- Capitalization of knowledge generated profit is calculated as the ratio between the difference between the normalized annual net profit and the net profit of tangible and intangible assets on one side, and the capitalization on knowledge capital on the other hand.
- Score based methods: Skandia Navigator, Balanced Store Card, Intangible Assets Monitor, IC Index. These methods are based on the evaluators given scores and do not quantify the monetary value of the intangible assets.
- Direct methods of calculation of the intangible assets: Technology Broker, Inclusive Valuations Methodology

The assessment of the value of intangible assets through these methods is done through information and non-monetary evaluations based on questionnaires or special forms of the updated cash flow.

Starting from general methods of assessing the value of intangible assets, for each category and type of intangible asset is necessary to choose the method most adequate for the objectives in view.

The provisions of IAS 38[55], referring to the accounting treatment for intangible assets, are meant for: Initial evaluation of intangible goods based on the acquisition cost, production cost and fair value, Revaluation of intangible assets (depreciation), Intangible assets directly and indirectly operated.

The evaluation methods for intangible assets are:

- methods based on market (sales) comparison
- methods based on income: the method based on the profit advantage of the asset, the method based on the contribution to the profit, the method based on decreasing the costs, the method estimating economy/ fee exemption policy as a result of the intangible asset

[53] D. Nica and others – Company evaluation, Editura Fundației România de Mâine, 2007,p.248

[54] D. Nica and others – Company evaluation, Editura Fundației România de Mâine, 2007, p.249

[55] International Financial Reporting Standards IFRS 2009, CECCAR Publishing House, Bucharest, p.2006

ownership, the method that quantifies the difference between the total value of the company using the intangible asset and the value of the same company not using that asset, the residual method through which the value of an intangible asset is calculated as a difference between the total value of the company and the value of the other tangible and intangible assets owned.

For example, it is presented the evaluation of a product brand through the royalty savings method (table 1). The object of the evaluation is represented by the BETA product brand. The purpose of the evaluation is the recording of the brand in the balance by applying the acquisition method, respectively after the purchasing in entirety of the company Beta by the company X. The type of value is the fair value. The date of evaluation is 30.01.2010. The adequate method of evaluation is represented by the actualization of the net royalty savings economy, hypothetic. The evaluation hypothesis are:

- the turnover related to the BETA product brand was projected as follows: 4400 EUR in 2010, 4840 EUR in 2011, 5227 EUR in 2012, 5541 EUR in 2013, 5818 EUR in 2014.
- The royalty rate in the turnover in that field is of 4%
- The income tax rate is of 16%
- The hoped annual perpetual increase of the turnover from 2013 to infinity is of 3%
- The nominal rate of actualization of the net royalty saving is of 16% (equal to the nominal cost of the company capital:

Table 1

Indicators	**Actual**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**
Turnover		4400	4840	5227	5541	5818	
Gross royalty savings	0,04	176	193,6	209,08	221,64	232,72	
Income tax	0,16	28,16	30,98	33,45	35,46	37,24	
Net royalty savings		147,84	162,62	175,63	186,18	195,48	201,35
Actualization factor @ 16%		0,862	0,743	0,641	0,552	0,476	
Updated net royalty savings		127	121	113	103	93	
Sum of updated net royalty savings		**557**					
Residual value	1383						
Actualization factor @ 16%	0,476						
Updated residual value		**658**					
Updated net royalty savings		**1215**					
Actualization rate	0,16						
Income tax	0,16						
Amortization duration	15						
Updated net profit from amortization	**124**						
Brand fair value	**1339**						

4.Conclusions

Certain authors promote fair value as a value closer to the economic reality because it emphasizes the creation of value for the shareholders and for the social partners. The international evaluation standards show that assessments of intangible assets can be required for various uses including: purchases and sales of entities, parts of entities or of an asset, merging.

Accounting at fair value in report with the historical cost presents advantages in what regards the improvement of the accounting information comparability by differentiation of assets, objectivity and neutrality in the evaluation accounting models.

The model of evaluation based on historical cost, doubled by the application of the principle of prudence, is harshly criticized because of its approximate, and so subjective, estimation, especially when it comes to asset depreciation. The authors of these critiques support in exchange the virtues of fair value counter, which lead to a higher objectivity and neutrality, because such an accounting model would be free of the influences and the opportunism present at certain account caretakers. Use of fair value accounting allows the development of financial statements that would provide the others with better information on current and future business performance and therefore the possibility of substantiating their

decisions, which is not allowed by the accounting model based on historical cost evaluation.

The evolution of accounting is slow and there will always be a gap between the immaterial investment volume and the recognized level of intangible assets, because there cannot be done a credible evaluation of all components involved in the investing process.

Bibliography

- CECCAR – International financial reporting standards: IFRS: official norms issued at January 1st 2009, CECCAR Publishing House, 2009, p.2002
- **D. Nica and others**, „*Company evaluation*" Fundația România de Mâine PH, 2007, p.248
- http://en.wikipedia.org/wiki/P/B_ratio
- **L. Feleagă, N. Feleagă** , „*FATHOMED FINANCIAL ACCOUNTANCY, Elements of accountancy engineering in the context of the international referential*", InfoMega Publishing House, 2005, pp. 115
- **M. Pantea**, „*Criza globală şi implicațiile asupra protecției drepturilor de proprietate intelectuală*", Journal of Criminal Investigation, Year I, No.2, Sitech, Craiova, 2008.
- **M. Pantea**, „*Investigarea criminalității economico-financiare*", vol.I, , Pro Universitaria Publishing House, Bucharest, 2010.
- **M. Pantea**, „*Protecția penală a proprietății intelectuale în era globalizării*". Expert PH, Bucharest, 2008.
- **N. Feleaga,L. Malciu**, „*The challenges of the international accountancy at the turn of the millennium: Models of assessment and immaterial investments*", Economic Publishing House, Bucharest, 2004, p.181
- OMFP nr.2861/2009 for approving the Rules on the organization and inventory of assets, liabilities and equity
- Order 3055/2009 for approving the Accounting rules harmonized with the European directives

II. EVOLUTION AND TRENDS OF CRIME

LES MODALITES DE COMMETTRE DES INFRACTIONS DANS LE DOMAINE DE LA PRODUCTION ET DE LA COMMERCIALISATION DE PRODUITS AGRICOLES. TECHNIQUES D'INSTRUMENTATION ET ESPECES RESOLUES.

Ph.D. Dan BUCUR
Directeur – Direction d'Investigation des Fraudes
Lecturer Ph.D. Marius PANTEA
Faculté de Police, Académie de Police „Al. I. Cuza"
Assist. Georgiana GHIȚESCU
Faculté de Police, Académie de Police „Al. I. Cuza"

La production agricole –élément essentiel de l'économie nationale – est un domaine qui offre beaucoup d'opportunités aux personnes qui obtiennent des revenus non -déclarés et qui crée et alimente l'économie souterraine. Les infractions qui peuvent être commises envisagent tant l'obtention de subventions illicites de l'Agence de Paiements et d'Intervention pour l'Agriculture que le non- enregistrement des quantités de produits réalisés pour se soustraire au paiement des impôts, tant à ceux liés au profit qu'à ceux liés à l'utilisation de la force de travail.

1. Terminologie spécifique

- ***l'activité de graduation –*** activité professionnelle d'identification et de séparation par des critères de qualité des parcelles de graines de consommation, pour les encadrer dans les degrés prévus par le *Manuel de graduation des graines de consommation* ;
- ***graines de consommation –***graines de céréales, oléagineuses, légumineuses, destinées à la consommation humaine et animale, à l'industrialisation et à la commercialisation ;
- ***Le Manuel de graduation des graines de consommation –*** document technique qui sert à la réalisation de la graduation et qui inclut les projets de graduation des graines de consommation et les procédés utilisés pour déterminer les valeurs qualitatives en vue de réaliser la graduation ;
- ***facteurs de graduation –*** les caractéristiques de chaque catégorie de produits selon lesquelles se réalise la graduation ;
- ***graduateur –*** personne physique autorisée à faire la graduation des graines de consommation;
- ***secteurs –*** domaines d'activité du marché des graines de consommation : production, stockage, traitement, commercialisation ;
- ***point de réception des graines de consommation –*** lieu où une personne physique ou morale ou le représentant légal de celle-ci, détenant une certaine quantité de graines de consommation peut la déposer en vue du stockage.

2. Modalités de commettre des illégalités dans le domaine des produits agricoles.

L'activité d'investigation déroulée par les officiers du Département d'Investigation des Fraudes doit suivre tout le cycle de production et commercial qui concerne les travaux agricoles enregistrés, récolte, transport, ensilage, meunerie et panification en vue de lutter d'une manière efficace contre toutes les infractions qui peuvent être commises dans ce domaine[56].

L'enquête doit commencer par le *Plan de culture*, document qui sert à l'obtention des subventions offertes par l'*Agence de Paiements et d'Intervention pour l'Agriculture*. Dans ce document on déclare les surfaces cultivées, la structure des cultures, la surface des parcelles étant localisée par GPS. Pour pouvoir obtenir plus d'argent d'une manière illicite, certaines personnes déclarent des travaux agricoles qui ne sont pas encore effectués.

Pour les cultures d'automne, on vérifiera les travaux pour chaque culture, en tenant compte des principaux travaux : le labourage (juillet – décembre) et les semailles d'automne (septembre – novembre) pour les cultures de blé, d'orge et de colza.

Pour les semailles, le matériel peut être procuré des Instituts de recherche (Fundulea, Lovin, Brasov, Iasi, Baneasa, Semom) ou de grands fournisseurs internationaux (Pioneer, Monsanto, Expur).

[56] voir M. Pantea, D. Bucur, „*Metode şi Tehnici de investigare a fraudelor*", Ed. Sitech, Craiova, 2009.

En ce qui concerne la qualité et la capacité de germination de ce matériel, il se classifie en trois catégories :

- ***C1*** – les premières semences ne se trouvent qu'aux producteurs spécialisés;
- ***C2*** et ***C3*** – représentent le résultat de la production agricole dans la première (C2) et la deuxième (C3) année de production et sont réalisées par les producteurs agricoles.

Au moment où on déclare l'utilisation des semences C2 et C3 on doit vérifier aussi l'existence et le fonctionnement de l'outillage sélecteur, indispensable dans l'activité de sélection des graines de semence. Le producteur de graines doit fournir aussi le bulletin de qualité qui prévoit le poids hectolitrique, la pureté et la capacité de germination. Les graines C2 et C3 ont un pouvoir germinatif diminué de 20 – 25 %.

Un moment important dans l'activité de la production agricole est représenté par l'assurance des cultures. Pour faire une assurance l'agent de la société d'assurance doit vérifier sur le terrain la situation selon l'épaisseur des plantes et faire des prévisions pour les futures récoltes en tenant compte aussi du prix. En général les documents reflètent la situation réelle et sont nécessaires pour pouvoir analyser les frais de production.

Pour pouvoir obtenir de meilleurs résultats on réalise chaque année des travaux de fertilisation du sol, en appliquant des engrais agricoles qu'on peut procurer des combinats pétrochimiques (Vâlcea, Azomureş etc.), mais aussi des entreprises qui offrent des produits moins chers en donnant au producteur la possibilité d'opérer des entrées fictives aux prix très grands.

Un autre moyen de frauder est représenté par l'obtention de l'*Agence de Paiements et d'Intervention pour l'Agriculture* des décomptes pour des travaux non effectués[57]. Pour pouvoir identifier ce type de fraudes on doit vérifier tous les documents de transport, les paiements effectués et les résultats de l'activité de pesage qui se réalise dans le cas d'un transport routier. On doit aussi retenir le fait que certains producteurs agricoles augmentent fictivement les dépenses, en enregistrant de grandes sommes comme salaires pour la période novembre – mars, quand, en réalité, dans cette période on ne paie pas le personnel qualifié (ingénieurs et mécaniciens).

En ce qui concerne les cultures de printemps de maïs et de tournesol, les travaux se réalisent au mois de mars et les graines sont de type C1. Elles ne se trouvent qu'aux sociétés spécialisées et se vendent avec l'herbicide.

C'est pourquoi les herbicides achetés des autres sociétés commerciales représentent un indicateur de risque en ce qui concerne l'augmentation artificielle des coûts. La justification des producteurs agricoles qui affirment qu'ils détiennent une production propre de graines pour les cultures de printemps, ne correspond pas avec la réalité parce que les graines de cette production agricole ont une capacité germinative réduite et aussi parce que leur justification pourra être contrecarrée par l'absence des outillages nécessaires pour la sélection des grains.

Les substances utilisées comme herbicides doivent être autorisées par le Ministère de l'Environnement et c'est pourquoi l'utilisation des autres substances introduites par contrebande et valorisées au marché noir représente un risque pour la santé et pour l'environnement.

Pour vérifier la réalité des opérations enregistrées et de leurs coûts on fera des contrôles tant aux producteurs agricoles qu'aux fournisseurs de graines, des herbicides et de combustible et on fera des corrélations entre le volume de travail, les surfaces travaillées, les frais de transport, la main-d'œuvre, les matériels utilisés et on fera aussi attention à la période où on a déclaré l'exécution des travaux.

On va comparer aussi les travaux et les coûts déclarés à l'*Agence de Paiements et d'Intervention pour l'Agriculture* pour l'obtention des subventions avec ceux enregistrés dans la comptabilité ; en cas de fraude, les travaux et les coûts enregistrés dans la comptabilité ont une valeur et un volume plus grand que ceux déclarés à l'Agence.

Il y a aussi des producteurs qui veulent valoriser la production au noir pour pouvoir reprendre le procès illégal de production et dans ce cas dans la comptabilité ils déclarent des quantités plus petites que celles réelles. Dans cette situation il faut vérifier aussi la situation des moyens de transport utilisés.

Dans ce cas le procédé utilisé est l'utilisation de deux bons de peson, le premier indiquant la quantité réelle qui est enregistrée dans la comptabilité parallèle en tant que le deuxième bon indique une quantité plus petite qui est enregistrée dans la comptabilité officielle. Pour pouvoir découvrir cette opération il faut vérifier le nombre de transports réalisés, leurs enregistrements, la consommation de combustible et le nombre de pesages au peson

[57] voir M. Pantea, *„Investigarea Criminalității Economico-Financiare"*, Ed. Pro Universitaria, Bucureşti, 2010.

électronique. On vérifiera aussi les enregistrements vidéo.

Pour effectuer les transports on a besoin d'un avis d'expédition et du bon du peson électronique, documents nécessaires pendant les vérifications, en tenant compte aussi du fait que le moyen de transport peut effectuer plusieurs courses avec les mêmes documents.

Un autre aspect qui doit être envisagé est lié à la récolte et concerne le fait que pour le moisson les moissonneurs sont payés à l'hectare et le nombre d'hectares indique le niveau de la production, la vitesse de moisson pouvant être identifiée selon le nombre de plantes au mètre carré. Par exemple 15 hectares par jour – une production d'environ 4000 Kg par hectare d'orge ou de blé ; toute déviation significative représente une irrégularité d'enregistrement comptable.

Les quantités récoltées et non enregistrées sont vendues en général aux opérateurs de la panification qui peuvent créer une production finie non enregistrée, en vue de soustraire le profit des impôts et aussi en vue de se soustraire au paiement du TVA.

Au cas où on identifie des déviations significatives, il est nécessaire de commencer une investigation approfondie pour pouvoir éclaircir la situation.

3. Techniques d'instrumenter les infractions dans le domaine agricole

La première phase est représentée par la préparation et par les vérifications qui doivent être réalisées au siège de l'unité de police[58]. Une première étape consiste à vérifier dans la base de données le siège social des sociétés qui doivent être vérifiées, leurs associés, leurs gérants, le chiffre d'affaire, etc. Puis on analysera les informations concernant le nombre et la dispersion tant des agents économiques qui doivent être vérifiés que des utilisateurs (locataires), aspect qui va conduire finalement vers le commencement des vérifications économico – financières.

Un autre aspect important est lié à la désignation des personnes qui vont conduire l'action et à l'instruction des commissaires de la Garde Financière sur les actions qui vont se dérouler et sur les objectifs poursuivis par l'établissement, objectifs et aspects très importants dans le déroulement de l'action. La désignation des personnes qui vont assurer la centralisation des résultats et leur valorisation intégrale représente un autre aspect important dans le cadre des opérations déroulées par les officiers du département d'investigation des fraudes.

La phase suivante consiste dans le déroulement de la vérification économico – financière chez l'agent économique visé. Cette étape doit commencer par la vérification des aspects qui envisagent la légalité de la création et du fonctionnement de la société au siège social pour lequel l'équipe va solliciter le certificat d'enregistrement émis par l'Office du Registre du Commerce, le statut de l'entreprise, le contrat de société etc. ; on vérifiera ainsi les détails liés à l'objet d'activité, aux actionnaires et aux gérants, si le siège social correspond avec le siège déclaré à l'Office du Registre du Commerce. On sollicitera aussi à vérifier l'existence de l'autorisation de stockage prévue par O. M.A.P.D.R, nr. 222/30.03.2006.

Un autre aspect est lié à l'identification des points de travail, des entrepôts, des comptes bancaires et de la logistique nécessaire pour la vérification opérationnelle de la quantité et de la qualité de graines stockées. Au début on essaie d'identifier des dossiers ou des agendas qui puissent prouver l'existence de doubles enregistrements et puis on commencera à vérifier les stocks de céréales.

Si on constate de grandes différences quantitatives on sollicitera l'aide de la Direction Agricole qui doit désigner au moins une personne autorisée pour évaluer le stock de céréales. Jusqu'à l'arrivée de la personne désignée par la Direction Agricole, on doit assurer la surveillance de l'espace de stockage par des équipes de gendarmes, instruits dans ce sens. Puis on va établir la capacité légale de stockage selon le certificat de calibrage ou selon d'autres documents émis par les spécialistes du Ministère de l'Agriculture et on va établir la surface et la capacité de stockage.

Dans le cadre des vérifications effectuées aux unités de meunerie et de panification quand il n'y a pas un certificat de calibrage de l'espace de stockage, on peut déterminer la quantité de céréales par la multiplication du stock, par la longueur et la hauteur de celui-ci (hauteur x largeur x longueur).

On vérifie aussi si l'entrepôt respecte les conditions nécessaires pour les espaces de stockage (murs avec des surfaces sans humidité, toit sans infiltrations, système d'alimentation en eau, fenêtres avec des systèmes de protection contre les insectes et les oiseaux, plateformes, etc.).

On vérifie aussi s'il y a des conditions spécifiques pour pouvoir identifier les indices de qualité des

[58] voir M. Pantea, D. Bucur, *„Metode şi Tehnici de investigare a fraudelor"*, *op. cit.*, pag. 102.

céréales de consommation (sonde électromagnétique, sondes manuelles, appareils pour l'identification de la température, espace pour garder les échantillons témoins etc.).

On vérifie s'il y a des conditions pour déterminer la qualité des produits, la réception ou la livraison (dispositifs de pesage à l'intérieur ou en dehors de l'entrepôt, vérifiés du point de vue méthodologique, etc.), conditions concernant les outillages, dispositifs et installations de dotation (outillages pour le traitement, la manipulation ou la livraison des produits, installations pour les désinsectisations et pour la dératisation).

On doit vérifier aussi les certificats de calibrage pour tous les espaces de stockage des céréales et la manière et les délais de rédaction des documents primaires et financiers comptables. De cette manière on vérifie l'existence des documents qui puissent prouver l'origine des céréales, du bordereau d'acquisition demandé par MFP nr.1027/2006, la fiche de graduation qui doit avoir les signatures du graduateur et du fournisseur (l'activité de graduation des graines de consommation est réalisée par les graduateurs, personnes instruites pour cette activité et autorisées par la Commission Nationale de Graduation des graines de consommation). Il faut analyser la fiche de l'entrepôt ou le document qui peut indiquer la quantité de céréales stockées au moment des vérifications et aussi les certificats délivrés par les mairies qui peuvent confirmer la quantité de céréales stockées. On vérifiera aussi les documents qui justifient les indices de qualité des céréales envoyés vers les unités de traitement et de stockage.

On va valoriser l'inventaire réel, en établissant les éventuelles différences de gestion, et quand on découvre de graves déviations on va continuer les vérifications. Selon leur complexité et selon les informations obtenues et à partir des documents financiers et comptables on va rédiger les documents de vérification et au moment où il y a des indices qu'on a commis des infractions on va conclure les documents prévus par le Code de procédure pénale.

Ces documents, qui produisent des effets juridiques doivent obligatoirement avoir les éléments suivants : la date et le lieu où s'est déroulé le contrôle, le nom, le prénom, la qualité et l'institution à laquelle appartient l'enquêteur, les données d'identification de la société commerciale vérifiée, les données d'identification et la fonction du représentant légal – dans le cas des personnes morales, la description des faits, la date, l'heure, le lieu et les circonstances dans lesquelles ils se sont produits, l'acte normatif qui établit et qui sanctionne le coupable et les mesures données. Les documents de contrôle seront signés aussi par l'organe de contrôle et par le représentant légal de la société vérifiée, et dans le cas où celui-ci refuse, par les témoins assistants. On va vérifier aussi toutes les données d'identification des fournisseurs et des clients de céréales.

Contraventions et sanctions au régime des céréales

Les faits suivants représentent des contraventions s'ils ne sont pas commis dans de telles conditions que, selon la loi, puissent être considérés comme des infractions :

- la réalisation des documents ou des faits de commerce avec des biens dont on ne peut pas prouver l'origine dans les conditions prévues par la loi. Les certificats d'origine vont accompagner la marchandise, au moment du transport, du stockage ou de la commercialisation sans tenir compte du lieu où elle se trouve. Par ces certificats on comprend la facture fiscale, le document d'accompagnement de la marchandise, les documents douaniers et tous les autres documents établis par la loi[59].
- la détention, avec n'importe quel titre, des actifs et des dettes tout comme la réalisation des opérations économico – financières, sans être enregistrées dans la comptabilité[60].
- la transgression des règles imposées par le Ministère des Finances Publiques relatives à[61]: l'utilisation et la garde des registres de comptabilité ; la rédaction et l'utilisation des documents justificatifs et comptables pour toutes les opérations effectuées, leur enregistrement dans la comptabilité, leur garde et la reconstitution des documents perdus, soustraits ou détruits.

Les documents de contrôle et les adresses par lesquelles on a saisi les organes compétents seront transmis en vue de l'inscription dans le casier fiscal dans un délai de 5 jours, selon l' O.G. 7/2001, de la Loi 410/2002 et H.G. 31/2003. Les documents de contrôle seront transmis à l'ANAF en vue d'établir les obligations fiscales envers le budget de l'Etat.

[59] Cf. art. 1 lit. e de la Loi n° 12 du 6 août 1990, concernant la protection de la population contre les activités commerciales illicites;
[60] Cf. art. 41 alin. (1) de la Loi n° 82 du 24 décembre 1991, la Loi de la comptabilité;
[61] Cf. art. 41 alin. (2) de la Loi n° 82 du 24 décembre 1991, la Loi de la comptabilité;

4. Modalités de commettre les fraudes fiscales dans le domaine des produits agricoles

I. *Le non-enregistrement dans la comptabilité des opérations commerciales effectuées et la cession des entreprises après 2 ou 3 mois pour des personnes sans possibilités matérielles et avec une éducation précaire.*

Exemples:

1. Les officiers de SIF Gorj, aidés par les officiers de la Direction d'Investigation des Fraudes, ont identifié dans leur département trois camions qui transportaient 118 tonnes de blé. Pendant les vérifications effectuées on a établi que les trois conducteurs, D.G, G.T. et D.M.I travaillaient pour la société S.C.H.T. S.R.L. Rm.-Valcea, sans avoir des licences de transport. Selon l'art. 2811 du Code pénal, on a ouvert pour les trois conducteurs des dossiers pénaux sous l'aspect de la commission de l'infraction de transport public routier sans licence. En même temps, les représentants de l'Autorité Routière Roumaine de Gorj ont retenu les certificats et les plaques d'immatriculation, parce que les trois camions n'avaient pas de licences de transport routier public valables et ont appliqué trois sanctions contraventionnelles d'environ 60.000 lei. Les officiers du Service d'Investigation des Fraudes de Gorj ont confisqué les 118 tonnes de blé et selon l'OUG 12/2006 ont appliqué une sanction contraventionnelle de 3000 lei. Dans ce cas on a ouvert aussi un dossier pénal pour l'infraction d'évasion fiscale, prévue et sanctionnée par l'art. 9 lit. b. de la loi 241/2005 envers M.A., M.N. et M.V. qui, entre juin et octobre 2010, ont commercialisé des céréales d'environ 969.919 lei vers la société SC S. S.A. de Tg. Jiu et n'ont pas enregistré dans la comptabilité les opérations commerciales et les revenus réalisés.

2. Les officiers de SIF Arad font des investigations dans le dossier pénal de N.C., gérant de la société S.C. R. LTD. SRL. Arad pour la commission de l'infraction d'évasion fiscale, fait prévu et sanctionné par l'art. 9. lit b. de la Loi 241/2005. N.C. a vendu des céréales, entre 2009 et 2010 à plusieurs sociétés sans enregistrer les revenus réalisés, en causant ainsi un grand préjudice au budget de l'Etat, d'environ 945.704 lei.

3. Les officiers de SIF Arad ont effectué aussi 5 perquisitions à domicile dans le département Arad dans le dossier pénal de P.I.M., gérant de la société SC Z.S.SRL, enquêté pour l'infraction d'évasion fiscale, fait prévu et sanctionné par l'art. 9 lit. b. de la Loi 241/2005. Celui-ci a effectué des transactions intracommunautaires avec des céréales en causant un préjudice au budget de l'Etat d'environ 500.000 euro, représenté par le TVA et par les impôts.

II. L'utilisation de documents justifiant l'origine des céréales pour la commercialisation et le transport fictifs

Les officiers de SIF Vâlcea ont fait des vérifications sur les livraisons de céréales provenues du département Timis et envoyées vers des sociétés de panifications de la ville Rm. Valcea. Pendant les vérifications ils ont identifié G.A., du département Valcea, qui est allé au siège de la société SC 7S S.A., pour livrer environ 24 tonnes de blé, marchandise pour laquelle il a présenté initialement un avis d'accompagnement signé par la société S.C. N. S.R.L. Prudeni, et puis des documents d'acquisition signés par la société P.F. D. Ocna Sibiului. Pendant les vérifications on est arrivé à la conclusion que les documents étaient faux et que la marchandise ne respectait pas les conditions de qualité. Les officiers de SIF Valcea ont été aidés par les commisaire de la Garde Financière de Valcea et ensemble ils doivent continuer les vérifications pour identifier si les activités déroulées par G.A. sont légales et pour voir s'il a d'autres rélations avec des personnes physiques ou morales du domaine du transport ou de la commercialisation des céréales.

III. Le manque de documents justifiant l'origine de la marchandise pendant le transport

Les officiers de l'IPJ Buzău –SIF et P.P. Poşta Câlnău, après la vérification des informations détenues, ont découvert U.C. de Rm. Sărat qui transportait avec le camion et une remorque de produits céréaliers sans avoir des documents légaux qui puissent justifier leur origine. Après les investigations on a établi que U.C. n'avait pas des documents que pour les produits transportés par le camion, en tant que pour ceux transportés dans la remorque, il n'en avait pas. Il est parti vers Buzău pour transporter l'orge à la société SC T, où on lui a refusé la marchandise à cause de son humidité trop grande. C'est pourquoi il a été arrêté par les policiers dans la localité Poşta Câlnău. Pendant le contrôle il a reconnu qu'il n'avait pas les documents nécessaires pour la marchandise de la remorque. U.C. a reçu une amende de 3.000 lei, selon O.U.G. 93/2009, art. 2. alin. 1 et on a confisqué le moyen de transport et les 14. 560 kg de marchandise.

IV. L'enregistrement dans la comptabilité des opérations commerciales fictives dans le but de déduire illégalement le TVA

Les officiers de SIF Teleorman ont vérifié l'activité de la société S.C. T.G. S.R.L. Alexandria, dont le gérant est S.C, et ont découvert que dans la

comptabilité de la société on a enregistré des factures fiscales même si en réalité on n'a pas déroulé ces opérations ; de cette manière la société a réussi à se soustraire au paiement des obligations fiscales : le paiement des impôts (432.439 lei) et du TVA (364.647 lei). Dans ce cas on a ouvert un dossier pénal pour S.C. pour l'infraction d'évasion fiscale, infraction prévue et sanctionnée par l'art. 9. alin. 1 lit. c de la Loi nr. 241/2005.

V. La vente de céréales sans documents fiscaux qui puissent justifier l'opération dans le but de diminuer les revenus réalisés et de se soustraire au paiement de l'impôt sur les revenus.

1. Les officiers de SIF Timiş, aidés par les officiers de la Police Jimbolia et par les représentants de la Garde Financière Timiş, ont identifié et arrêté le 25.10.2010 à Jimbolia un camion avec une remorque (appartenant à la société S.C. N.A. S.R.L. Ortişoara, jud. Timiş) qui transportait 24.860 Kg de maïs de Jimbolia à Timişoara. Pendant les vérifications on a découvert que la marchandise a été procurée par la société S.C. A. M. S.R.L. d'un producteur agricole du département Timiş, qui avait l'intention de la commercialiser à la société S.C. S. S.A Timişoara, sans avoir des contrats de transport ou de vente-achat en conformité avec l'O.U.G. 12/2006. La Garde Financière a infligé à la société S.CC. A. M S.R.L. une amende de 5.000 lei selon l'art. 14 lit. e de l'OUG 12/2006 (3000 lei pour le transport de céréales dans le but commercial, non accompagné par les documents prévus par la loi), et a confisqué les 24.860 kg de maïs, d'environ 14.916 lei.

2. Les officiers de SIF Timiş ont identifié et arrêté un camion avec une remorque appartenant à la société S.C.I.T.L. S.R.L. Hunedoara qui transportait 22.600 kg de maïs. Pendant les vérifications on a découvert que la marchandise transportée a été procurée par la société S.C. F.F.M.A. Germania de la société S.C. F.M.A.I. S.R.L., sans facture fiscale et sans conclure des contrats de transport ou des contrats de vente-achat marchandise selon l'O.U.G. 12/2006. La Garde Financière a infligé à la société S.C. F.M.A.I. S.R.L. une amende de 4.000 lei, selon l'art. 14 lit. e de l'O.U.G. 12/2006 (pour le transport dans un but commercial des céréales non accompagnées par les documents prévus par la loi), et a confisqué les 22.600 kg. de maïs, d'environ 13.560 lei.

3. Les officiers de SIF Timiş ont identifié et arrêté 3 camions avec remorques, qui transportaient 48.840 kg. de maïs. Pendant les vérifications les policiers ont découvert que la marchandise a été procurée par la société S.C. C. S.A. Dolj, de la société S.C. S. S.R.L. Timiş, sans facture fiscale et sans conclure des contrats de transport ou de vente-achat de marchandise selon l'OUG 12/2006. La Garde Financière a infligé à la société S.C. S. S.R.L. une amende contraventionnelle de 5.000 lei, selon l'art. 14 lit e de l'O.U.G 12/2006 et a confisqué les 48.840 kg. de maïs, d'environ 29.304 lei.

V. Conclusions

Pour prévenir et lutter contre le phénomène d'évasion fiscale qui se réalise par des activités illicites avec des produits céréaliers sans avoir des documents légaux, tout comme par le non enregistrement des revenus obtenus de ces activités, au niveau national la Police d'Investigation des Fraudes a organisé et deroulé des activités spécifiques pour lutter contre l'évasion fiscale et contre tous les autres faits illicites de nature économique. Les policiers ont vérifié les activités de production, de stockage, de transport et de commercialisation des produits céréaliers et des autres plantes techniques.

En 2010 en Roumanie on a récolté environ 18 millions de tonnes de céréales, de blé, de maïs, d'orge, de tournesol et de colza. Cette quantité de céréales a été utilisée pour la production des fourrages, de l'huile comestible, de l'alcool, de produits de panification et du combustible biodisel. En même temps les grandes quantités de céréales ont été envoyées à l'étranger vers 49 pays par l'entremise de 79 entreprises d'import-export de céréales. Jusqu'au 01. 08. 2010 on a exporté 2.066.615 tonnes de blé et 2.066.615 tonnes de céréales en valeur de 309.955.678 euro et on a importé 653.278 tonnes en valeur de 118.708.635 euro.

Aux actions déroulées en 2010 ont été impliqués 10.404 policiers, 2.940 commissaires de la Garde Financière, 1.621 spécialistes de la Direction pour Agriculture et Développement Rural, 918 spécialistes de C.N.A.D.R. et 1230 représentants des autres institutions. Pendant les actions déroulées on a effectués 19.223 contrôles, on a vérifié 22.252 moyens de transport, et on a infligé 12.059 sanctions contraventionnelles de 9.129.654 lei. On a confisqué, selon l'OUG nr. 93/2009, 54 véhicules, on a annulé et retiré 37 autorisations d'entrepôt, on a confisqué comme mesure complémentaire de la sanction contraventionnelle une quantité de 3.145 t de produits céréaliers, dont 1.311 t de blé, 331 t de produits de blé, 520 t de colza, 527 t de maïs, 318 t d'orge et 138 t de tournesol.

On a découvert 235 infractions et on a enquêté 217 personnes, on a pris des mesures de sécurité

dans les dossiers pénaux relatifs à 4 moyens de transport, on a indisponibilisé de biens de 3.458.482 lei, le préjudice étant estimé à 35.834.437 lei. Après l'analyse géographique on a découvert que les plus grandes confiscations de produits céréaliers ont été enregistrées au sud et au nord-ouest, la plus grande quantité étant enregistrée dans le département Timiş.

***Liste des références bibliographiques*:**

- **C. Voicu (coord.), M. Pantea, D. Bucur, etc.**, „*La sécurité financière de l'Union Européenne conformément au Traité de Lisbonne*", vol.II, Ed. Pro Universitaria, Bucarest, 2010.
- **C. Voicu (coord.), M. Pantea, N. Ghinea, etc.**, „*Investigation des fraudes*", Vol. II, Ed. Sitech, Craiova, 2009.
- **M. Pantea**, „*L'investigation de la criminalité économique et finqncière*", vol.I, Ed. Pro Universitaria, Bucarest, 2010.
- **M. Pantea, D. Bucur**, „*Méthodes et techniques d'investigation des fraudes*", Ed. Sitech, Craiova, 2009

TREATMENT VERSUS DETENTION: COST-BENEFIT ANALYSIS OF THE DRUG ADDICTION TREATMENT AS AN ALTERNATIVE TO PRISON PUNISHMENT

Student Ph.D. Adrian Marcel IANCU
National Antidrug Agency
Associate Lecturer Ph.D. Victor NICOLĂESCU,
"Petre Andrei" University Iaşi

Over time and especially today, cost-benefit analysis has seen other uses such as for example in decision-making in public administration, social policy evaluation and public policy especially public safety. Developed world governments frequently use cost-benefit analysis as a helpful technique for determining the effectiveness of different projects or public policies, both economic and transport (infrastructure building projects, roads, highways, dams, etc..) as well as in social field (public health, educational system, social security, etc.). Cost-benefit analysis, applied to public safety or crime prevention is a relatively new and was rarely used, even internationally, although we know the high cost of crime on society.

Keywords: cost - benefit analysis, social policy, re-socialization, drug users, prison.

1. Cost benefit analysis – a means to evaluate social policies

The cost – benefit analysis implies an evaluation of the funds spent in report to the benefits the society gets within some projects in order to decide whether the latter are reliable or not. Such projects may be for dams or highways, training programs, health systems, etc.

The idea of such an economic accountancy was developed by Jules Dupuit,[62] a French engineer whose 1844 article based on this topic is still a valuable piece worth reading.[63] Subsequently, the British economist Alfred Marshall[64] conceived some of the formal concepts[65] which are at the foundation of the cost – benefit analysis, but the practical development of this concept came as the result of the impetus provided by the Federal Navigation Act from 1936 in the USA. Such act requires that the U.S. Corps of Engineers carry out projects for the improvement of the waterway system when the total benefits of a project exceed the costs of that project, indifferent of how high these may be. These being the conditions, the Corps of the Engineers created systematic methods to measure such costs and benefits, doing this without much assistance from the economics profession. It was not until about twenty years later in the 1950s that economists tried to provide a rigorous and consistent set of methods to measure the benefits and costs of a project in order to decide whether such project is worth being put into practice or not.

Some technical issues regarding the cost – benefit analysis have not yet been completely solved up to this day but the fundamental problems have been well established.

In time and especially nowadays the cost – benefit analysis has also experiences other uses such as within the decisional process, in public administration, in the assessment of social policies and especially of public policies[66] regarding citizen safety. The governments of the developed states frequently use the cost – benefit analysis as a support technique in order to establish the efficiency of different public projects or policies, both in the economic and transport field (in projects for the construction of infrastructure, roads, highways, dams, etc.) and in the social field (in public health, the educational system, social protection, etc.). The cost – benefit analysis, as applied in public safety and crime prevention, is a relatively new area and it has been quite rarely used even at international level,[67] even though the costs of criminality in Australia are

[62] http://en.wikipedia.org/wiki/Jules_Dupuit
[63] Dupuit, Arsène Jules Étienne Juvénal (1844): *De la mesure de l'utilité des travaux publics*, Annales des ponts et chaussées, Second series, 8.
[64] http://en.wikipedia.org/wiki/Alfred_Marshall
[65] Marshall, Alfred (1920). *Principles of Economics* (Revised Edition ed.). London: Macmillan; reprinted by Prometheus Books. ISBN 1573921408.
[66] Mireille Rădoi, *Evaluarea politicilor publice (Evaluation of Public Policies),* Tritonic Publishing House, Bucharest, 2005
[67] Concerns in the field manifested in the USA, Great Britain and Ireland.

of approximately 18 million dollars a year,[68] the equivalent of 4% of the gross global income).

It is agreed the fact that not all public policies or governmental programs, taken from point of view of costs, are necessarily effective in the long term solving of social problems such as crime. There is an area of uncertainty whenever the initiators of public policies are to take decisions regarding the alternatives proposed for implementation. The type of questions revolving this area refers to the effective use of available funds and to the most efficient action methods. It is likely for one Euro extra spent to prevent crime within the social development programs financing physical and psychical development of children during their first years of life to bring a net benefit greater that that Euro spent on the construction of an extra cell in the penitentiary system. Once criminality imposes considerable costs on the society,[69] - in terms of financial, emotional costs and missed opportunities – the identification, analysis and evaluation of programs which have proved efficient represent a successful strategy for the future design of the new cycle of public policies in the field of citizen safety.

The design of public policies regarding criminal prevention and fighting starts from some basic premises:

- The belief according to which situational prevention of crime can be reached, in which case the measurement and quantification of costs and benefits is simpler and more direct;
- The phenomenon of criminality never appears under the same form, it materialized differently depending on the place and temporary moment the criminal act is committed, on the personality characteristics of the author and / or other specific factors (knowledge and understanding of this type of information which configures the pattern of criminality represents an important instrument of public policies which, used accordingly, may lead to the minimization of the socially involved cost associated to criminality).
- Public policies to prevent crime result in the diffusion of social and economic benefits to a greater range of population than the target group initially aimed at; in case the concentrated costs are on a territorial administrative unit or on a public institution, the benefits can be disseminated[70] at the level of local collectivities or even more extendedly, to the social level.

What is more important for the society as a whole and particularly for the initiators of public policies is to make sure that the limited financial resources from the collection of taxes and duties to the state budget which can be used for a large scale of public policies or governmental programs are efficiently allocated for effective governmental interventions. This does not necessarily mean that resources should be allocated strictly to those initiatives of public policies which prove themselves efficient in the reduction of the level of criminality, but it implies that the funds shall be allocated so as to maximize the benefit, that is a level as lower as possible of crime / monetary unit (one spent Euro or Leu). Therefore, in order to have the evaluation of a project and efficient grant of available funds, we need a cost- - benefit analysis which may represent the most relevant evaluation technique.

The cost – benefit analysis is a concept which refers to two fundamental dimensions: it is an instrument to evaluate and compare the public policies or projects and, in the same time, it can be defined as a means of substantiation of any type whatsoever of decision in general. Under its both senses, the cost – benefit analysis, both implicitly and explicitly, involves the weighing of the costs estimated in report with the foreseen benefits as a result of one or more actions, so as to choose the most profitable way of action. The costs and benefits are conveyed in monetary terms and updated to the real value of the money so that the flux of the expenses and that of the benefits of the project of public policy should be in time conveyed in terms of present – day value. The cost – benefit analysis is strongly related with certain differences to other qualitative evaluation methods of public policy alternatives, such as the cost – efficiency analysis, the risk analysis, the economic impact analysis, the analysis of Inland Revenue or of social investments.[71]

Under a more specific form, the social type cost – benefit analysis represents a conceptual framework for the evaluation and completion of different social investment projects such as, for example, the decision to allocate funds for the setup of more facilities in penitentiaries or for the increase in the number of foster parents for children coming from

[68] John Chishlom, *Cost Analysis and Crime Prevention,* in Trends and Issues in Crime and Criminal Justice, No. 147, February 2000, pag. 1, Australian Institute of Criminology

[69] *The Application of Economic Analysis to Criminal Justice Interventions: A Review of the Literature* Criminal Justice Policy Review June 2005 16: 141-163,

[70] The term of benefit diffusion refers to the fact that the effective prevention of criminality within a well assigned location may produce a decrease in the criminal rate in the neighboring regions or in relation with other types of criminal offences.

[71] Social Return on Investment, SROI

decayed or extremely poor families. The monetary units to measure the costs and benefits are accepted in such type of analysis only as a reference point for the units of marginal utilities (profits or loss related to social welfare).

The cost – benefit analysis as well as its strongly related techniques, such as the cost – efficiency analysis can be used for the following:

- To foresee which is the greatest benefit a social project may bring to an available limited budget;
- To determine the optimal amount necessary for the implementation of a certain governmental project or public policy, or to establish the costs necessary in time for the maintenance of certain services or products of social policies;
- It may stand as guidelines in the selection process of public projects or policies proposed for implementation.

There are two main types of the cost – benefit analysis: the ex-ante and the ex-post. The ex-ante analysis is the most commonly met form of cost – benefit analysis and it has an immediate and direct impact on the decisional process, thus supporting the governors in their decision taking related to the efficient allocation of the available financial resources. The ex-post analysis is run after having finalized the implementation of the program or while the latter is in the on-going implementation stage. This type of analysis cannot, both directly and immediately, influence the decisional process and inform the governments on the optimal decision as the costs of policies are already engaged and the money is spent, being almost impossible to retrieve it. However, the ex-post cost-benefit analysis is useful especially in the field of crime prevention because the efficiency of a prevention program can be better measured, the long-term benefits can be more precisely calculated, thus contributing to the highlight of the elements which ensure the success of public policies, taking into account the situational context in which the latter are applied as well as the extent to which they can be adapted within other social situations.

The cost – benefit analysis can be used both to determine the economic efficiency of the policies, the aim being that of choosing the least expensive policies with a maximum of benefits, and to keep a check on the distribution of costs and benefits among different groups of the society according to age, gender, geographical position or time. Such an analysis may indicate the presence of some possible unbalances between the costs and benefits for certain segments of the population which are vulnerable.

Given a synthetic definition, we may say that the cost – benefit analysis is an analytic instrument which comes to support the initiators of public policies in the foundation of the decision by means of the monetary evaluation of the costs and benefits related to the public policy. This implies both the comparison of the costs and benefits and the evaluation of the risks and the analysis of the sensitivity.[72]

The design of the public policies of crime prevention needs to be planned according to the characteristics of specific types of crimes and to the context in which these characteristics behave. The cost – benefit analysis plays the role of an economic instrument for the evaluation of social policies at a macro-social level, but its implementation in the public policies of crime prevention, in the beginnings of its use in this field, was done at a micro-project level. Unlike many other interventions of public policies which make use of the cost – benefit analysis, the crime prevention programs have both a macro-social and micro-social impact which needs evaluating.

Due to many other factors, such as: the lack of a rigorous program to evaluate the impact of the public policies,[73] which should offer the database necessary to make the cost – benefit analysis, difficulties encountered in quantifying certain intangible costs and benefits, the lack of uniformity in providing data by different information sources, the difficulty to exactly quantify the number of attackers according to the type of offence or the existence in this field of only some fragmented or very narrow studies, it all resulted in very few programs or public policies in the field of public safety and especially those related to crime prevention using the cost – benefit analysis. In order to be able to decide on the monetary benefits which result from the implementation of policies regarding the prevention or the decrease of crime, it is first of all necessary to have a program to evaluate the impact,[74] which should offer assessments of the efficiency of the public policy in discussion. Although the comparison of the assessments is useful before and after the implementation of public policies, the only method which is truly effective most of the

[72] Sandra Briggs, Baiba Petersone, Karlis Smits, *Manualul de metode folosite în planificarea politicilor publice şi evaluarea impactului*, Proiect PHARE RO2003/IB/OT/10 din 2006;

[73] Brian J. English, Edith Cowan University Rick Cummings Murdoch University and Ralph G. Straton Murdoch University – *"Choosing an evaluation model for community crime prevention programs"* in Crime Prevention Studies, volume 14, pp. 119-169/2005

[74] Nick Tilley, Nottingham University, – *„Evaluation for crime prevention"* in Crime Prevention Studies, volume 14 pag. 1-10, 2005

times to establish the general efficiency of the policy is that of designing experimental or quasi-experimental research.[75]

In case a proper evaluation of the public policy is available whereas the evaluation should be designed so as to provide relevant information for the cost – benefit analysis, the steps to be taken in order to achieve it would be the following:

- identification of the public policies to be analyzed,
- determining all categories of implications for the society, estimation of the impact by attributing a monetary value to each change, whereas the favorable ones will be counted as benefits while the unfavorable ones as costs and at the same time paying attention to their evolution in time,
- calculation of the net benefit by deducting the total of costs from the total of benefits,
- establishing the most efficient project of public policy.[76]

In order to evaluate the programs of crime prevention, Barnett[77] proposed the implementation of the following steps, according to the scheme below:

DEFINING THE AIM OF THE ANALYSIS
Establishing the program to be analyzed through the cost – benefit analysis, identification of the set of criteria based on which different comparisons with other projects / programs will be carried out, identification of the limits of the comparison with other projects, deciding on the set of benefits

↓

ESTIMATION OF THE EFFECTS OF THE PROGRAM, IDENTIFICATION OF TYPES OF IMPACT
The benefits of the program are the result of its efficiency, the identification of the effects of the public policy from the point of view of the expectations, of the participants' perception, as well as the use of the services and products related to the public policy. The method to evaluate the impact may be an experimental or a quasi-experimental one, by means of comparing the experimental group with the control group "*before*" and "*after*" the implementation of the program.

↓

ESTIMATION OF THE MONETARY VALUE FOR ALL COSTS AND BENEFITS
The basic principle is the association of a monetary value to every type of impact or result of the public policy / program.

↓

CALCULATION OF THE CURRENT VALUE AND ESTIMATION OF PROFITABILITY, QUANTIFICATION OF NET BENEFITS
It is taken into consideration the update rate and the inflation, it is used the rate of social discount.

↓

DESCRIPTION OF COSTS AND BENEFITS DISTRIBUTION IN THE SOCIETY
Even though the positive net value might prove to us that the program has been profitable for the society as a whole, it may show nothing about the real benefits and loss borne by the different social categories.

↓

EXECUTION OF A SENSITIVITY ANALYSIS
The estimation of the costs and benefits of the crime prevention programs is based on certain assumptions, such as the existence of a logical correlation between the efficiency of a program and the social costs of criminality

In order to identify and measure the costs and benefits, it is firstly necessary to identify the costs of the *input* factors so as to make a certain public policy. Then there comes the association of a monetary value to each of the envisaged results, while the next step is to calculate the efficiency of the program as a relation of the registered costs and the produced benefits. Based on a utilitarian criterion, the evaluation defines a public utility project as being effective when the benefits exceed the costs.

In general, the costs are defined as representing the value of the material and financial resources used for the implementation of the public policy and there is a great range of classifications of the costs and of the used accountancy methods. Therefore, the costs are classified in two main categories: financial costs (historic, accountancy costs, with an impact on the state budget) and economic costs (costs which the public policy generates for certain groups of the society). The financial costs may be classified, in turn, in implementation costs necessary for the start up of the planned activity, maintenance costs which ensure the long term performance of the chosen alternative of public policies and administrative costs represented by salaries, services and consumables which cannot be identified as costs for the direct activities of the public policy. The economic costs are all those costs taken on by the society as a result of the performed activity within a public policy. From the perspective of the society, economic costs consist of financial costs (the state budget) and other costs imposed on the members of the society or external costs created by the negative externalities generated by the implementation of the policy.

As far as the benefits of a public policy are concerned, these can be classified in direct benefits which derive directly from the public policy and indirect benefits which are subsidiary products of the policy. Following the distribution of the direct and indirect benefits involves the principle of equity and it is important for the evaluation of the public policies with social implications for different groups of the society. The measurement of the costs and

[75] Ekblom P, and K. Pease (1995). "Evaluating Crime Prevention." In: M. Tonry and D. Farrington (eds.), *Building a Safer Society: Strategic Approaches to Crime Prevention.* (Crime and Justice series, vol. 19.) Chicago, 1L: University of Chicago Press.

[76] Brian J. English, Edith Cowan University Rick Cummings Murdoch University and Ralph G. Straton Murdoch University – "*Choosing an evaluation model for community crime prevention programs*" in Crime Prevention Studies, volume 14, pp. 119-169/2005

[77] Barnett P, 1993,- *Calculation of the cost and benefit of the Perry Preschool*, www.rand.org/pubs/monograph_reports/MR898/MR-898.AppB.pdf

benefits depends on their character, whether they are tangible, that is whether they can be evaluated by taking into consideration their price on the market or intangible, that is they cannot be evaluated / identified based on the market price.

Tangible costs of criminality were classified by different authors in many categories:

1. Costs sustained by victims (direct costs: medical care, financial loss, property damage, loss of income, etc.)
2. Costs of homicide risk (the probability that certain aggressions may lead to the loss of human life and the association of individual life to the present day value of the economies during the entire life period, estimated between 6 to 10 million dollars[78]);
3. Costs of medical care given to victims (for psychological counseling and other associated health services[79])
4. Costs associated to justice procedures (protection offered by the police to witnesses and victims, juridical costs, costs of the correction and rehabilitation system);
5. Costs induced by criminal activity (decrease in economic productivity in the areas with high level criminality, reduction of the level of tourism in risk regions, etc.).

Intangible costs of criminality refer to aspects such as pain, sufferance, calculated according to criminal categories, according to the medical treatment the victim receives[80] and the correction or reduction of homicide risks (associated to the probability of homicide occurrence for each type of criminality multiplied with the statistic value of human life, that is 6,7 million dollars, according to some authors[81]).

The programs run in Great Britain, Australia and the United States of America are some of the examples of social projects evaluated with the help of the cost – benefit analysis. Therefore, in the program for the reduction of residential burglary *British Kirkholt Housing Estate,*[82] for each spent pound other 5 pounds were saved while the American educational program *Perry Preschool Program*[83] brought a benefit of 7 dollars for each spent dollar, together with benefits in new work places, reduction in the level of criminality and the improvement of life opportunities.[84] The Australian Institute of Criminology estimated that in 1996 the cost of criminal events was of 11 and 13 million dollars. Being very difficult to associate a price to certain intangible values, such as human life, these numbers are the least unlikely but some general approximations. Even though, they indicate a significant loss for the society of almost 2,5% of the gross global income of Australia.[85]

In the social cost – benefit analysis the concept of the *social discount rate* is frequently used, this being defines as the ***r*** value used in the calculation of the present day value of the social discount for the investments within the social programs and policies. The social discount rate is used in the cost – benefit analysis for the social policies in which the initiators have to calculate the marginal social cost and the marginal social benefit for the evaluated projects. In the Member States of the European Union almost all initiatives of public policies are taken into consideration only if the cost – benefit analysis has been made. The social discount rate can be used to estimate the plus value brought by the project, such as for example the construction of highways, schools or for the protection of the environment.

Calculation of the real marginal social cost may constitute an easier task than the calculation of the marginal social benefit. For example, it is difficult to quantify the value of time through the association to the national average wage or to the preferences of the beneficiaries. Another problem is the quantification of the value of human life (although some may say like is priceless, the economists appreciate human life to 6,7 million dollars) or the calculation of intergenerational costs. It is often likely for the present generations to pay a greater part of the costs of public policies interventions

[78] John Roman, - *Cost Benefit Analysis for Crime Prevention: Opportunity Costs, Routin Savings and Crime Externalities,* Crime Prevention Studies, vol 14, pp. 53-92

[79] Cohen, M. A., and Miller, T. R. (1998). The cost of mental health care for victims of crime. *J. Interpers. Violence* 13: 93-110.

[80] Miller, T. R., Cohen, M. A., and Wiersema, B. (1996). Victim costs and consequences: a new look. *National Institute of Justice Research Report,* Washington, D.C.

[81] W. Kip Viscusi & Joseph E. Aldy, 2003. "*The Value of a Statistical Life: A Critical Review of Market Estimates throughout the World,*" NBER Working Papers 9487, National Bureau of Economic Research, Inc.

[82] David Forrester, Mike Chatterton and Ken Pease with the assistance of Robin Brown - *The Kirkholt Burglary Prevention Project, Rochdale,* CRIME PREVENTION UNIT: PAPER 13, LONDON: HOME OFFICE Editor: Kevin Heal, Home Office Crime Prevention Unit, London SW1H 9AT

[83] Barnett P, 1993,- *Calculation of the cost and benefit of the Perry Preschool,* www.rand.org/pubs/monograph_reports/MR898/MR-898.AppB.pdf

[84] John Chisholm, *Benefit-cost analysis and crime prevention* in Trends and issues in crime and criminal justice, No. 147, February 2000, pag. 3, Australian Institute of Criminology

[85] idem

while the benefits to be taken, in most of the cases, by the future generations. A good example would be the pollution of the environment by means of accelerated industrial development, the benefits coming to the present day generation while the costs of environment damage would be on the future generations. The social discount rate should reflect the opportunity cost of all projects which may be carried out with the same value of the funds we currently have available. For instance, in case an amount from the state budget could be directed towards investments in the private sector which may bring a 5% profit for the state, then 5% would represent the social discount rate.

The social discount rate is a concept analogous to the discount rate of any project whatsoever and therefore the mathematical calculus formulas are similar:

$\frac{1}{(1+r)^t}$ r = the value of the social discount rate
t = time

A high value of the discount rate makes it less possible for a social project to be granted funding, which may indicate the existence of some increased risks. The social discount rate reflects in fact the social valorization of the present welfare versus the future welfare.

Hence, crime prevention may be conceived as a continuum of time, made by means of governmental interventions all along the entire existence of individuals through social programs which focus on the supervision of target groups between the two fringes of the temporal level even from prenatal period up to detention. Between these two extremes, there is situated an entire range of social development programs, starting from the juvenile period (criminal or non – criminal) up to adulthood. The way in which limited funds we may have are allocated for a program or another, shall contribute to the amelioration or, on the contrary, to the accentuation of the social problem of criminality. This is why one extremely useful tool may be the cost – benefit analysis which, when evaluating the alternatives of public policies, takes into account all social costs and benefits the public policy produces. If the cost – benefit analysis was made correctly, then it will be possible for the gained results to be also validated by other researchers or analysts of public policies who shall be entitled to recalculate the costs and benefits and to retrieve the initially gained results for the estimation of the benefits – costs report.

It is at the same time worth mentioning the fact that the application of the cost – benefit analysis in crime prevention programs has certain limitations due to the factors herein: the lack of uniformity of data sources, missing data, fragmented or inconsistent studies, difficulties related to the quantification of the current number of offences (the black number of criminality), the estimations exclude the value of the psychological sufferance, the value of the lost property – the real cost or the transfer of a tax. However, the cost – benefit analysis remains a real work tool for the evaluation of the benefits of a program, indifferent of its field of application.

2. The Social Costs for the Treatment and Re-sociali of Drug Consumers and of Drug Consumer Offenders

It has been proved that the addiction does not cease once with the conviction of the person, moreover, the persons who have never had anything to do with drugs, once imprisoned, due to the influence from other inmates, get to become drug consumers. Furthermore, the more drug addicts in the families of the prisoners, the more chances to develop an addiction. Starting from these environment factors it is needed the implementation of drug consumption prevention programs in prisons, as well as the rehabilitation of the imprisoned persons and the insurance of their social integration after their release. In fact, the success of the efforts to re-socialize and reintegrate such persons depends on the success of the systematic programs carried out with this aim.

The treatment of drug addicts, the social assistance and the support given to drug consumers, either offenders or not, so as to reintegrate them within the society represents a means to reduce the social costs simultaneously with the increase in citizen safety. Scientific studies proved that each pound invested in the treatment produces savings of 9.50 pounds in the health field and at the level of juridical expenses.[86]

Most of the problems experienced by the drug-consuming individual involve special financial and social costs especially in the situation in which the individual is admitted in treatment centers or in therapy communities.

A WHO (World Health Organization) report (2009)[87] indicated the cost of the treatment for the drug addicted persons in centers of compulsory

[86] Goodfrey C, Stewart D and Gossop M. – *Economic analyssis of costs and consequences of the treatment of drug miuse: two-zear outcome data from the National Treatment Outcome research Study (NTORS),* Addiction, 99(6), p. 697 - 707, 2004

[87] WHO Western Pacific Region (2009) Assessment of compulsory treatment of people who use drugs in Cambodia, China, Malaysia and Viet Nam: An application of selected human rights principles, p.1

treatment from Cambodia (100-200$ for admission, plus 50$ monthly, even if, pursuant to the law, the treatment is free), China (290-440$ therapy cost per person compared to the voluntary treatment in the center: 790$), Malaysia (subsidized by the government, without costs) and Vietnam (in 2005 the government made investments of 70 million USA dollars in centers, but the families must pay for the food and additional goods).

The studies carried out in the USA regarding the costs of the re-socialization and reintegration of the drug-addicted who have committed any criminal offences[88] prove the net benefit of this alternative compared to the classical punishments – imprisonment and even of the persons on probation. Therefore, according to some authors[89], the system of the drug specialized Courts from the state of New York has produced a 254 million dollar economy during a period of three years as a result of the application of rehabilitation and social integration of these categories of persons. According to statistics,[90] on average, the benefits resulted from the inclusion of criminals within the programs of the drug specialized Courts are of 6.779 dollars a year, out of which 3.759 dollars represent the savings at the level of juridical costs (paid by the tax-payers) whereas the difference of 3.020 represent the costs which should have been paid by the state for the care of the victims.

In Saint Louis, every graduate from the programs of the drug specialized Courts costs the local economy 2.615 dollars less as compared to probation. Furthermore, the savings also reflect in the medical and mental assistance services.[91]

In general, drug specialized Courts produce a 2,21 – 3,36 dollars benefit for each dollar cost within criminal justice. Furthermore, more than 12 dollars for each 1 invested dollar are saved by the community as a result of the reduction in emergency care assistance and in other health services as well as of the reduction in the costs of victimization and property loss.

When it comes to the access to treatment for all the 1,47 million prisoners who need i tat the level of the USA, the cost would seem expensive but it would produce a 46 million dollar benefit to a cost of 13,7 billion[92] without taking into consideration the costs of future offences the prisoners may later commit.

Very little adequate research compares the efficiency of the costs of different types of constraint for the treatment of drug-addiction. The efficiency is inherently difficult to be measured due to the great number of the cost varieties and to the results which should be taken into consideration. This is why a cost – benefit type approach needs to be reasoned so as to be more feasible than an analysis of the efficiency. Research has proved that the treatment is efficient and it produces savings at the level of the society if it is associated to the programs of the drug specialized Courts.

Making a parallel between the cost – efficiency and cost – benefit notions, one may notice that the cost – efficiency analysis implies the calculation of the financial direct costs by reaching a level of specific results and it needs at least another alternative for comparison, a typical retrospective and the use of a very general perspective – not an accountancy exercise, the focus on having a result in the society (for example the cost of keeping a person teetotaler for a year: Form 1 of constraint vs. Form 2 vs. Form 3).

The cost – benefit analysis compares autonomously all the benefits with all the costs and it is characterized from a typical perspective, an accountancy–type approach – the analysis of direct and indirect benefits, the workers engaged in providing the program and the financers (the tax-payers), all being converted in a common, measurable quantity.

As far as the "measurement of constraint' is concerned, it is generally appreciated that the greater the constraint is, the longer the treatment period.[93] This form of constraint seems as the most expensive because it is associated to the long period of time necessary for the staying under treatment, without taking into consideration the high benefits at the level of the society associated to have a comparative analysis of the costs of different types of constraint:

[88] Belenko, Steven - *The Challenges of Integrating Drug Treatment into the Criminal Justice Process*, Alb. L. Rev. 833 (1999-2000);

[89] Michael Rempel – *Drug Courts, Domestic Violence Courts and Mental Health Courts: Judging Their Effectiveness,* Presented at the 2009 International Problem-Oriented Policing Conference, Anaheim, CA, November 2-4, 2009

[90] Washington State Institute for Public Policy, 2003/ *www.wsipp.wa.gov*

[91] Institute for Applied Research, 2004/ www.iarstl.org/papers/ARFinalExecSum.pdf;

[92] Bhati et al. (2008) To Treat or Not To Treat: Evidence on the Prospects of Expanding Treatment to Drug-Involved Offenders. Washington, DC: Urban Institute.

[93] James J. Collins and Margaret Allison - *Legal Coercion and Retention in Drug Abuse Treatment* , Research Triangle Institute; North Carolina;

Categories of costs	*Type of Constraint* *Weak >.....> Strong*					
	Pressure from the family	Pressure from the school	Reference to treatment by a probation officer	Drug specialized Courts	Obligation to medical treatment	Long term supervision
Administrative costs						
Detention costs						
Treatment costs						
Urine costs						
Total costs						

As far as the expectations of the treatment are concerned, it is necessary to take into account the different types of benefits and the savings we may get from it. Therefore, there is a forst category of benefits and economies *easily to measure* and that is:

- reduction in unemployment,
- reduction in the number of arrests,
- increase of income cashed from the wages contribution,
- reduction in the costs of welfare and savings in the field of health care. The second category represents the benefits and savings which are *difficulty bur possible to measure:*
- decrease in family dysfunctions,
- reduction in the consumption and number of drug consumers,
- improvement in educational performances/ graduation from school training courses, increase in the quality of life.

Within a cost – benefit analysis of the drug-specialized Courts, the answers to the following questions were pointed:[94]

- Which is the cost of the investments in drug-specialized Courts, over and under the usual costs of criminal trials, as a business?
- Which are the costs or savings associated to the results of the drug – specialized Courts as compared to the businesses of the participants?
- Are there agencies or bureaus (for example the Prosecutor's office, the public defender) which never claim their costs?

The cost transactional analysis was used within it as a work tool, the benefits were defined based on the taxes paid by the taxpayer and the available resources were analyzed.

Even though there was not a differential analysis of the effectiveness of the different types of treatment for different types of crimes and only one system of the drug-specialized Courts was assessed, on the whole[95] the conclusion of the analysis was that the drug-specialized court can be a feasible way to use the financial resources supplied by the taxpayers.

Furthermore, the analysis made a comparison between the majority of interests of the state in the position of policy render in the field and the respect of profitability (it should and in what way are benefits prioritized, are some benefits more important than others, are the saved expenses the only reason for all those interested in the success of the business?) and it established which other factors should be taken into consideration when making a comparison and namely:

- demographic characteristics,
- the severity of the drug consumption,
- the level of involvement of the person in the illegal drug business,
- previous treatment, relapses,
- the need of change.

The allocation of the costs of the drug-specialized courts according to the benefits has become an important issue for those who contrive public policies whereas the previous studies on the cost – benefit analysis being often related to estimations, the reports of the clients and / or the general data needed to make the estimations. Such allocation though is less useful for the local authorities in particular who are trying to understand both their current investments in drug-specialized courts and the real savings at local level. The above-mentioned study represented an intensive analysis of the costs, investments and advantages resulted from the activities in only one court. The data were collected so as to allow for the benefits and costs to be allocated both at a global level and from one agency to another and the value of the less intensive approaches for the provision of similar estimations. As a work tool, the study used an economic pattern of the transactional cost, a pattern which analyzes the complex contributions of the agencies within the costs.

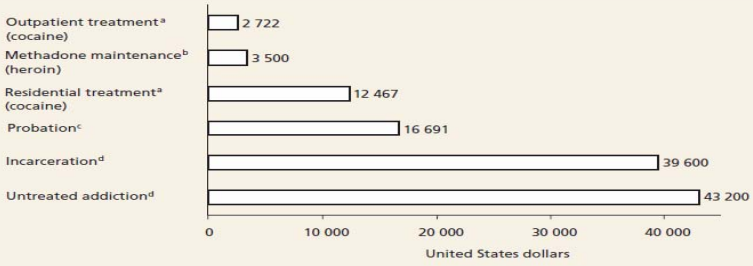
[94] Carey SM, Finigan MW (2004) A detailed cost-analysis in a mature drug court setting: A cost-benefit evaluation of the Multnomah County Drug Court. Journal of Contemporary Criminal Justice 20:315.

[95] Shannon M. Carey, Michael W. Finigan - *A Detailed Cost Analysis in a Mature Drug Court Setting:A Cost-Benefit Evaluation of the Multnomah County Drug Court,* Journal of Contemporary Criminal Justice, Vol. 20, No. 3, 315-338 (2004), DOI: 10.1177/1043986204266893

3. The Costs of the Detention for the Drug-Consuming Offenders

The studies regarding the costs of the treatment for the drug addiction as compared to the imprisonment punishment or the untreated drug addiction present a clear social benefit through the treatment of drug addiction (see the attached figure). Some studies suggest that for each dollar invested in the quality treatment of the drug addiction, societies can save some 4 to 7 $ in the criminality associated to drugs and in the costs of criminal justice.[81]

Costs of drug abuse treatment in the USA per person, per year (in US$)



[a] 1992 figures. The average cost per admission is much lower than these figures because most patients are in treatment less than one year.
[b] 1993 figures.
[c] 1992 figures, adjusted for inflation from 1983 data.
[d] 1991 figures.

Source: Institute of Medicine, *Pathways of Addiction: Opportunities in Drug Abuse Research* (Washington, D.C., National Academy Press, 1996), p. 199, figure 8.1 (adapted).

Source: UNODC, 2003[82]

[96][97]There is little available information on the cost – efficiency report of the treatment in closed settings / compulsory treatment centers. A study on rehabilitation in closed settings reached the conclusion that investments within the latter offer only very limited health services for drug consumers (only general medical examinations, there is no access to voluntary HIV testing and counseling, no anti-retroviral therapy prescription, limited understanding of the drug addiction among the personnel of the center), they are not economic but they are not also efficient as related to the result of the drug addiction treatment (90% recurrence rates) or of HIV prevention (the average rate with HIV in centers was of 30-65%).

Recent research[98] has provided ample evidence according to which prison population is composed of a great number of drug consumers and that the latter commit a substantial number of unpunished or unclaimed delinquencies. Meanwhile, the agencies of law enforcement have few strategies for the detection and quotidian intervention in the case of heroin and cocaine consumption by the consumers under arrest. Furthermore, there are few statistics to prove the fact that only the punishment itself is as efficient in the reduction of drug consumption and in the level of criminality as their treatment of the consumers outside prison. The quoted research indicates the fact that the criminality at the level of heroin addicted is substantially reduced as long as they receive any form of treatment. Efficient experimental programs indicate the fact that the treatment method must have a theoretical and empirical basis in order to be put in practice. The recommendations of the antidrug policies of this study focus on[99] the identification of the heroin and cocaine consumers taken in the arrest of the police or of the penitentiaries, in the treatment programs of the penitentiaries and of the communities and on the organization and management of the treatment programs for the addicts respectively.

According to a study performed in Ireland[100] in penitentiaries there are many offenders convicted for drug regime crimes, 69% of these being under the influence of drugs when committing the crime. The average punishment given to this category of persons is of 3 months so it does not represent a threat for the community, 70% of the convicted are drug consumers, 80% are infected with hepatitis C

[96] *The Application of Economic Analysis to Criminal Justice Interventions: A Review of the Literature* Criminal Justice Policy Review June 2005 16: 141-163,

[97] UNODC (2003) Investing in drug abuse treatment. A Discussion Paper for Policy Makers, p. 10

[98] H K Wexler ; D S Lipton ; B D Johnson - Criminal Justice System Strategy for Treating Cocaine-Heroin Abusing Offenders in Custody, http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=113915

[99] idem

[100] Grupul Pompidou – Platforma de Justiție Penală / www.coe.int/t/dg3/pompidou/default_fr.asp

as well as the fact that many convicts inure to drug consumption while in prison.

The cost of one year detention per person reaches values between 71.000 and 250.000 euro while the costs afferent to the options offered by the community are of: 1.500 euro for the public service, 4.100 euro for the supervision during the period of the punishment execution and 6.100 euro for probation. Therefore the cost of the community sanction represents 2 – 8% of the cost of the custody sentence (without taking into account the social cost of the prison: the decay of the families).

One aspect worth noticing is the fact that it has not been taken to test the existence of a direct relation between the severity of the punishment and the rate of criminality. According to a report of Great Britain it is necessary a 15% increase in the penitentiary population in order to obtain a 1% reduction in the rate of criminality. Moreover, in Ireland, 7 out of 10 persons who leave prison are prone to relapse.

The Irish study shoes that after a one year treatment the criminality rate decreased from 31% to 16% and for the final stage of the treatment it was recorded a 49% reduction in criminality, resulting in a net economic advantage for the society.

According to the data provided by the National Center on Substance Addictions and Abuse (CASA) din SUA,[101] out of a 38 billion total spent within the correctional system in 1996, more than 30 billion were spent for the incarceration of individuals with a history in drug and / or alcohol consumption of those who broke the drug regime, had been under the influence of drugs or alcohol while committing the offence or had committed offences to get the money necessary for the procurement of drugs.[102]

The annual average cost of detention in the United States of America is of 20.674$, the cost of federal prisons being of 23.542$ while that of state prisons is of de 20.261$.[103] The annual cost at the level of local prisons varies between 8.037 and 66.795$:[104]

Average cost per year to incarcerate an inmate

Federal prison (1997)	$23,542
State prison (1998)	$20,261 ($8,895-$36,526)
Local jail (1998)	$19, 903 ($8,037-$66,795)

Sources: Federal Bureau of Prisons. *Key Indicators/Strategic Support System*, Washington, DC: U.S. Department of Justice, October 1997; Camp, Camille G., and George M. Camp, *The 1988 Corections Yearbook*, South Salem, NY: Criminal Institute, Inc., 1999;

The Federal Bureau of Drugs provides a detoxification treatment for all eligible convicts primarily for those who are to be given in custody, according to the regulations of the act regarding the control over violent crimes (Violent Crime Control and Law Enforcement Act of 1994). The Bureau operates more types of treatment programs for drug addicts: residential programs, transitional programs, nonresidential programs and educational programs in the field of drugs. Residential treatment programs are generally provided by special units, separated from the rest of the penitentiary unit population, for the participant in detoxification programs. Transitional service programs offer continuous support and counseling to prisoners under semi-freedom regime in order to prepare their transition from custody to society. Nonresidential programs and the educational ones are not based on penitentiary units.

The aim of the treatment for the drug consuming and addicted criminals is double: the return to society of a productive individual who is addiction free and the reduction of the costs of criminality associated to drugs. NIETS (The National Treatment Improvement Evaluation Study) reports within the Center for Substance Abuse Treatment (CSAT) showed that the average costs of the treatment were of 2.941$ between 1993 and 1995.[105] The average benefits of the treatment for the society were of 9.177$ per client, which means an average of three to one: every spent dollar on the treatment produced a three dollar saving at the level of the society. These savings are the result of the reduction in the costs afferent to criminality, including the juridical ones, the reduction of the medical costs, all these being on the expense of the society. The studies made on the prisoners who had fully attended the residential treatment program showed that only 3,3% of those discharged were rearrested during the first six months from their discharge, compared to 12,1% of

[101] www.whitehousedrugpolicy.gov

[102] National Center on Addiction and Substance Abuse, *Behind Bars: substance abuse and America's Prison population,* New York, NY: Columbia University. January 1998,

[103] Federal Bureau of Prisons. *Key Indicators/Strategic Support System,* Washington, DC: U.S. Department of Justice, October 1997;

[104] Camp, Camille G., and George M. Camp, *The 1988 Corections Yearbook,* South Salem, NY: Criminal Institute, Inc., 1999;

[105] Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment, national Evaluation Data Services, *The Cost and Benefits of Substance Abuse Treatment: Findings From the National Treatment Improvment Evaluation Study.* August 1999;

those who had never benefited from such program. Similarly, from those who had benefited from the treatment only 10.5% consumed drugs again during the first six months after their release while in the other category (the prisoners who had not benefited from treatment) the percentage was of 36,7%.[106]

All these data reveal, at the level of the society, the net benefits of the treatment for the drug addicts, indifferent from the fact that such treatment is offered in a penitentiary or as an alternative to prison punishment, as compared to the "benefits" of the simple detention.

4. Conclusions:

The application of some fundamental rehabilitation programs for drug consuming persons who have committed criminal offences, centered on the principles of the drug addiction treatment indicates the fact that lower costs are registered when the beneficiaries are free as compared to duress detention. The use for the last two decades of such approach in different states points out positive aspects and practices which are worth applying within one's own national context. Even in our country the costs of detention are quite high, the amount the government allocates for one prisoner is of 2.400 lei per month,[107] an amount to which the treatment costs for drug addicted offenders are added. Faced with the increasing pressures to reduce public expenses, a lot of solid arguments are brought in favor of the taking – up and implementation of some integrated treatment measures for drug consuming criminals at liberty.

Bibliography:

- „*Crima organizată la nivel transnațional. O amenințare în creştere la adresa pieței globale*", NATO Summit 1998
- **Abraham Pavel, Nicolăescu Daniela**, „*Justiția Terapeutic*", Concordia, Arad, 2006
- **Belenko Steven** „*The Challenges of Integrating Drug Treatment into the Criminal Justice Process*", Alb. L. Rev. 833 (1999-2000);
- **Belenko Steven, Patapis Nicholas, French Michael T.**, „*Economic benefits of drug treatment: a critical review of the evidence for policy makers*" February 2005, Scaife Family Fundation and Missouri Foundation for Health
- **Briggs Sandra, Petersone Baiba, Smits Karlis**, „*Manualul de metode folosite în planificarea politicilor publice şi evaluarea impactului*", Proiect PHARE RO2003/IB/OT/10 din 2006;
- *Buletin de informare şi documentare* Nr.2(61)2004, Ministerul Administrației şi Internelor, Serviciul Informare-Documentare,
- **Camp Camille G., and George M. Camp**, „*The 1988 Corections Yearbook*", South Salem, NY: Criminal Institute, Inc., 1999;
- **Carey SM, Finigan MW**, „*A detailed cost-analysis in a mature drug court setting: A cost-benefit evaluation of the Multnomah County Drug Court*". Journal of Contemporary Criminal Justice 20:315, 2004
- **Chishlom John**, „*Cost Analysis and Crime Prevention*", in Trends and Issues in Crime and Criminal Justice, No. 147, February 2000, pag. 1, Australian Institute of Criminology
- **Cohen, M. A., and Miller, T. R.** (1998). „*The cost of mental health care for victims of crime*". J. Interpers. Violence 13: 93-110.
- **Dupuit, Arsène Jules Étienne Juvénal** (1844): „*De la mesure de l'utilité des travaux publics*", Annales des ponts et chaussées, Second series, 8.
- **Ekblom P, K. Pease** (1995). „*Evaluating Crime Prevention*" In: M. Tonry and D. Farrington (eds.), *Building a Safer Society: Strategic Approaches to Crime Prevention.* (Crime and Justice series, vol. 19.) Chicago, 1L: University of Chicago Press.
- **Elena Matei**, „*Uite ce sume acordă guvernanții pe lună pentru diferite categorii sociale*", Ziarul Libertatea din 6 decembrie 2010,
- **English, Brian J., Cowan, Edith** (University Rick Cummings Murdoch University and Ralph G. Straton Murdoch University), „*Choosing an evaluation model for community crime prevention programs*" in Crime Prevention Studies, volume 14, pp. 119-169/2005

[106] Federal Bureau of Prisons, *TRIAD Drug Treatment Evaluation Six-Month Report: Executive Sumary,* Washington, DC: U.S. Department of justice, february 1998,

[107] Elena Matei, *Uite ce sume acordă guvernanții pe lună pentru diferite categorii sociale,* Ziarul Libertatea din 6 decembrie 2010,

- **Federal Bureau of Prisons**, *TRIAD Drug Treatment Evaluation Six-Month Report: Executive Sumary,* Washington, DC: U.S. Department of justice, February 1998,
- **Federal Bureau of Prisons**. *Key Indicators/Strategic Support System,* Washington, DC: U.S. Department of Justice, October 1997;
- **Forrester David, Chatterton Mike, Ken Pease with the assistance of Robin Brown** „*The Kirkholt Burglary Prevention Project, Rochdale*", CRIME PREVENTION UNIT: PAPER 13, LONDON: HOME OFFICE Editor: Kevin Heal, Home Office Crime Prevention Unit, London SW1H 9AT
- **Goodfrey C, Stewart D and Gossop M.** „*Economic analyssis of costs and consequences of the treatment of drug miuse: two-zear outcome data from the National Treatment Outcome research Study (NTORS)*", Addiction, 99(6), p. 697 -707, 2004
- **H K Wexler, D S Lipton, B D Johnson**, „*Criminal Justice System Strategy for Treating Cocaine-Heroin Abusing Offenders in Custody*", http://www.ncjrs.gov
- **Iancu, Adrian Marcel** „*Depenalizarea şi dezincriminarea consumului de droguri în cadrul legislației naționale ale țărilor membre ale Uniunii Europene*" – Buletin de informare şi documentare nr. 2/2007 şi Buletinul Info-Drog nr. 2/2007
- **Iancu, Adrian Marcel**, „*Administrarea justiției în comunitate: locul şi rolul societății civile în reabilitarea infractorului consumator de droguri*" în SPECTO 2009 – Prima conferință internațională: „Perspective ale asistenței sociale în tratamentul cvasicoercitiv al infractorilor, West Publisher House, Timişoara 2009
- **James J. Collins and Margaret Allison,** „*Legal Coercion and Retention in Drug Abuse Treatment*", Research Triangle Institute; North Carolina;
- **James Slack**, „*The £3,000 cost of crime for every home in the UK*": http://www.dailymail.co.uk
- **John Roman**, „*Cost Benefit Analysis for Crime Prevention: Opportunity Costs, Routin Savings and Crime Externalities*", Crime Prevention Studies, vol 14, pp. 53-92
- **Marshall, Alfred** (1920). „*Principles of Economics*" (Revised Edition ed.). London: Macmillan; reprinted by Prometheus Books. ISBN 1573921408.
- **Menachik D.**, „*Strategic Crime and Romanian National Security Strategy delaing with „non traditional" Security Threats, Organized Crime, Drug Trafficking & Terrorism în East and Central Europe*", în Romanian's National Security Politics, Bucureşti, 1997.
- **Michael Rempel**, „*Drug Courts, Domestic Violence Courts and Mental Health Courts: Judging Their Effectiveness*", Presented at the 2009 International Problem-Oriented Policing Conference, Anaheim, CA, November 2-4, 2009
- **Miller, T. R., Cohen, M. A., and Wiersema, B.** (1996). „*Victim costs and consequences: a new look. National Institute of Justice Research Report*", Washington, D.C.
- **National Center on Addiction and Substance Abuse**, „*Behind Bars: substance abuse and America's Prison population*", New York, NY: Columbia University. January 1998,
- **P. Barnett**, „*Calculation of the cost and benefit of the Perry Preschool*", 1993,
- **Rădoi, Mireille**, „*Evaluarea politicilor publice*", Editura Tritonic, Bucureşti 2005;
- **Shannon M. Carey, Michael W. Finigan**, **„***A Detailed Cost Analysis in a Mature Drug Court Setting:A Cost-Benefit Evaluation of the Multnomah County Drug Court*", Journal of Contemporary Criminal Justice, Vol. 20, No. 3, 315-338 (2004), DOI: 10.1177/1043986204266893
- **Tilley, Nick** (Nottingham University), – „*Evaluation for crime prevention*" in Crime Prevention Studies, volume 14, 2005
- **Viscusi W. Kip & Aldy Joseph E.**, 2003. „*The Value of a Statistical Life: A Critical Review of Market Estimates throughout the World,*" NBER Working Papers 9487, National Bureau of Economic Research, Inc.
- **WHO Western Pacific Region** (2009) Assessment of compulsory treatment of people who use drugs in Cambodia, China, Malaysia and Viet Nam: An application of selected human rights principles

LES CULTURES DES PAYS VOISINS: RESSEMBLANCES ET DIFFERENCES INFLUENÇANT L'ACCOMPLISSEMENT DES MISSIONS DE FRONTIERE

Cms. en chef Costel DUMITRESCU
Lect. univ. à la Chaire langues et préparation Schengen
Scms. Ligia STANCU
Assist. univ. à la Chaire langues et préparation Schengen
Académie de Police Bucarest

La mentalité désigne un état d'esprit, une manière d'interpréter la réalité selon des principes, la manière associée aux coutumes observées dans les comportements. Dans une manière intuitive, on associe alors les comportements et les principes qui sont à la base des actions. Par conséquent, la mentalité fait référence à quelque chose de commun aux membres d'un groupe. Ce quelque chose peut être: comportements, manières de vivre, normes d'appréciation et caractéristiques.

Index de mots-clés: mentalité; lingua franca; choc culturel; sous-culture; enculturation.

Facteurs culturels: le comportement et la mentalité des individus de partout

La notion de mentalité suppose la culture intérieure, le type modal de la personnalité qui se forme exclussivement par la fréquence de l'incidence, acquis communs qui servent de références permanentes et inconscientes dans la perception sociale et diverses évaluations intervenant dans l'orientation des conduites. La mentalité porte en elle une vision sur le monde et génère des attitudes (manières d'être) envers les éléments de l'environnement constituant des objets cardinaux – référents essentiaux de l'identité de groupe.

La mentalité/l'univers mental se constitue comme noyau identitaire de groupe. Les caractéristiques de la définition de la mentalité sont pour la plupart déduites de toutes les autres informations concernant le groupe. Une analyse de contenu de toutes les expressions collectives permet l'identification des principes constituants de la mentalité: des codes et des normes de comportement, des modèles et contre-modèles, des représentations collectives, des systèmes d'opinions, de croyances, des attitudes envers les objets cardinaux. A l'aide de tous ces éléments on contour l'univers mental du groupe qui organise la cohérence de l'ensemble de ses activités et donne du sens – un sens de groupe – à l'ensemble de l'environnement vécu ou crée. Similaire à la culture intérieure, une mentalité peut être conçue sous la forme d'un système de prémices, de modèles et de représentations (par exemple, il faut créer et innover - mentalité progressiste; il faut analyser et raisonner – mentalité rationnelle). Donc, en exposant d'une manière systématique ce que l'on comprend par mentalité, on peut affirmer que la mentalité représente le système de valeurs auxquelles il attache la vision sur le monde, les attitudes envers les objets cardinaux (univers, vie, divinité, temps, organisation sociale etc.) et les comportements typiques d'un groupe d'individus (ou d'un seul individu représentatif pour un groupe). Pour un groupe, la mentalité c'est le cadre de référence issu par l'assimilation des normes et des valeurs existantes dans la culture ambiante; c'est alors l'empreinte laissée dans le psychique par les caractéristiques communes de la socialisation. Par ces comportements typiques, la mentalité c'est l'expression de la culture intérieure. Le système qui constitue la mentalité intervient d'une manière constante comme une grille de décodage du monde et des informations reçues, celui-ci représentant aussi le système d'interprétation de l'univers du groupe. En conclusion, la mentalité c'est un système de référence, un système des représentations, source des interprétations du monde et source des expressions spécifiques du groupe, noyau de l'identité de groupe.

La réponse de l'homme donné à ses besoins représente la manière de s'adapter à l'environnement et de le maîtriser par les représentations et ses notions qui ne sont pas annulés lors de la disparition de l'individu, mais qui

sont valorisées aussi par les générations à venir. On constitue de cette sort une expérience et un acquis culturel transmis d'une génération à l'autre.

Les nations reconnaissent leur identité par les cultures nationales qu'elles produisent. Le système de valeurs de la culture nationale est une composante vitale du sujet national et, en même temps, une expression synthétique par l'intermédiaire de laquelle s'affirme la personnalité des nations dans le tableau de l'humanité. Dans la physionomie d'une culture nationale on découvre l'image caractéristique de la nation qui l'a produite.

Il faut préciser que, selon les historiens, la constitution de la culture nationale vise des ressorts psychologiques.

Le champ de la culture nationale est formé de: langue, droit et mœurs, littérature et traditions, beaux arts. Principalement, la culture nationale est constituée des actes de protection, de développement et de l'exercice de la langue, de réglementation des rapports morals de droit et de la connaissance du passé pour la compréhension du présent et la préfiguration de l'avenir, du développement des arts et de la littérature.

La culture nationale, appartenant aux membres de la même nation orientée vers un idéal commun, offre, en même temps, le cadre et le liant pour la communication d'entre eux. Alors, à l'époque moderne les réalités définitoires sont l'état national et la culture nationale. La géographie culturelle se modifie d'après la géographie politique. Autrefois, les frontières de la culture étaient indiquées par des nomenclateurs géographiques (Occident, Orient, „le nouveau monde" etc.) ou religieux (la culture byzantine, la culture catholique, la culture islamique etc.). A présent, on utilise un nouveau critère de démarcation des frontières culturelles: le critère des cultures nationales.

Lorsqu'on essaye la définition par un seul mot un ensemble de comportements individuels s'appuyant sur des règles, normes et institutions reconnues et acceptées, et aussi sur un patrimoine commun, c'est obligatoire de prendre en compte la culture de l'organisation.

La culture de l'organisation c'est un concept difficilement à définir; ce qui est à remarquer c'est le fait que, dans la littérature de spécialité, elle n'a pas une définition totalement acceptée.

Tout essai de définir la culture d'une organisation ne peut réussir qu'à partir de l'homme, de son existence historique, de la psychologie de son peuple et de sa culture nationale.

Les principales caractéristiques des cultures voisines qui prédominent parmi les passagers/les clients/les migrants

La culture bulgare c'est pour la plupart un mélange de cultures traces, slaves et bulgares, mais on observe d'autres influences aussi, parmi lesquelles des influences byzantines et grecqués.

Les cultures préhistoriques du territoire de la Bulgarie d'aujourd'hui comprennent les cultures Hamangia et Vinča de néolithique (les millénaires 6-3 a.d.), la culture énéolithique Varna (le millenium 5 a.d.), et la culture Ezero de l'époque de Bronze. La chronologie Karanovo sert d'orientation pour la préhistoire de la région balkanique largo sensu.

En 864, la Bulgarie a accepté l'orthodoxie comme religion en devenant un grand pouvoir dans les IXème et Xème siècles, période pendant laquelle elle s'est opposée à l'Empire Byzantin pour la suprématie dans les Balkans. Elle l'obtiendra pendant le règne de Boris I. A cette période-là, l'alphabet chirilique a été créé en Préslave et Ohrid, une adaptation selon l'alphabet glagolitique, créé par les saints moines Chiril et Metodiu. L'alphabet chirilique est devenu la fondation pour le développement de la culture ultérieure. Quelques siècles plus tard, cet alphabet avec la langue bulgare archaïque deviendront la langue culte écrite (*lingua franca*) de l'Est de l'Europe, connue comme le slave de l'Église.

La plus grande extension du territoire a été réalisée pendant le règne de Siméon I, le premier tzar bulgare, le fils de Boris I, qui couvrait presque toute la Péninsule des Balkans. A côté de cette extension, le plus important succès de ce tzar a été une riche culture chrétienne-slave qui s'est constituée en exemple pour les autres peuples slaves de l'Est de l'Europe, en assurant l'avenir de l'existence de la nation bulgare pour les siècles suivants.

Les cinq siècles de domination ottomane ont été caractérisés par violence et oppression. La population de la Bulgarie a été décimée et beaucoup de ses reliques culturelles ont été perdues. Les grandes villes dominées par les ottomans ont été dépeuplées systématiquement jusqu'au XIXème siècle.

La culture de Moldavie – c'est la culture de l'état moldave, plus tard la Bessarabie ou la Moldavie de l'est de Prut, la République Autonome Soviétique Socialiste ou la République Soviétique Socialiste de la Moldavie et la République Moldave Indépendante. La culture de la Moldavie est liée à diverses ethniques qui vivaient et vivent encore sur son territoire et à la langue parlée sur son territoire. La

culture moldave est proche de la culture de la Roumanie, de l'Ukraine et de la Russie et des cultures d'autres états voisins.

La culture de la Moldavie comprend un série d'activités culturelles: la littérature, le théâtre, la musique, les arts plastiques, l'architecture, la cinématographie, la radiodiffusion et la télévision, l'art photographique, le design, l'art populaire, les archives et les bibliothèques, l'édition de livre, la recherche scientifique, le tourisme culturel etc.

Le folklore moldave a une forte origine daco-latine et comprend un système de croyances et de coutumes populaires manifestés en musique et danse, en poésie et prose orale, en mythologie, rituels, théâtre populaire etc. Ce patrimoine culturel, dans l'ensemble des manifestations, constitue un domaine important, d'une valeur spéciale, de l'art national qui a précédé ses formes cultes et a continué se développer à l'époque moderne en assurant à la culture professionnelle la substance de son originalité ethnique.

La culture de Serbie c'est une de plus variées cultures d'Europe. Les frontières des grands empires ont été établies sur le territoire de la Serbie d'aujourd'hui, pendant plusieurs époques de l'histoire européenne: entre les parties de l'ouest et de l'est de l'Empire Romain, entre le Royaume de la Hongrie, l'Empire Bulgare et l'Empire Byzantin et entre l'Empire Ottoman et l'Empire Autrichien (plus tard Autriche-Hongrie). Donc, si le nord de la Serbie peut être dénommé „centre-européen", le sud appartient plutôt à l'Est de l'Europe. Bien évidement, les deux régions se sont influencées, par conséquent, une séparation entre nord et sud est plutôt artificielle.

La Serbie a huit sites culturels considérés par UNESCO patrimoine de l'humanité: les monastères de Stari Ras et Sopoćani (depuis 1979), le monastère Studenica (1986), le Complexe religieux médiéval de Kosovo. En plus, il y a deux mémoires littéraires ajoutés sur la liste UNESCO, partie de la liste du Programme « Les mémoires du monde »: les manuscrits Miroslav de XIIème siècle (depuis 2005), et l'archive Nikola Tesla (2003).

La culture de l'Ukraine c'est le résultat des influences de l'ouest et de l'est exercées pendant plusieurs siècles sur le territoire du pays, mélangées avec des identités culturelles spécifiques aux diverses ethniques peuplant la zone. Selon le modèle de toute l'Europe, la religion chrétienne représente un facteur important d'influence pour la culture de l'Ukraine.

Les plus anciens établissements humains sur le territoire de l'Ukraine remonte à 4500 avant JC environ, pendant la période de floraison de la culture de Cucuteni, au néolithique, et s'étendent sur une vaste zone couvrant une partie de l'Ukraine d'aujourd'hui et de la région du Nipre-Nistre. Pendant l'Âge du Fer, le territoire était habité par les Cimmériens, les Scythes et les Sarmates. Entre 700 a.d. et 200 a.d., l'Ukraine faisait partie de la Scythie. Plus tard, les colonies grecques, romaines et byzantines ont été fondées, comme Tyras, Olbia et Hermonassa depuis le sixième siècle avant JC, sur la rive nord-orientale de la mer Noire, qui ont prospéré jusqu'au sixième siècle p.d. Au septième siècle, l'Ukraine orientale a fait partie de l'État bulgare. A la fin de ce siècle, la plupart des tribus bulgares ont migré dans des directions différentes, et le territoire habité par eux est tombé dans les mains des Hazars.

L'Âge d'or de la Russie kiévienne a commencé avec le règne de Vladimir le Grand (Volodimir, 980-1015), qui a dirigé la Russie vers le christianisme byzantin. Pendant le règne de son fils, Iaroslav le Sage (1019-1054), la Russie kiévienne a culminé par le développement culturel et la force militaire. Cette époque a été suivie par la fragmentation progressive de l'état, ce qui augmente l'importance de puissances régionales à nouveau. Après un dernier réveil durant le règne de Vladimir Monomaque (1113-1125) et de son fils Mstislav (1125-1132), la Russie kiévienne s'est divisée en principautés séparés. L'invasion mongole du XIIIème siècle a dévasté la Russie kiévienne. Kiev a été complètement détruit en 1240. Sur le territoire ukrainien, la Russie kiévienne a été suivie par les principautés Halici et Volhynie, qui ont été rejoints plus tard sous le nom Halici-Volhynie.

Après 1569, l'Union de Lublin a formé l'Union polono-lituanienne et une partie importante du territoire ukrainien est transférée aux nobles lituaniens assimilés pendant l'administration polonaise, donc à la couronne polonaise. Sous la pression culturelle et politique d'assimilation, de nombreux membres de la classe supérieure ruthène se sont convertis au catholicisme, se confondant ainsi avec la noblesse polonaise. Ainsi, les Ukrainiens ordinaires, privés de leurs protecteurs de la noblesse ruthène, ont recours à la protection des Cosaques, qui sont restés définitivement orthodoxes et avaient la tendance à recourir à la violence contre ceux qu'ils considéraient comme des ennemis, en particulier contre l'État polonais et ses représentants.

La révolution qui a amené le gouvernement soviétique au pouvoir a dévasté l'Ukraine. 1,5 million

de personnes sont mortes et des centaines de milliers ont perdu leurs maisons suite aux conflits. Dans ces conditions, le gouvernement soviétique est resté souple dans les années 1920. Ainsi, la culture et la langue ukrainienne ont connu une période de renaissance et l'assimilation est devenue une application locale des politiques soviétiques (autrement dit indigénisation). Les Bolcheviks ont introduit l'assistance médicale universelle, l'éducation et l'assistance sociale. Les droits des femmes ont été reconnus et de nouvelles lois ont essayé d'enlever les vieilles inégalités. La plupart de ces politiques ont été annulés jusqu'au début des années 1930, après que Joseph Staline a consolidé progressivement son pouvoir devenant chef de facto du Parti communiste et le dictateur de l'Union soviétique.

Les coutumes ukrainiennes sont fortement influencées par le christianisme, la religion de la plupart des praticiens dans le pays. Les rôles des sexes ont aussi tendance à être distribués de façon traditionnelle, les grands-parents jouent un rôle plus important dans l'éducation des enfants que dans les pays occidentaux. La culture ukrainienne a été influencée par ses voisins à l'ouest et à l'est du pays, ce qui se reflète dans les beaux-arts, l'architecture et la musique.

La Hongrie est un État enclavé, voisin avec la Slovaquie, l'Ukraine, la Roumanie, la Serbie, la Croatie, la Slovénie et l'Autriche. Son relief est essentiellement plat, avec de petites montagnes dans le nord (le plus haut sommet: 1014 m). Elle a, cependant, des paysages extrêmement variés, parfois spectaculaires. La calme plaine hongroise, la Transdanubie, « le territoire au-delà du Danube », abonde dans diverses espèces de flore et faune, et le lac Balaton remplacé avec succès le manque de mer. La nature peut être surprise dans de nombreux parcs naturels et zones protégées, occupant environ 10% de l'ensemble du territoire. 1100 années en Europe centrale, au carrefour de nombreux événements historiques et entre des cultures si différentes, ont créé cet espace de 100 000 km2, soit un des nations les plus authentiques.

La capitale hongroise a été intégrée dans le patrimoine mondial de l'UNESCO et surnommée la « Perle du Danube ». La grande réserve d'eaux thermales de surface situe la Hongrie, après l'Islande parmi les pays les plus connus pour de telles ressources.

Les Hongrois gagné en prestige de la réussite dans les domaines intellectuel, artistique et scientifique, qui bénéficient du soutien.

La différence entre les personnes de cultures différentes

Lorsque ce contacte se déroule entre des individus, groupes ou communautés humaines différentes de point de vue ethnique, historique et avec des origines culturelles différentes, on peut dire qu'il s'agit d'un contacte entre cultures. Contacte entre cultures représente aussi les rapports économiques, sociaux, politiques, organisationnels et culturels qui s'établissent entre les institutions, les agences, les entreprises, les organisations et les communautés humaines de diverses pays conformément aux conventions et aux accords bilatéraux ou multilatéraux.

Notre époque est par excellence une époque des contactes des cultures, stimulés par les processus amples d'intégration européenne et de mondialisation, et par conséquent, dans la zone du contacte culturel on peut ajouter aussi le contacte des nations, des peuples et des pays qui s'inscrivent avec toute leur richesse culturelle, spirituelle et humaine dans ces nouvelles tendances. C'est à supposer alors le contacte des individus, „la matière première" des nations et des peuples, les représentants des modèles culturelles, à des trajectoires de vie sociale distinctes.

Les contacts entre les cultures est un thème présent et doivent être analysée par la fréquence d'aujourd'hui, d'une ampleur sans précédent, des échanges sociaux, économiques et culturelles entre les nations et les peuples, entre les groupes, entreprises, organisations et particuliers, facilitée par les moyens de transport et les technologies d'information et la communication. Nous vivons dans une ère de contacts entre les cultures et les peuples, accélérés par les méga-processus qui se déroulent à l'échelle continentale et mondiale à l'heure actuelle comme: l'intégration européenne, la régionalisation et la mondialisation. Chaque méga-procès à sa manière, entraine la population à une plus ou moins grande échelle, se focalise sur des segments humains et sur des territoires croissants ainsi que nous pouvons dire que la planète entière est prise dans une danse, sans la possibilité que toute entité nationale soit en mesure de la contourner.

Le rapport entre unité et diversité conduit vers la conscience de la diversité culturelle du monde et à une meilleure compréhension de l'unité commune de l'humanité. Comment autrement peut-on définir les ressemblances des manifestations humaines, le soit-dit facteur commun, les uniformités, les universaux de l'existence humaine que l'unité en diversité de l'humanité, dans les termes de

l'anthropologie et de la sociologie de la culture? La définition donnée à la culture par Ruth Benedict „la culture lie les peuples" c'est la plus synthétique expression de la multitude des formes d'expression humaine qui va à l'infini.

Le principe de la diversité culturelle est opposé au mono centré et à l'homogénéisation culturelle du monde occidental tel qu'il est pratiqué en fournissant un « menu culturel » commun aux pays en développement. Par conséquent, l'architecture du nouveau monde que les gens vont le construire on insiste de plus en plus sur la reconnaissance de la diversité culturelle et sur l'acceptation du droit fondamental des nations et des groupes ethniques à préserver leur culture dans leur contexte social.

Le contact entre les cultures suppose comme une condition sine qua non le rapport équilibré entre continuité et discontinuité, entre ancien et nouveau. Les emprunts et l'assimilation de ce qui est nouveau dans une autre culture ne peut pas dépasser la capacité d'un individu ou d'un groupe sans répercussions néfastes qui se manifestent dans un comportement déséquilibré de la personne ou du groupe. La personnalité culturelle d'un individu est donné des valeurs culturelles auxquelles il a adhéré, en vertu desquelles il s'imagine et construit des projets. Ces valeurs représentent la continuité. Le contact avec une nouvelle culture signifie une rupture avec les valeurs communes, avec l'ancien mode de vie, surtout pour les immigrants, une discontinuité, ce qui était traditionnellement un moment donné doit laisser la place à de nouveaux éléments de la nouvelle société à laquelle l'individu adhère. Cela signifie la restructuration de la personnalité humaine tout entière ou des parties importantes de celle-ci, ce qui n'est pas sans importance. Dans les conditions actuelles de la migration, lorsque les individus consciemment s'en vont suite à un projet et dans un autre pays, les processus d'acculturation sont supportés plus facilement car il ya une acculturation anticipée, c'est-à-dire qu'ils sont prêts mentalement et moralement, ils apprennent la langue du pays de destination, s'informent sur les conditions et les exigences du pays de destination, ce qui simplifie le processus d'intégration sociale. Mais l'assimilation d'un nouveau mode de vie n'est pas un processus linéaire, sans contradictions et difficultés psychosociales. Celui qui accepte analyse premièrement le nouveau élément de la culture de l'autre en termes de ses configurations, il compare, cherche son utilité, sa fonction, le consensus et alors il intègre lui seul ou en le combinant avec des éléments préexistants dans sa culture commune. La confusion la plus grande survient le plus souvent au niveau des symboles pour que l'un et le même comportement peut avoir des significations complètement différentes dans une autre société ou culture, signifier le contraire de ce qu'elle signifiait pour lui avant la situation de contact. Par conséquent, la première chose qui est requise lorsque le contact est ma mise à l'aise avec la nouvelle culture, c'est d'apprendre les significations des symboles humains, le langage, les actes et le comportement humain. Le choc culturel est ressenti plus ou moins sévère selon la situation spécifique de contact, la nature des contacts, hostiles ou amicales, dominants ou de niveau égal, le niveau de connaissances de l'individu du mode de vie de la société à laquelle il adhère.

La dialectique du national et de l'universel est une composante organique pour le contact entre les cultures à partir de l'hypothèse que dans les processus d'acculturation la nation, en tant que communauté humaine ou macro-communauté, est le critère de définition des types de groupes humains en contact dans leur délimitation des frontières culturelles. Cependant, la nation est le cadre social donnant le spécifique d'une culture et sa personnalité distincte.

L'accomplissement des responsabilités journalières d'une manière professionnelle, compte tenant des ressemblances et des différences culturelles de son pays par rapport aux pays voisins

Dans le cadre de la culture, l'interaction de ces deux aspects, national et universel, c'est le facteur dynamique qui assure le passage réciproque de l'un à l'autre. La culture de tout peuple, de toute nation a en même temps des caractéristiques universelles et nationales, universelles parce que c'est une manifestation de l'homme comme être générique, avec des caractéristiques communes issues de sa constitution bio-psycho-sociale relativement la même avec celle nationale, parce que ces caractéristiques communes se mélangent avec des particularités créées suite aux conditions sociales, économiques, historiques diverses auxquelles il a été exposé. Le national passe dans l'universel dans la mesure où il est une valeur totalement reconnue, et l'universel s'exprime dans le national par ses possibles formes concrètes: des personnalités, des œuvres d'art, des œuvres littéraires individualisés dans certains cadres nationaux. L'affirmation d'Octavian Goga est devenue un truisme: „on n'entre dans l'universalité que par sa propre porte".

Le contacte des cultures est un produit historique de la manière spécifique selon laquelle la société humaine s'est organisée à se débuts dans des communautés humaines à des cultures différentes

les unes à cotées des autres. La proximité physique a été sans aucun doute l'occasion de contactes directes et des échanges entre les diverses communautés humaines.

Le caractère social-historique du contact entre les cultures se produit entre des personnes qui ont répondu différemment aux mêmes problèmes de la vie - le besoin de nourriture, vêtements, logement, éducation et élevage des enfants, la vie sociale, la sécurité, la culture, l'appréciation des autres - selon l'étape développement de la société dans laquelle ils vivaient. Tout au long de l'histoire, chaque nation a forgé sa propre manière de répondre aux nécessités de la vie, différente des autres, synthétisé dans la culture, qui juste par sa variété distinctive peut devenir une source de prêts et d'échanges entre les groupes et les peuples.

La dimension sociologique du contact entre les cultures met en lumière l'essentiel social, par excellence, du contact social entre les gens, d'où résulte un changement partiel, pour le cas des contacts longues et libres, de ses modèles culturels originaux ou leur changement total, pour le cas des situations d'assimilation forcée par violence, pression ou le déracinement complet de la culture mère.

Du point de vue de l'anthropologie culturelle et de la sociologie, le contact entre les cultures signifie une interaction entre les groupes portant de traits culturels, d'expériences et de valeurs différentes, représentatives de deux distincts zones socioculturelles. Les questions auxquelles nous voulons répondre sont les suivantes: Qu'est-ce qu'il arrive quand deux zones socioculturelles représentées par de grands ensembles d'individus, groupes ou individus distincts entrent en contact? Quelles sont les valeurs qui entrent en contact premièrement? Y a-t-il une certaine régularité? Pourquoi certaines valeurs sont assimilés plus rapidement, se multiplient, tandis que d'autres ne se déplacent que longtemps après leur création?

Les groupes humains ne sont jamais amorphes, ils se constituent autour d'un noyau de valeurs ou d'intérêts (mais ils peuvent se constituer aussi sur la base de non-valeurs comme le désir ou l'intérêt de vivre suite aux vols, aux cambriolages, aux actions illégales, etc.) qui leur donne l'unité et la cohésion. Le résumé de toutes les valeurs, les normes, les règles et les compétences conformément auxquelles ils agissent forme leur culture. Dans la société, des groupes et sous-groupes se forment, chacun avec sa propre culture et sous-culture. Un groupe s'établissant dans une autre société porte avec lui sa culture qui est soumise aux processus lents ou brutaux de changement de l'identité. La manière dans laquelle une culture ou une sous-culture accepte, rejette ou adapte les éléments empruntés à une autre dépend des similitudes ou des différences d'entre elles. Tant que la ressemblance entre les deux est beaucoup plus grande, le processus d'assimilation est plus lisse. Mais l'assimilation des caractéristiques, des ensembles et des modèles culturels peuvent avoir lieu aussi entre les cultures plus distinctives. Dans ce cas, les éléments qui sont assimilés, sont greffés sur un fond de valeur similaire préexistant dans la culture du groupe, ce qui nous amène à affirmer le principe que dans le cadre du contact entre personnes de cultures différentes rien ne se fonde sur un vide. L'acceptation et l'assimilation ne peuvent se produire que seulement dans « la dote » de l'individu ou du groupe existe quelque chose de semblable.

Du point de vue sociologique, dans le cadre du contact entre les cultures ce qui est important c'est le statut et le rôle des individus en contact, relevant pour la façon d'accepter l'échange, pour la manière d'apprécier les valeurs différentes d'autres groupes culturels. Les processus de socialisation - d'apprentissage social des normes de comportement par l'intermédiaire desquelles l'être fragile nouveau-né devient membre d'une société et s'inscrit en elle – et d'enculturation – l'assimilation des modèles culturels spécifiques à la culture de leur propre groupe, deviennent des outils opérationnels pour la compréhension des processus de resocialisation et réenculturation qui surviennent à l'âge adulte, pour le cas de la transplantation des individus d'une culture à l'autre.

Nous savons que la socialisation et l'enculturation sont des processus par lesquels les individus se rapprochent de leur réalité en tant que son matériel et spirituel et l'intériorisent, devenant sa partie composante pour l'extérioriser ultérieurement par le comportement, le langage, les attitudes, les opinions - processus par lesquels il acquiert la culture à la quelle il est exposé et se forme comme personnalité. Grâce à elles nous entrons dans le mécanisme intime de processus qui se déroulent dans la personnalité humaine, qui, sous l'influence de contact, subissent des changements dans tous ses compartiments: développement psychique, cognitif, comportemental, et de valeur. Par resocialisation et ré-enculturation lieu la réadaptation des individus à une nouvelle culture et société.

Liste des références bibliographiques

- **Aries, Philippe**; Duby, Georges. *Istoria vieții private. De la Imperiul Roman la anul 1000.* Volumul I. Traducere de Ion Herdan. Bucureşti: Editura Meridiane, 1994.
- **Chataway C.; Berry J.W.** *Acculturation experiences, appraisal, coping and adaptation. //* Canadian Journal of Behavioural Sciences, 21, p. 295-309, 1989.
- **Cuzişcin, V. I.; Potlog**, V. *Istoria Greciei antice.* Traducere din rusă de Ana Crețu, Cornelia Drumov, Ion Sandu. Chişinău: Univesitas, 1992.
- **Isac, Ştefania**. *Dezvoltarea competențelor comunicative vs. anglicismele recente în limba română. Monografie.* Chişinău: CEP USM, 2004.
- **Leanca, Gabriel**. *Cultură politică şi univers cultural în relatările călătorilor francezi prin spațiul românesc. //* Cultură politică şi politici culturale în România modernă. Culegere de studii editată de Alexandru Zub şi Adrian Cioflâncă. Iaşi: Editura Universității „Alexandru Ioan Cuza", 2005.
- **Leclerc, Gerard**. *Mondializarea culturală: Civilizațiile puse la încercare.* Chişinău: Ştiința, 2003.
- **Simu, Octavian**. *Civilizația japoneză tradițională.* Bucureşti: Editura Ştiințifică şi Enciclopedică, 1984.
- **Şerbănescu, Andra**. *Cum gîndesc şi cum vorbesc ceilalți. Prin labirintul culturilor.* Iaşi: Polirom, 2007.

THE USA IMMIGRATION POLICY, BORDER SURVEILLANCE AND CONTROL

Student Teaching Assist. Ph.D. Gabriel PEREŞ
Student Teaching Assist. Ph.D. Cristina PIELMUŞ,
"Alexandru Ioan Cuza" Police Academy

In the United States immigration has become a major source of demographic increase and cultural, social, political and economic changes that have inherently generated controversies as to the ethnicity, economic benefits, the locals' work places and have also impacted greatly on the social mobility, criminality and the right to vote. Starting with 2006 the USA has accepted illegal immigrants as legal permanent residents (LPRs) in a larger proportion than all the other states. Border security and the defence against terrorist acts are major objectives of the American Customs and Border Protection Department.

Taking into consideration the Immigration Law of 1965, the number of the first generation of immigrants who live in the USA has increased four times from 9.6 million in 1970 to nearly 40 million nowadays (1.046.539 persons have been naturalized as American citizens only in 2008, most of them coming from Mexico, India, The Philippines and China).

However, two thirds of the illegal migrations are generated by the illegal border crossing from Mexico, which led to the initiation of a project for the setting up of a ***protection area*** along the 3.141 km border with Mexico.

The history of the American immigration can be seen along four ages: the colonial period, the middle of 19th century, the beginning of the 20th century and the post-1965 period. Each age has brought about diverse national groups, races and ethnicities in the USA.

During the 17th century, nearly 175.000 English people immigrated in Colonial America. The middle of the 19th century was mainly characterized by a migration flow from Northern Europe, and the beginning of the 20th century from Southern and Eastern Europe and starting with 1965 the majority of migrants came from the Latin America and Asia.

The peak of the European migration to the USA was 1907, when 1,285.349 persons set foot on American land. By 1910 approximately 13,5 million migrants had already settled in the United States.

The first migration law was issued in 1891 and four years later the American government set up the Immigration Bureau. Nowadays, the institution is a Governmental Agency within US Department of Homeland Security[108] (DHS) and it is called US Citizenship and Immigration Services (USCIS). Its role is the surveillance of the illegal migration in the United States and it is also partner of the US Customs and Border Protection.

The US Department of Homeland Security prevents and investigates illegal acts beyond the USA borders, including trafficking of human beings, drugs, currency and weapons.

Among others, the Department acts so as to enforce border security and supports ***Smart Security*** so as to facilitate the international travelling and trade.

The Statue of Liberty on Ellis Island was and has ever since been the first travel objective seen by the migrants to the USA. The island was opened for public visitation in January 1892. The Naturalization Law in 1906 was an act of the US Congress signed by the president Theodore Roosevelt (1901-1909). This law revised the 1890 law and it provided that the immigrants learn English compulsorily so as to become naturalized citizens. The bill was adopted on the 29th of June 1906 and took effect on the 27th of September 1906. In 1990 the law was modified by the Immigration Law.

In 1917, on the 4th of February, the US Congress adopted The Immigration Law in order to control the migration flows and set up certain descriptions of accepted citizens, which turned it into a xenophobic law.

In 1921, the Congress adopted The Emergency Immigration Law replaced by the Immigration Law in 1924, which stipulates, among others, the consular control of immigration and defines the term "immigrant". The law confines the migration of Southern and Eastern Europeans, especially Jews, Italians and Slavonic people, who had entered USA in

[108] Department created on the 25th of November 2002 under George W. Bush administration.

large flows since 1890. The majority of the European refugees after the World War II were forbidden to enter The United States.

In 1924 US Border Patrol was set up. Between 1930 and 1954 it led a politics of repatriation of the Mexicans when the American government spent huge amounts of currency. The Immigration and Citizenship Law was issued in 1952 (codified under title 8 of the United States Code) and it defined the US territory and stipulated that persons born in the US starting with and after the 24th of December 1952 might get the American Citizenship on their birth. The law defined several types of immigrants, set up rules for visa extension limitation, as well as methods of expulsion from the US.

The Immigration and Citizenship Law of 1952 set an annual limitation of 300.000 granted visas, which thus allowed the familial reunion. The law took effect on the 1st of July 1968 and together with The Immigration and Citizenship Law of 1952 represented the basic components of the US immigration legislation.

For the first time in 1986 The Immigration Reform and Control Law created sanctions for the employers who hired illegal immigrants knowingly. The US Commission on immigration reform covered the manifold facets of the immigration policy.

The Immigration Law of 1990 changes and extends the 1906 and 1965 laws and increases significantly the immigration limitation to 700.000 visas (including visa lottery). The reunion of the families was declared as a main immigration criterion, but also the immigration linked to job occupancy. Several law signed in 1996 have brought about a shift to harsher policies both for the legal and illegal migrants so that the number of deportations has increased.

The terrorist attack on September 11, 2001 generated few consequences among which immigration. Out of a total of 20 foreign terrorists involved in the attack, 19 took part in the terrorist act that caused 2.974 deaths among civilians. The terrorists entered US with travel or student visas. Four of them had expired visas and were illegally on US territory. The terrorist attack exposed the flaws in the visa granting, foreigners' control and intelligence exchange system.

In 2006, the immigration reform was again discussed in the US Congress, The House of Representatives and The Senate. In December 2005, The House of Representatives adopted the Law on border protection, fight against terrorism and illegal migration control. It did not pass in the Senate and together with the imminent social protests its enactment was limited. Further debate took place in 2007 when the American senators agreed on the new Immigration Law. After this law had been adopted, as a result of Republicans and Democrats' support, nearly 12 million people that were illegally living on US territory gained legal status. Yet, the new law contained also provisions for the surveillance of the US borders.

As a rule, the provision is to grant a Z-type visa to those who work illegal in the United States, whereas their relatives get Z-1 and Z-2 type visas. In order to get such a visa, the immigrants have to pay 5.000 dollars, and later on they could apply for American citizenship.

To adapt and alter the laws on immigration is a task of all American states, especially the border ones.

In 2005 Department of Homeland Security initiated the SBInet Project (The initiative for a border security network). In 2010 in Arizona 53 Mexico border miles were already covered as a first pilot-project. The costs were estimated then at about 1 billion dollars, which exceeded the initial costs estimates, since the cost per kilometre needed to be covered made the project extremely inefficient. "The virtual fence" is made up of surveillance towers, which automatically turn on the alarm in the border patrol posts so as to act in due time.

These surveillance towers are initially mobile, then, after the optimum spots have been set, they will become permanent. The system has been planned so as to have approximately 1,800 towers, which will create a virtual fence along the entire Mexico border. Moreover, the system includes the construction of fences and barriers against vehicle crossing and also patrols roads. The towers are equipped with radar technology, long-range video cameras, wireless access points, thermo vision cameras, movement detectors and seismic detection sensors. All recorded information is distributed to the control centres, where the operation image is displayed on the monitors with geospatial maps so as the images can be viewed in real time.

The technology has proved to be useful only on flat ground and it has been inefficient in mountain and valley areas. For this reason the project was stopped in January 2011 because of the delays and high costs. SBInet could not offer an integrated and efficient border surveillance system that is why an up-to-date technical monitoring system was proposed to be implemented by 2016. The border security project will be extended from Arizona to

California, New Mexico and Texas by 2012, but not later than 2026.

From the very beginning the Obama administration highlighted its endeavours to enhance the border security, despite knowing that the American immigration policies did not stand a chance of reformation only if the administration proved to the Congress and the Americans that they did not adopt an aggressive policy in order to prevent the illegal migration to the US.

In 2010 President Obama signed a normative act granting 600 million dollars for the acquisition of two surveillance planes without pilots and the supplementation of the patrols with 1.500 officers. These police forces have been assigned to fight against smuggling, trafficking with migrants and drugs on the Mexican border.

As to the SBInet project, the agreement was cancelled and it was no longer financed.

A new bill called DREAM Act[109] was drafted so as to support the illegal minor migrants who were already living on American territory. Yet, this could not pass in the Senate in December 2010 on the grounds that if it had become a law, the DREAM Act would have encouraged both the illegal migration of thousands of Mexican people and a series of illegal and criminal acts.

The US border surveillance and control are the responsibility of US Customs and Border Protection (CBP).

Whereas most countries have to protect a smaller infrastructure, the US have to secure nearly 7.500 miles of land border with Canada and Mexico, which is annually crossed by over 500 million people, 130 million vehicles and 2.5 million railway wagons.

The border officers in US have to patrol nearly 95.000 shore miles and navigable waters and 361 ports where about 8.000 foreign vessels are registered annually, 9 million containers of merchandise and nearly 200 cruise and transport passengers.

The US has about 422 main airports and other 124 trade airports, where 30.000 flights and 1,8 million passengers are registered annually. There are approximately 110.000 miles of highway, 220.000 miles of railroads and 590.000 bridges.

The United States – Borders:

Land Borders - Canada: 8.893 km, Mexico: 3.141 km

Land Border Total: 12.034 km

Maritime Border - 19.924 km[110]

Border Total: 31.958 km

Population: 295.734.134

US is the third largest country of the world according to the territory and population criteria.

The US Customs Service was set up on the 31st of July 1789 and it was preceded by the adoption of the Tariffs Law on the 4th of July 1789. For almost 125 years the Customs financed virtually the entire state budget. CBP was set up on the 1st of March 2003 and it included the US Customs Service, the US Border Patrol, the US Department of Agriculture, Animal and Plant Health Inspection Service and the US Immigration and Naturalization Services, all under the coordination of the US Department of Homeland Security. In 2004 DHS moved the Air and Marine Operations from the Immigration and Customs Enforcement to US Customs and Border Protection (CBP).

The border patrols appeared in 1904 within the US Immigration Services as a means to prevent illegal border crossings and they functioned as unsteady troops which were made up only when the resources and needs allowed. The patrols operated especially in El Paso (Texas). A series of 75 inspectors used to patrol between Texas and California in order to limit the flow of Chinese illegal immigrants.

[109] Acronym from *Development, Relief and Education for Alien Minors Act.*

[110] Approximately 95.000 miles in partnership with US Coast Guard.

The real dangers at the border occurred once the Mexican Revolution started in 1910 and continued until 1920. The Civil War quickly involved the US and general Francisco Guilledo known as "Pancho Villa" terrorized the Southern border between the US and Mexico.

In March 1915, the Congress authorized the set up of a separate patrol group, the mounted guards, which patrolled riding horses, driving vehicles or sailing boats, without prior extensive training.

In the same time military troops worked along the South-Western border. They patrolled intermittently and redirected the foreign groups of illegal migrants to the immigration control points of the border states. The Texas Rangers used to work sporadically, but efficiently.

In 1922 the border patrols were equipped with a number of 35 used planes necessary for the surveillance of the border territory, and on 28th of May 1924 the institution of Border Patrol was born as part of the US Immigration Bureau. During this time, but also in the following years, the institution underwent numerous changes and reorganizations depending on the development of the border situation, but also on the legislative acts. The service gradually expanded by the occurrence of training schools, by extending its competencies and abilities in the area of immigration, customs, border surveillance and control, import and export, transportation etc.

In 1951 CBP received an official flag under President Harry S. Truman administration (1945-1953). CBP continued the endowment and the training programmes for the mobile, mounted, canine patrols, aerial and air security patrols, the customs, phytosanitary, documents and travel conditions control.

The period between 1980 and 1990 was characterized by an extraordinary increase of illegal migration in US. Border Patrol increased the human resources and implemented up-to-date technology. This interval distinguishes itself by the implementation of telecommunication systems, radars, aerial and space observation devices, but also by the set-up of databases.

In an effort to increase the efficiency at the border, "Hold the Line" operation was initiated in 1993 in El Paso and it proved to be an imminent success. The focus was placed on the hot directions and it offered a "power and efficiency performance" in fighting the illegal border crossings. Their dramatic cut down forced Border Patrol to carry out a large scale operation in San Diego, California, which was more than half of the illegal entries on a national level.

"Gatekeeper" Operation was implemented in 1994 and its outcomes consisted in the reduction of illegal entries in San Diego, more than 75% in the following years. The national border protection strategy was introduced together with "Gatekeeper" Operation and a long-term Strategic Plan covering 2009-2014 for Border Patrol was drawn up. Given the reduced illegal entries, Border Patrol was able to focus on other areas, such as: combating smuggling, setting up the search and rescue units and teams (BORSTAR)[111].

The Border Security Initiative (SBI) was created in 1998 as a cooperation agreement between Border Patrol and the Mexican government. In 2005 SBI was endowed with human resources, technology, infrastructure, investments and regulations.

A series of regulations were adopted in the legislative field and border-related crimes were identified, but also some international cooperation organizations for combating traffic and smuggling were created.

The US security became a main concern of the American nation after the events on September 11, 2001. Thus border security turned into a highly important issue in Washington. Financing applications and the application proposals were reconsidered and the political figures started to re-evaluate the way borders should be monitored and protected.

The CBP main mission is to prevent terrorists and their weapons to enter US and also to facilitate the legal trade flows and the movement of natural persons. In order to accomplish the CBP's main goals, the border officers have to:

- continue the traditional mission of detecting drugs, infringements of intellectual property rights, violations of the agricultural products and also to allow movement of natural persons;
- use diverse technologies efficiently;
- learn new technologies so as to detect terrorists and terrorist acts.

The CBP officers have the authority to search persons, freight shipments, means of transport on the US border with no need for search warrant. They also represent the only federal enforcement agency that benefits from such an authority.

[111] Acronym from *Border Patrol Search, Trauma, and Rescue,* which is composed of volunteer officers from Border Patrol, specially trained in medical interventions, rescue techniques, navigation, communications; air-sea rescue operations.

CBP enforces over 400 legal provisions to the benefit of 40 other agencies and it has the following responsibilities:

- Life quality:
  - vehicle safety;
  - water pollution;
  - pesticide control.
- Public and trade companies' health;
- Consumer's safety.

Example of traffic in a road border crossing controlled by the CBP[112]:

- 1.500 commercial vehicles a day;
- 25.000 passenger vehicles a day;
- 8.000 pedestrians a day.

CBP maintains the border security between border crossing by performant air-ground surveillance technique. Approximately 56.000 officers protect US from terrorists, drug traffickers and people smugglers, animal and vegetal diseases and they also maintain a commercial flow and permanent movement of persons.

ESTA monitors more efficiently and safely foreigners who travel legally to US because the Visa Waiver Programme allows passengers to get a travel authorization before embarking on a transportation means to go to the US via air or sea.

SENTRI allows travellers with a preliminary authorization to benefit from quick processing of data in the land border crossings between US and Mexico.

NEXUS is a bilateral programme for the quick processing of members' data based on their freedom to travel through air, land and maritime border crossings.

According to **The Western Movement Initiative** there is a need for a passport or any other accepted document in order to enter or re-enter US on land or sea.

The Immigration Counselling Programme: the CBP officers deployed in foreign airports perform a preliminary assessment of passengers who travel to US and identify those who might be denied entry in the country.

Global Entry allows those who travel abroad frequently and have been checked to use an automatic office for passport control and provides an exit line out of the CBP processing area.

CBP Air and Marine (A&M) represents the greatest international air and maritime enforcement agency. A&M employs the latest technologies, including automatic aeronautic surveillance systems in order to detect and prevent terrorism, drug trafficking and smuggling of migrants at US borders. A&M continued to build international and inter-institutional partnership in order to deter and combat the threat of illegal activities.

Experts in agriculture control ships, airplanes, motor vehicles, goods, passengers and their luggage and they look for forbidden merchandise which may contain rodents and diseases. The products forbidden in US by the agricultural experts represent a threat to crops and national plants, and also to the US animal production.

The new technologies:

- **The National Target Centre**
- **Non-intrusive Inspection Systems:** X-ray and gamma-ray resonance, railways gamma-ray vehicle radiation detectors and radiation detection pagers;
- **Sensors, video surveillance cameras,** infra-red devices and radiation detection devices for the detection of illegal activities at the border;
- **Automatic air surveillance systems;**
- **Advance Passenger Information System (APIS)**

The National Target Centre (NTC) has the following responsibilities:

- employs personnel from all over DHS;
- examines databases in order to decide whether potential terrorists can enter the US.

Legislative and regulatory initiatives

- the information from merchandise documents is required 24 hours before it is loaded in foreign ports for all containers that have a US maritime port as their destination. For merchandise shipped via aircrafts, trucks or trains, the information has to be electronically available in due time.

Training of CBP Officers:

- they attend a 15-week elementary training course (counter-terrorism training, shooting training, special tactical and technical training, field information, risk assessment, public relations);
- they undergo a 2-year internship;
- after they graduate the course, the CBP officers participate in practical training on the job;
- when needed, they attend specialization courses;
- they periodically take part in training sessions in order to use their duty guns.

The Border Patrol Strategy for 2009-2014 consists of five important objectives:

1. Risk assessement of potential terrorists who want to enter US territory;

2. Deterrence of the illegal entries by strict law enforcement;

[112] The border crossings represent the first protection line.

3. Apprehension, arrest and deterrence of drug and human traffickers, smuggling and other crossborder crimes;

4. Leverage of "Smart Border" technology in order to effect law enforcement personnel;

5. Reduction of criminality rates in border communities and improvement of life quality and economic boom in target areas.

This strategy contains legal provisions for Border Patrol as part of CBP so as to plan and carry out missions in accordance with its competencies.

The strategy aims to accomplish three strategic objectives, namely:

1. Prevention of terrorism;

2. Reinforcement of national security between entry points in order to prevent the illegal entry into the country of terrorists and their weapons, of smugglers and illegal migrants;

3. Maintenance of national security and public order.

The Strategic Plan 2009-2014 has the following motto: "***Secure borders, safe travelling and legal trade".***

In the following five years there will be significant changes in the approach to the concept of border security as a complex integrated system based on the field information, risk assessement and performance management techniques in cooperation with Homeland Security Department partners.

The Strategic Plan envisages the use of human resources, infrastructure, just enforcement of the law, performant techniques and technologies in order to maintain the security of the aerial and maritime space and the land borders as the first line of defence against terrorism and other threats.

The US Southern border with Mexico consists of approximately 3.141 km, some areas are known to be extremely hostile and rough. Hundreds of migrants die each year trying to cross the Southern border, either to enter the country illegally or to engage in smuggling.

There are three main smuggling corridors: Southern Texas, Western Texas/New Mexico and California/Arizona. These corridors are mainly created by the transport routes, relief and border urban centres.

Border Patrol succeeded in gaining control of the borders in high risk areas such as San Diego, El Paso and McAllen. However, many other areas along the South-Western border are still penetrable and represent a threat to US national security.

The US-Canadian border consists of nearly 8.893 km, including the Great Lakes area and the navigable ways around. Some of these navigable ways freeze in winter and can be easily crossed on foot, by car or snowmobile.

Within this Strategy, Border Patrol has to tackle the inherent issues that occur along the Northern border and also the Amerindian reservations, whose people have limited access on both sides of the US and Canadian border, though most of the Canadian population does not live in border areas. The number of illegal border crossings along the US-Canadian border is limited as compared to the US-Mexico border.

Although there is cooperation between border agencies of the two states based on signed agreements, the intervention is somewhat limited.

In the US coastal areas, Border Patrol cooperates with various law enforcement agencies, among which: The Coast Guard. Two other CBP partner agencies are The US Citizenship and Immigration Services/USCIS and The US Immigration and Customs Enforcement/ICE.

USCIS is a governmental agency whose responsibility is to monitor legal migration to the US. It has the following strategic goals:

- To enforce the security and integrity of the immigration system;
- To efficiently gather and provide data;
- To support the integration of immigrants into American social and cultural life;
- To promote flexible immigration policies and programmes;
- To reinforce the support infrastructure for USCIS missions;
- To operate as a highly performant organization, which promotes professional and dynamic personnel.

The US Immigration and Customs Enforcement (ICE) is the main investigation agency of US Department of Homeland Security (DHS) and the greatest Federal Investigation Agency. Its main mission is to promote public and national safety and security by enforcing of federal civil and criminal laws, regulating border control, customs, trade and immigration. The agency consists of two main operative components - Homeland Security Investigation (HSI) and Enforcement and Removal Operations (ERO). Their strategic goals are:

- To prevent terrorism and enforce national security;
- To protect borders against illicit trade, illegal migrants and fiscal fraud;
- To protect border against illegal migration;

- To operate as an efficient, professional and dynamic agency.

The 21st century is about to offer an up-to-date performant technology that can be used in crossborder areas. The new generations of CBP officers employ innovative methods and devices to carry out their field operations in order to more effectively manage the national borders. Moreover, cooperation between US and the other neighbouring states provides new opportunities for the maintenance of border security and the enforcement of the law.

The future of US Customs and Border Protection appears to be as interesting as its past in keeping with the agency's motto that has been promoted ever since 1924 - "*Honour First*".

Bibliography:

- ✓ http://www.cbp.gov
- ✓ http://uscis.gov
- ✓ http:/dhs.gov
- ✓ National Border Patrol Strategy 2009-2014
- ✓ U.S. Customs and Border Protection Fiscal Year 2009–2014 Strategic Plan

THEORETICAL AND PRACTICAL ASPECTS OF UNFAIR COMPETITION CRIME

Lecturer Ph.D. Laura MAIEREAN
Police Faculty – "A.I. CUZA" Police Academy
Costin FĂTU

In the suppression of competition law violations, criminal offense is becoming more common worldwide, especially since, in most cases, even very large fines do not appear sufficient to prevent the formation of cartels, especially the "benefits" of participants are high fines. From this perspective, even speaks of a possible "take the baton" by the criminal law in the fight with anticompetitive behavior. Besides competition law, although still predominantly contravention intensive use tools and concepts of criminal law, for example, unannounced inspection of the premises, using forensic methods and immunity from fines in cartel participants who denounce its existence, through the leniency policy.

Keywords: competition, Competition Council, anticompetitive practices, cartel

1. Introduction to competition

Promote culture of competition, initiated and carried out today by the Competition Council is a very important aspect in the application of competition rules, with specific instruments to combat anti-competitive practices and merger control and state aid. Why? Because competition policy must be known and understood by all those involved in economic life, which can not be achieved without consistent application of principles of transparency and non-discrimination. However, there are some who infer that the application of competition law would not be appropriate until you reach a certain stage of economic development.

However, our expert opinion - Rally Competition Council, that promote competition and consistent application of its principles only produce disadvantages for inefficient enterprises, but for the economy in general and especially for customers, the effects demonstrated in dozens of countries are those promoting technical progress and the efficient allocation of resources, private sector development and social welfare, as competition arises welfare.

Community competition rules is a critical tool that allowed the formation and development of the European Single Market, which still raises many controversies among experts when the subject of discussion is government intervention in regulating competition authority. For example, American specialists reject the idea of regulation in this sector considering that there is an antagonism between the notion of free market, with its mechanisms of self regulation and the notion of competition by public authority. In their view, the battle of competition can result for some participants with partial or total loss of their customers and therefore, in few cases, including their complete removal from the market. So competition is a defining element of market economy, the engine of economic and social development of Romania, a market economy based on free enterprise and competition, and the state as general nurturing entity must ensure free trade, protection of fair competition, creating the favorable for the recovery of all factors of production in general, the competition means a confrontation between adverse trends that converge to the same end.

2. Correlation between Community and national legal framework on combating unfair competition crime

Whenever more people pursue a goal in the same economic activity is the idea of competition, contest, competition, work that requires them to carry out development in an organized, competitors being forced to perform work in good faith, according to fair practices, with the interests of fair competition and requirements.

We believe that any economic competition between competitors worn-competitors-and/or any other individuals/corporate/local government or central economic activities are used dishonest

means, for the purposes obviously restricted the notion of unfair competition.

Because the issue of crime combating unfair competition, and is not only interesting one of all competitive major markets in the world, because it means no more and no less than security vulnerability at national and international, it has resonance in internationally since the start of competition at Community level training regulations and the review of Washington was introduced in the text of the Paris Convention on Protection of Industrial Property of 1883 article 10 bis 1, which provides suppression of unfair competition in respect which EU states are obliged to provide these citizens of member countries, effective protection against unfair competition. According to article 10 bis paragraph 2 of the Convention, unfair competition means any act of competition contrary to honest practices regarding industrial and commercial, although the Romanian legislator concept constitutes unfair competition against any act or practice honest fact the industrial activity and marketing of products, execution of works, and making provision of services (Article 2 of the Competition Law).

Therefore, we agree with the view that domestic legal text deviates from the content of article 10 bis of the Convention, which marks the abandonment of classical thesis implicit recognition that loyalty should govern commercial and industrial activity, even in the absence of report of competition between competitors.

Also, according to article 10 bis paragraph 3 are considered acts of unfair competition acts likely to cause confusion among consumers (any facts which are capable of creating, by any means, confusion with the company, products or industrial activity or business of a competitor) false statements likely to undermine a competitor (false statements in the exercise of trade documents) which are likely to discredit the company, goods or industrial or commercial activities of other competitors); indications likely to induce public error (indications or allegations the use of which in commercial exercise is likely to mislead the public about the nature, types of manufacturing, features, ability to use or quantity of).

Although the definition adopted by the Romanian legislature bring some progressive elements, such as elimination of the condition of existence of the report of the competition, hence broadening the scope of application of the law on unfair competition, yet it is characterized in the literature as being insufficiently precise and analytical to qualify certain acts of unfair competition as some, for which the same opinion, proposed another definition that unfair competition is a manifestation of unlawful competition, including those legal acts or deeds-actions human, as criminal offenses, misdemeanors or civil offenses only, as appropriate by dealers or other subjects that qualify employees traders or civil servants, only violates intentionally or negligently legal provisions that govern competition and/or rules/ practices moral business taken and considered as sources of the positive law in order to attract a larger number of customers from competitors.

Therefore, unfair competition is itself a set of provisions to individuals and legal practices are protected against unfair competition of third parties, but does not envisage direct protection of property rights, but measures to prohibit and suppress practices contrary to fair competition practices in industry and trade. Romanian society, enslaved a democratic and capitalist market economy, promote economic and social development based on free enterprise, but as in any competition effect, there is a tendency for competitors to circumvent fair dealing, honest, which is why it was necessary intervention of a judge-legislator, to establish the exact rules of conduct to be followed by companies. Thus, there are two basic laws in the field of commercial competition on 29 January 1991 Law no.11 on combating unfair competition provided for in article 4, 5 main acts of unfair competition, criminal or administrative sanctions, but listing the two items can only be declarative in the unfair, since even the *World Intellectual Property Organization* experts noted that there are always new unfair competition acts, since there are no limits to inventiveness in this field, any attempt to include all acts of unfair competition, present and future in a comprehensive definition, which also includes all conduct prohibited and to be flexible enough to accommodate new business practices, failed to date. Therefore, completion of the regulatory framework of this attribute of the market economy, was made when the legislature felt the need to regulate distinct and unequivocal rules of commercial competition by Law No. 21 of April 10, 1996-competition law. The two acts, along with others in the general regulatory framework is business competition in Romania, together with legislation obvious that the Romanian legislature has an obligation to introduce permanent directly and with priority in national legislation. As a social sphere complex and raises a series of

controversies, competition has received a legal form that the legislature intended the statutory strict rules of conduct harsh penalties imposed for their violation by many whose legal status differs depending on the degree of social danger abstract. Thus, the Law nr.11/1991 and Law 21/1996 provide sanctions for administrative law, civil law, and significantly, considering that certain facts would seriously endanger social values which would not harm be repaired, and criminal sanctions. Criminalization of antisocial acts that crime has a public function, namely to draw attention to those who are binding provisions of normative acts mentioned that the legislature has assigned an important distinction circumvent the legal status of commercial competition, because protection of fair competition is corollary that the regulatory function exerted on the state economy. Limited intervention of state entity, just to punish unfair competition and eventually to assist enterprises in conducting business is the attribute of a democratic state.

3. The offense of unfair competition provided by Article 5 of the Act on combating unfair competition nr.11/1991

The painting competition regulations is particularly important because of legislative methods in the field committing criminal offending. As appreciated in the literature nr.11/1991 Law transcends the political and legal basis for the development of art.301 of the Criminal Code representing crime unfair competition, as the subject of criminal protection for crime provided by article 5 of Law nr.11/1991 is the social relations established between the free market traders, in the spirit of art. 1 of this Act, therefore it is considered that with the emergence nr.11/1991 Law article 301 of the Criminal Code provisions were repealed by default.

According to article 5 of Law there are several ways circumscribed crime legislation and description of the facts indicated to article 5 paragraphs a-g are sanctioned by the legislature with imprisonment from 6 months to 2 years or a fine from 25,000,000 lei to 50,000,000 constituting the offense unfair competition as follows:

- *using companies, inventions, trademarks, geographical indications, a drawing or industrial model, the topography of an integrated circuit, a logo or a container liable to cause confusion with the legitimate use of another merchant;*
- *putting into circulation of counterfeit goods and/or pirate, whose marketing prejudice the proprietor and misleading consumers on quality of product/ service;*
- *use the commercial results of experiments which required a considerable effort to obtain or other secret information about them, sent to the competent authorities to obtain marketing authorizations for pharmaceutical products or chemical products for agriculture, containing chemicals us;*
- *disclosure of information referred to in c, except that disclosure of such information is necessary to protect the public or unless steps were taken to ensure that information is protected against unfair commercial exploitation, whether these information coming from competent authorities;*
- *the disclosure, acquisition or use trade secrets to others without the consent of its owner legitimately as a result of industrial or commercial espionage;*
- *the disclosure or use of trade secrets by persons belonging to public authorities and by persons authorized by the legitimate holders of these secrets to represent the public authorities;*
- *production in any manner, import, export, storage, sale or offering for sale of goods /services bearing false indications regarding patents of inventions, trademarks, geographical indications, industrial designs, topographies of semiconductor products, other types of intellectual property, as such as the media and the like, origin and characteristics of the goods and on behalf of the manufacturer or dealer for the purpose of misleading other traders and consumers.*

According to article 6 of the Act, the person who commits an act of unfair competition will be forced to stop or remove the act to return the confidential documents acquired unlawfully from legitimate holder and, where appropriate, pay compensation for damage under legislation. Law nr.11/1991 through article 5 criminalize one specific offense but there are several facts, which in practice violate the elementary rules of loyalty in the competition trading violations provided for in article 5 paragraphs a-g are essentially forms of deception in trade and Industrial. At the same, according to article 8 of Law nr.11/1991 criminal procedure are laid down certain aspects which are designed to clarify the powers of judicial bodies in matters of unfair competition. Thus, the prosecution in the cases provided for in article 5 shall be initiated at the request of the victim or upon notification by the Chamber of Commerce and Industry or other professional organization or upon notification by persons authorized by the Competition Council.

In the following we try to analyze the elements of crimes under article 5 of Law nr.11/1991. Thus, the general legal subject is formed by social relations whose existence and development depend on the work of defending the social value of use, circulation, production and marketing of goods, work carried out in accordance with the law in good faith and in legal. Also, special legal subject of the offense provided for in article 5 of Law nr.11/1991 is the social relations and conduct training which is provided by the market economy to promote integrity, morals, good faith and defense manufacturers, retailers and consumers against unfair practices. Offense affect in the alternative public confidence in the authenticity of the goods and products from the market and the interests of consumers are deceived, usually in the quality of products they buy. The offense usually has a material object, there are situations where such an object does not exist, for example, if article 5 paragraphs c, using commercially the results of experiments. When there is a material object it can be the example of a product bearing the designation of origin or false indications of origin. The product is the subject of the crime of unfair competition material may be industrial or agricultural, and may be subject to a number of processing operations, but may appear as natural products, minerals, mineral waters.

For the purposes of article 5 paragraphs b is the material object of counterfeit and pirated goods. The counterfeit goods means copying and packaging of a product that closely resembles the original product with the intent to mislead, using this brand marks and logos counterfeit (making a similar product material). By means pirated piracy of original products in order to obtain financial gain without permission of the rights holder and usually have a questionable expense.

According to article 139 index 6 paragraphs 8 of Law nr.8/1996 through pirated means all children, regardless of medium, including covers, made without the consent of the right holder or person duly authorized by it and which are made directly or indirectly, total or part of a product bearing the copyright or related rights or their packaging or their covers. Active subject of crime is usually a trader can be both a person and a person. If the trader is a person, and committing acts of unfair competition, criminal responsibility and individuals who were directly or indirectly involved in committing the acts. On whether the active subject of the crime of unfair competition directly to the dealer have the right qualities is controversy doctrine. When we speak of an individual, we expressed the view that only a natural person who is a merchant in the legal sense, may be directly active subject (author) of the crime and not any particular person who incidentally, made sporadic acts of trade. Passive subject main dealer, regardless of legal form under which they operate (company or independent director) and whatever the nature of capital (public, private or mixed), which was damaged by the act in its interests or that of unfair competition. Secondary passive subject can be beneficial product or service report that committed the act of unfair competition. Primary and secondary passive subject can be a legal or natural, national or other country that has ratified the Paris Union Convention for the Protection of Industrial Property. In terms of the objective side of the material element appears in more normative ways as follows:

a) use a firm, patents, trademarks, geographical indications, a design, a product of topographies of semiconductor, a logo or a container liable to cause confusion with the legitimate use by another trader. If this method is governed hypothesis using a trade mark, geographical indication, a design, an invention or topography of a semiconductor product. Unlike the offense under item g which is reference to goods or services bearing false indications regarding patents of inventions, trademarks, geographical indications, industrial designs, topographies, origin and characteristics of the goods. Regarding these facts, note that there is criminality and nr.129/1992 Law on the Protection of Industrial Designs and Law 84/1998 on trademarks and geographical indications, the following rules apply to criminalize the most recent (or whose sanctions were most recently modified). Any action which may, alternatively, the material element of the offense provided for in article 5 of Law nr.11/1991 letter (to us in the presence of this crime) must meet the essential requirement specified in the law that is be likely to cause confusion. Confusion may be caused not only by a servile imitation or counterfeiting of the hallmarks of another merchant. This imitation may be only partial, but so far reaching elements characteristic can be confusing. Have become commonplace confusion like Reebok - REABOK, PANASUNIC - PANASONIC, MULINEX - MOULINEX, ABIBAS - ADIDAS etc. In such cases the offender expect that the consumer's mind an association occurs involuntarily in the window of the goods in good quality branded product with a famous brand.

b)putting into circulation of counterfeit goods and / or pirate, the marketing of which affect the proprietor and misleading consumers on quality of

product / service. The release involves placing the goods onto the market so they can be purchased by prospective buyers. To be in the presence of the means of committing the crime, the act should affect the trade mark proprietor and to mislead the consumer on the quality of product / service.

c)use the results of experiments for commercial production of which required considerable effort and other intelligence about them, sent to the competent authorities to obtain marketing authorizations for pharmaceutical products or chemical products for agriculture, containing compounds new chemical. In this case the action complained of (use) is committed by a qualified subject - a person who belongs to a competent authority to give authorization for marketing of products - and is using the results of experiments in personal or other trader, aiming and obtain the benefits. For the purposes of article 5 paragraphs c the results of experiments in writing means the materialization of the experimental drugs or chemicals containing chemical compounds for agriculture us.

d)disclosing information under c, unless disclosure of such information is necessary to protect the public or unless steps were taken to ensure that information is protected against unfair commercial exploitation, if This information comes from the competent authorities. Disclosure requires disclosure of classified information or the results of experiments on these experiments, an indeterminate number of people.

e)the disclosure, acquisition or use trade secrets to others without the consent of its owner legitimately, as a result of commercial or industrial espionage. Disclosure requires disclosure of trade secrets to an indefinite number of people. Acquisition means acquiring a trade secret rights in particular through the sale. Use assumes that the trader entering into possession of a trade secret is used in the production process. Previous Acts to be committed as a result of commercial or industrial espionage. According to article 1^1 paragraphs b is trade secret information that in whole or in exact connection of its elements, is not generally known or easily accessible is not dealing with people in rural normally with this kind of information and acquires commercial value in that is secret and the holder took reasonable steps, given the circumstances, to be kept under secret, trade secret protection operates as long as previously stated conditions are met.

f)disclosure or use of trade secrets by persons belonging to public authorities and by persons authorized by the legitimate holders of these secrets to represent to the public authorities. Disclosure requires disclosure of trade secrets to an indefinite number of people. Offenses set out in article 5 paragraphs f is a variant of the offense provided for in art.298 economic disclosing secrets when committed by persons authorized by the legitimate owners. When the offense is committed by a person belonging to public authorities act could be construed as an abuse of office against the interests of persons, but in both cases shall apply article 5 of Law nr.11/1991. Depending on the specific use of trade secrets could mean its use in the processes of delivering goods or could be a speculative use purposes - trade secret is sold to another trader in exchange for money.

g) production in any manner, import, export, storage, sale or offering for sale of goods/services bearing false indications regarding patents of inventions, trademarks, geographical indications, industrial designs, topographies of semiconductor products, other types of intellectual property as appearance as the company's fashion design showcases and the personnel, advertising and the like, origin and characteristics of the goods and on behalf of the manufacturer or dealer in order to deceive the other traders and consumers . According to DEX by commodity means a product designed to work through the purchase and sale exchange. The service within the meaning of Article 5 letter g means committing an act that serves favors somebody, a duty, a form of labor for the benefit or interest to someone. The activity of "production" means, generally making material values, scientific and literary value, is to create something by a certain activity. It is, therefore, an action to produce, to manufacture something, followed by the result achieved, by that action. Can be defined as all products produced in a particular industry, in an enterprise in a period of time. As for the actions of "offering for sale" or "sale" referred to article 5 of Law nr.11/1991 letter g, mean by this is only offering, is effectively a transfer of property, if the trader or vendor (which can be a reseller) used false claims referred to this text. Offer, express or implied, for sale or resale must be a manifestation of will with firm character, which comes from the bidder proposing the contract of sale. Actual sale means the actual transfer of property under civil law and the contract was concluded. The purpose of such a contract is the commodity that must meet certain conditions, namely: to be in civil circulation, there at the time of conclusion or can exist in the future (to be produced), to be determined or determinable.

Goods delivered must be consistent with the type of product qualities and contractually agreed. Compliance is determined when supplying goods contractual risks and for this purpose the verification of quantitative and qualitative goods. After that time, the seller is liable only for the hidden defects of the goods. Unlawful action which I analyzed it may occur both during the tendering and at the initial sale or resale of a product of the future, if used false entries with intent to mislead other traders or only the final beneficiaries, individual consumers, of that product.

If the activities of materials provided by article 5 of Law nr.11/1991 letter g to form the objective side of the offense of unfair competition, false entries must be accompanied by referred to incriminating text, namely those concerning patent, trademark, geographical indications, industrial designs, topographies of semiconductor products, other types of intellectual property such as the appearance of business, fashion design showcases and the personnel, media advertising and the like, origin and characteristics of the goods and the name manufacturer or trader. In terms of subjective offense that is committed intentionally look directly qualified by purpose. The aim is misleading other traders and beneficiaries.

Biography

- *Criminal Code*
- **D. Clocotici**, "*Crime competition regulation of trade*", Commercial Magazine no.4/200
- **G. Antoniu, C. Bulai**, "*Criminal jurisprudence*", vol V, Romanian Academy Publishing House, Bucharest, 1998
- **G. C. Turianu**, "*Observations about the regulation of unfair competition crimes*", Law Magazine no. 5/1998
- **M. Pantea**, „*Protecția penală a proprietății intelectuale în era globalizării*". Expert PH, Bucharest, 2008.
- **Octavian Capățână**, "*Commercial competition law*", Lumina Lex, editions 1992.1994, 1996, 1998
- *Romanian Constitution*, republished in 2003
- **Yolanda Eminescu**, "*Competition - Romanian law and comparative law*", Lumina Lex, Bucharest, 1993

CONSIDERATIONS REGARDING INFORMATION AND THE SECURITY INFORMATION SYSTEM

Lecturer Ph.D. Petrică-Mihail MARCOCI
"Alexandru Ioan Cuza" Police Academy
Chief Cms. Reader Ph.D. Florian GRIGORE
D.G.I.P.I

The nowadays society approaches and capitalises information and information systems in a different manner, especially systems involved in the field of national security. The new types of risks and threats induced by economic and social globalisation generate a need for profound structural adjustments of the legal framework, institutional mechanisms and procedural patterns in place in the field of security information.

Keywords: information, information system, protection of classified information, security information system.

In the nowadays society, strongly influenced by fulminatory developments in the field of information, knowledge and assimilation of new technologies, the organisations and the State set up their own information systems, in response to the needs for recognition, anticipation and response to dangers or stimuli existing in the domestic or global reality. Such systems collect, analyse, process, store and use a certain type of information, which, when submitted to this type of operations, fall into a conceptual category known in the Anglo-Saxon literature as 'intelligence'..

Intelligence is a concept which, in a general sense, defines the field of interest and activity of the information services – that is, structures involved in the field of information and counterespionage.

In the same manner, intelligence can be perceived as the grounds of decision-making with regards to a state's security. Re-conceptualisation of the notion of national security has generated the need for a new model of intelligence. This is no longer signally military or political, like in the period of the cold war, but rather consists of a significant translation towards other areas - asymmetric threats; economic, energy and industrial security; organised crime; weather threats, etc.

Within such a context, new patterns of identifying recognition needs - by obtaining relevant information - have become shadowed by the need to redesign information systems, on one hand in order to ensure their operational efficiency, and on the other hand, in order to make them capable for defence against aggression targeting them.

The globalisation and economic growth of multinational companies has generated another type of context, never seen before: private intelligence, used for the dynamics of private businesses, identifying competition, etc. Thus, there have been situations when the antagonising interests between the two types of intelligence systems have led to overt conflicts, with significant direct consequences for both entities involved in the actions.

As the monopolist characteristic of public intelligence is given up, private information systems become a true competitor, a potential threat to state systems, thus representing a part of the conflict between the state and private corporations. Actually, modern views in terms of designing and carrying out internal and external aggressions upon the state only envisage war as a last-resort solution, while much more sophisticated means are preferred – information war, psychological operations, economic assimilation, etc.

All these sophisticated, modern forms of aggression need to have a wide range of design requirements in the field of information systems.

This type of extremely subtle aggressive means represent realities that the state information structures are not prepared to face. The causes backing up this affirmation are definitely numerous and have to do with the security culture; the inertia of these structures; the professional competition, sometimes perverted in actual institutional wars; the incapacity of information officers to adapt to this type of threats; the operational management focusing on targets that are peripheral to the public

interest, but appealing to the political decision-maker driven by revengeful feelings, etc.

The shift of political interest towards the social dimension of security came to require a re-conceptualisation of intelligence, which has become a significant decision-making support to modern managers. Currently, we may identify a type of security information management and a type of economic information management.

The business environment, where economic competitiveness is represented by the amount of profit, has generated - directly or indirectly - the significant mutations in the field of information systems. These changes, which the information services have felt as an external stimulus, have resulted in the need to redesign informational processes along new lines. The reality of the new global security environment, primarily oriented towards the economic-financial area, requires new policies and action-strategies to be designed in relation to information systems.

In the new reality, information systems should become factors that influence public and government policies in any field of social relevance. Far from being able to provide to this desiderata, information structures have long time been content with being merely warning factors for the political decision-makers, while allowing them to have monopoly over decision-making, whether the required expertise was in place or not.

The security of a nation is an extremely vast concept, both in terms of doctrines and specific actions. Achieving a state of security is one of the attributes of effective government and a prerequisite for the sustainable development of a nation. Achieving a state of national security implies, among others, ensuring protection of vital information which, by law, should be subject to strict dissemination in terms of the beneficiaries allowed to have access to it.

In Romania, the desiderata of protection of classified information was achieved with the passing of Law no. 182/2002 on protection of classified information. From a regulatory perspective, the law defines a number of terms, such as:

- information – any documents, data, objects or activities, irrespective of their support, form, manner of expression or circulation[113];
- classified information – information, data, documents of relevance for the national security which, considering its levels of significance and the consequences that unauthorised disclosure or dissemination would generate, must be protected[114];
- state secret information – information regarding the national security, the disclosure of which may bring prejudice to the national security and country defence[115];
- work secret information – information the disclosure of which may generate prejudice for a public or private legal entity[116];
- the levels of secrecy are assigned to classified information in the 'state secret' category[117] and are as follows:
  - strictly secret of special relevance – information, the unauthorised disclosure of which may result in exceptionally serious damage to the national security;
  - strictly secret – information, the unauthorised disclosure of which may result in serious damage to the national security;
  - secret – information, the unauthorised disclosure of which may result in damages to the national security;
- legal protection – the totality of constitutional norms and other legal provisions in force, regulating the protection of classified information[118];
- protection through procedural measures – the totality of regulations through which issuers and holders of classified information establish internal working measures and order structures meant for achieving protection of information[119];
- physical protection – the totality of activities for safety, security and protection of classified information, through physical control measures and devices and through technical means[120];
- staff protection - the totality of checks and measures aimed at people with job prerogatives connected to classified information, in order to

[113] Art 15 letter a of Law no 182/2002 on classified information

[114] Art 15 letter b of Law no 182/2002 on classified information

[115] Art 15 letter d of Law no 182/2002 on classified information

[116] Art 15 letter e of Law no 182/2002 on classified information

[117] Art 15 letter f of Law no 182/2002 on classified information

[118] Art 15 letter g of Law no 182/2002 on classified information

[119] Art 15 letter h of Law no 182/2002 on classified information

[120] Art 15 letter i of Law no 182/2002 on classified information

prevent and eliminate security risks to the protection of classified information[121];

- security certificates[122] - documents certifying for the verification and accreditation of a person to hold, have access to and work with classified information.

The role of these theoretical clarifications is extremely important, especially because the field of classified information was always accused of exaggerated formalism and secrecy. From the viewpoint of our research approach, these definitions provide the reference base required for any solid notional analysis, and the validity and efficacy of these concepts will be discussed further on, in the subsequent chapters of this work.

Protection of state secret information is an obligation that lies with the authorised persons issuing, managing or coming into possession of such information.[123]. In other words, the classified information protection system includes all entities that come in direct contact with such information.

Another extremely important clarification is related to the scope of state secret information. Thus, this category includes information representing or referring to:

- the country defence system and the basic elements of this system; military operations; manufacturing technologies; characteristics of weapons and combat techniques used exclusively within the elements of the national defence system[124];
- the schemes, as well as the military devices, the manpower and the missions of the forces engaged[125];
- the state code and other cryptology elements established by the relevant public authorities, as well as the activities connected to their realisation and use[126];
- structure of the protection and defence systems of units, sectors, and special and military computer networks, including their security mechanisms[127];
- data, schemes and programmes referring to the communication systems and the special and military computer networks, including their security mechanisms[128];
- the information activities carried out by public authorities assigned by law for country defence and national security[129];
- the work means, methods, technique and equipment, as well as specific sources of information used by the public authorities carrying out information activities[130];
- maps, land schemes, thermographic designs and above-ground recordings of any type, on which content or units classified as state secrets are represented;
- maps, land schemes, thermographic designs and above-ground recordings performed at flight scales higher than 1:20.000, on which content or units classified as state secrets are represented[131];
- studies, geological exploration and gravimetric surveys of densities higher than one point per square kilometre, through which national reserves of rare, precious, disperse and radioactive metals and ores are evaluated, as well as data and information regarding material reserves that fall under the competence of the National State Reserves Administration[132];
- the systems and schemes for supply of electricity, heating, water and other supplies needed for the functioning of units classified as state secrets;
- scientific, technological or economic activities and investments that have to do with the national security or national defence or are especially important for Romania's economic and technical-scientific interests[133];
- scientific research in the field of nuclear technologies, except for fundamental ones, as well as programmes for protection and security of nuclear materials and installations[134];

[121] Art 15 letter j of Law no 182/2002 on classified information
[122] Art 15 letter k of Law no 182/2002 on classified information
[123] Art 16 of Law no 182/2002 on classified information
[124] Art 17 letter a of Law no 182/2002 on classified information
[125] Art 17 letter b of Law no 182/2002 on classified information
[126] Art 17 letter c of Law no 182/2002 on classified information
[127] Art 17 letter d of Law no 182/2002 on classified information
[128] Art 17 letter e of Law no 182/2002 on classified information
[129] Art 17 letter f of Law no 182/2002 on classified information
[130] Art 17 letter g of Law no 182/2002 on classified information
[131] Art 17 letter h of Law no 182/2002 on classified information
[132] Art 17 letter i of Law no 182/2002 on classified information
[133] Art 17 letter k of Law no 182/2002 on classified information
[134] Art 17 letter l of Law no 182/2002 on classified information

- issuing, printing of banknotes and monetizing of metal coins, layouts of money issues of the National Bank of Romania and safety elements of the money symbols for forgery identification, not meant for the public, as well as imprinting and printing of stocks and shares such as public securities, treasury bonds and state bonds[135];
- foreign relationships and exterior activities of the Romanian state, which, according to the law, are not meant for the public, as well as information of other states or international organisations towards which the Romanian state, through international treaties or agreements, has taken an obligation of protection.

State secret information is categorised per levels of secrecy, depending on the importance of the values protected. Secrecy levels assigned to information in the state secret class are the following[136]:

a) strictly secret of special importance;

b) strictly secret;

c) secret.

The following are mandated to assign one of the information secrecy levels when the information is produced[137]:

a) for strictly secret information of special importance:

1. the President of Romania;

2. the president of the Senate and the president of the Chamber of Deputies;

3. the members of the Supreme Council for Country Defence;

4. the prime minister;

5. the members of the Government and the secretary general of the Government;

6. the governor of the National Bank of Romania;

7. directors of the national information services;

8. the director of the Protection and Safety Service;

9. the director of the Special Telecommunications Service;

10. the secretary general of the Senate and the secretary general of the Chamber of Deputies;

11. the president of the National Statistics Institute;

12. the director of the National State Reserves Administration;

13. other authorities mandated by the President of Romania or by the prime minister;

b) for strictly secret information[138] - persons mandated by the persons entitled to classify documents as strictly secret of special importance, as well as state secretary-rank officials, according to their material prerogatives;

c) for secret information[139] - persons mandated by the persons entitled to classify documents as strictly secret of special importance or strictly secret, as well as high officials of the level of sub-secretary of state, secretary of state, secretary general or director general, according to their material prerogatives.

For keeping records of state secret information, the Office of the National Registry of State Secret Information is established, as subordinated to the Government. The Office of the National Registry of State Secret Information keeps records of lists and information in this category and of the time while information is to be maintained in the classification levels, of personnel checked and approved to work with state secret information, and of authorisation registries[140].

Documents that contain state secret information will have the secrecy level marked on each page, along with the note 'private', when they are meant for a specific person[141]. Information classified according to the law may be declassified by Government decision, following a grounded request of the issuer[142].

The law forbids classifying information, data or documents as a state secret for the purpose of hiding violations of the law, hiding administrative errors, limiting access to information of public relevance, illegally restricting some persons from exerting their rights, or harming other legitimate interests[143].

At the same time, information, data or documents regarding some fundamental scientific research that has no justified connection with the national security may not be classified as state secret information[144].

[135] Art 17 letter m of Law no 182/2002 on classified information

[136] Art 18 par. 2 of Law no 182/2002 on classified information

[137] Art 19 letter a of Law no 182/2002 on classified information

[138] Art 19 letter b of Law no 182/2002 on classified information

[139] Art 19 letter c of Law no 182/2002 on classified information

[140] Art 21 par. 2 of Law no 182/2002 on classified information

[141] Art 24 par. 1 of Law no 182/2002 on classified information

[142] Art 24 par. 4 of Law no 182/2002 on classified information

[143] Art 24 par. 5 of Law no 182/2002 on classified information

[144] Art 24 par. 6 of Law no 182/2002 on classified information

Existence of this wide framework for classifying information is extremely beneficial with regard to the incidence of data protection institutions in this field. The framework for protection of classified information shall be analysed in the subsequent chapters of our research, as an extremely important component of information systems management.

In Romania, the national security activity that implies collection, analysis, evaluation, dissemination and capitalisation of information is mainly provided by the following structures:

- Romanian Information Service;
- Exterior Information Service;
- The General Directorate for Information and Internal Protection of the Ministry of Interior;
- Defence Department's General Directorate for Information within the Ministry of National Defence;
- The Security and Protection Service;
- The Special Telecommunications Service.

All these structures have their own strategies and plans implemented for collection, analysis, evaluation and capitalisation of security information as an optimal modality for ensuring Romania's national security.

Incident principles in designing the security information system

A) The information system has to be subordinated to the organisation's managerial imperatives.

In relation to the management system, the information system is a sub-system, as it is a component of the former. The rationale of the information system in the organisation is to ensure the information base required for the proper deployment of the management and executive positions.

In rationalising the information system, its specific goals and requirements need to reflect the fundamental, derivate, specific and individual goals of the organisation. This implies studying policies, documents of the organisation, as well as conducting joint discussions and analysis with managers as key beneficiaries of the information system.

B) Interlacing of the information system with the decision-making system and with the organisation's structure.

The information system needs to be organised in a structural manner and functionally adapted to the other components of the management system, with the organisational structure, for collection, recording, transmission and reception of the information (especially for positions and relationships between departments).

From a functional point of view, it has to be harmonised with the decision-making system in such a way, as to contain information and dimensional characteristics of the flows and reflect the need for rational decision-making at leader level.

C) The principle of consistency in treating the information.

In order to ensure compatibility between all components of the information system, with a view to achieving integration of the information vertically into the management system, the manner of collecting and processing the information needs to be methodologically coherent in order to ensure additional safety and control for the management over the system.

D) The principle of ensuring optimum response time of the components of the information system and of the managerial ensemble.

Since the unfolding within the organisation of various work processes in general and of management processes especially varies in terms of the different temporal characteristics of these processes, the response time of the various sub-systems also needs to be different. As a result, the times for collecting, circulating and processing the information - and implicitly, the times for decisions – need to be differentiated as well. This is especially achieved by use of a range of procedures and means for treating information.

E) The principle of flexibility

The information system needs to allow for a needs-based modification of its features, especially the functional ones; for this, it is recommended that the system is conceived in a modular approach, especially possible when using electronic computing equipment, databases and high performance software, also in order to allow for quick implementation of the modifications needed without changing the overall design.

F) The principle of efficiency

It has general value in a security organisation, and at the system level, this translates as permanent evaluation and comparison of the effects of quantity and quality to the costs needed for realising and operating the information system. The propagated effects that need to be considered in the decision-making mechanism become very important here.

Besides pointing to the incontestable vulnerabilities of the new global society, the current global economic-financial recession has also revealed the incapacity of information systems to warn, manage and remove its consequences using their own gnoseological means. In other words, one

of the fundamental issues with information structures of all times was the increase of the strategic proactive capacities focused on extremely serious or complex problems.

The new demands of national security require basal resizing of certain fields of interest, such as: staff selection, continuous staff training, public-private partnership, transparent decision-making, etc.

For half a century – in which time competitors were state-type – informative analyses were representing politically-influenced decisions, which have often confined analysts to a field of criticism and interaction with the final recipients of the decisions. The current security environment, based on asymmetrical threats and non-state competitors, is proof of the vulnerabilities of information systems. Vertical functional relationships need to be repositioned and focused on collaboration processes focused on achievable shared goals.

The fundamental goal of the information systems is to provide valuable information to the strategic decision-maker, through a multi-disciplinary approach on the aspects that the decision is going to be made on.

Bibliography

- **C. Voicu, Ş. Prună**, "*Managementul Organizațional al Poliției*", Fundamente teoretice – Mediauno Publishing House. Bucharest, 2007.
- **Gabriel Oprea, Radu Timofte, Constantin Onişoru**, "*România – integrare şi securitate, Balcanii şi Europa*", Publishing House, Bucharest, 2005.
- **M. Pantea**, „*Criza globală şi implicațiile asupra protecției drepturilor de proprietate intelectuală*", Journal of Criminal Investigation, Year I, No.2, Sitech, Craiova, 2008.
- **M. Pantea**, „*Investigarea criminalității economico-financiare*", Pro Universitaria PH, Bucharest, 2010.
- **M. Petrescu, N. Năbârjoiu**, "*Managementul informațiilor*". Vol I. Informații şi securitate, Bibliotheca Publishing House, Târgovişte, 2006.
- **M. Petrescu, N. Năbârjoiu, M. Braboveanu**, "*Managementul informațiilor*". Vol II. Informații clasificate, Bibliotheca Publishing House, Târgovişte, 2008.
- **Zygmunt Bauman**, "*Globalizarea si efectele ei sociale*". Antet Publishing House, Bucharest, 2001.

SUPERVISED DELIVERIES IN ROMANIA AND OTHER EU MEMBER STATES
Part II

Commissioner Liviu BĂLAN
Bucharest Fraud Squad Officer
Prosecutor student PhD. Vasile POPA
Head of Criminal Investigation Department - Public Prosecutor Bihor Court

For a part of the European ex-communist countries, the political, economical and social similar phenomenon of drug use started to become a problem only after the socio-political changes of the 90s, the „open borders" contributing significantly in this. Romania, firstly a transit country for drugs has become a country of consumers in short time. The impact was very high among young people, who out of curiosity, eccentricity or solidarity towards the group broke into drugs, and since 1995 these young people have begun knocking on the doors of psychiatric hospitals being the first addicted patients seeking treatment. The Romanian society has been taken by surprise by this scourge of drugs and, with all efforts, some problems persist.

Keywords: supervised delivery, drugs, precursors, psychotropic substances, trafficking in weapons, money laundry, police co-operation.

Supervised deliveries in Austria

The Austrian legislation does not include any specifications regarding supervised deliveries. According to the case law of the Austrian Supreme Court, there are no legal specifications regarding supervised drug deliveries.

Controlled transit. Authorising participation of the Austrian police in a supervised drug delivery transiting Austrian territory (controlled transit) is guaranteed if the following requirements are met[145]: the transiting countries and the destination country have agreed; all transit countries and the destination countries have taken responsibility for supervising the transport while transiting; assurance was given that the drugs would be seized and charges would be pressed against those involved in the drug business; guarantees were given that police force would intervene in case of risk of losing the transport.

Controlled export. Relevant authorities may authorise controlled transports from Austria to other countries (controlled export) if they are assured that the drugs are going to be seized and charges will be pressed against the people involved in drug trafficking.

Controlled import. A supervised delivery transiting Austria to another State (controlled import) may be authorised. As defined in the Austrian legislation, such procedure is more like a postponement of police intervention (from the moment of arrival on Austrian territory to a later date).

Participation of foreign officers as observers in a supervised delivery is allowed on the grounds of Section 16(1) of the Law on Police Co-operation. Law enforcement actions can be carried out if such actions are provided for in the international legislation.

Using undercover agents or informers is allowed in supervised deliveries, but these persons are not to perpetrate or instigate to perpetration of any kind of crime.

Technical assistance for supervision of supervised deliveries can be granted with no need for a separate authorisation. Assurance will be given that the assistance guarantees continuation of the supervision.

The request for police assistance needs to be submitted to the central drug bureau in due time, so that necessary arrangements can be made timely; in order to allow for adequate action, a notice that there is a request for assistance can be submitted few hours in advance or forty-eight hours in advance (on weekends and holidays), as case may be.

The relevant authorities and bureaus where the request has to be sent in case of controlled transit and export are[146]: Bundesministerium fur Inneres,

[145] European Union's Handbook for Supervised Deliveries, pag. 52.

[146] D. Bucur, „*Criminalitatea transfrontalieră și economia globalizată*", Pro Universitaria Publishing House, Bucharest, 2011.

Generaldirektion fur die öffentliche Sicherheit, Gruppe II/D, Abteilung II/S - Zentralstelle zur Bekämpfung der Suchgiftkriminalität (Federal Ministry of Interior), Central Public Security Bureau, Group II/D, Department 1 I/S. The central bureau in charge for fighting drug crime can be contacted directly as well, via the INTERPOL. In emergency situations, procedures can be carried out based on a verbal request that would subsequently be submitted in writing as well. The Federal Criminal Investigation Bureau – the Central Bureau in charge for fighting drug crime – takes action as required, in order to ensure approval from the Austrian Customs Authority via the Federal Ministry of Finance.

Supervised deliveries in Portugal

Monitored transit is possible. The legislation contains provisions on monitored transit: article 160 A in Law no. 144/99 of August 31, 1999, as subsequently updated in Law no. 104/2001 (legislation on international judiciary co-operation). From a legal perspective, transit monitoring refers to transport of goods and products.

Article 160-A of Law no. 144/99 of August 31, 1999, as subsequently updated in Law no. 104/2001, provides a detailed description of the requirements to be met in order to obtain the authorisation for organising the transit monitoring.

The operation can be authorised at the request of one or several states in cases of investigation of international-level crime for which extradition is allowed by law. Such operations are carried out with a purpose to discover and bring to justice as many criminals as possible. The right to take action, supervise and control investigations belongs to the Portuguese authorities.

The relevant authorities in destination and transit countries need to guarantee that their legislation allows for implementation of proportional sentences for persons involved in criminal activities, and that criminal action against such persons is going to be carried out. The relevant authorities in the destination and transit countries need to communicate right away all detailed information regarding the results of the operation and the actions of the persons involved in criminal activities, especially those on Portuguese territory.

However, despite the fact that authorisation for supervised delivery is granted, the police has the right to intervene in the following situation: when they notice a decrease in safety levels or in any other circumstances that may compromise seizure of the goods, of the products, or the arrest of the people involved.

If the destination country has agreed, the substances transported can be partially replaced with harmless substances. Police in other countries may cross the country borders only with authorisation from the Ministry of Justice (article 145, no. 5 and 7, of Law no. 144/99 of August 31, 1999, as updated by Law no. 104/2001). The requirements stipulated in Law no. 101/2001 (on undercover investigations) and in article 160-B of Law no. 144/1999 of August 31, 1999, as updated by Law no. 104/2001 apply for allowing a third party or an undercover agent to deploy a supervised delivery. Technical assistance from other countries is allowed if it seems indispensable for the success of the operation.

The time needed for approving a supervised delivery will depend on the region where the operation is going to be deployed. The waiting period will be longer if the operation is deployed outside of Lisbon. We should mention that up to now, transit monitoring operations had good results and unfolded with no delays, when the demanding country has submitted the application from the beginning, in the form required by the Portuguese legislation.

The authority in charge for authorising supervised deliveries is the Public Department of Justice from the Lisbon judiciary district - article 160 - A, paragraph 9 of Law no. 144/1999 of August 31, 1999, as updated by Law no. 104/2001.

All international contact is to be carried out through the judiciary police, through the national Interpol bureau (7 of Law no. 144/1999, of August 31, 1999, as updated in Law no. 104/2001). All other authorities, depending on the requests regarding monitored delivery, especially the Direccao General das Alfandegas (General Customs Directorate), have to immediately submit the request to the judiciary police for solving. In emergency situations, the request has to be submitted to the judiciary police – Direccao Central de Investigacao do Trafico de Estupefacientes (General Directorate for Drug Trafficking Investigations).

Supervised deliveries in Finland

Supervised delivery is a strategic procedure. There are no legislative grounds for this procedure. In a number of legislative procedures regarding international co-operation, Finnish legislators have expressed their opinion that supervised deliveries at international level rely on the right of the authority that co-ordinates the action to decide what the right time for seizing the narcotics is, so that the crime can be proved. The co-operation between Police,

Customs and Border Police relies on international regulations, such as the UN Convention against illicit trafficking in drugs and psychotropic substances, drafted in Vienna on December 20, 1988; Article 73 of the Schengen Agreement and other agreements signed by Finland. Finland has also signed bilateral agreements regarding customs and police co-operation with the Russian Federation and the Baltic States, agreements that allow for controlled deliveries. In order to ensure consistency of procedures at a national level and co-ordination of actions between the authorities involved, the Police, Customs, Border Police have signed a joint agreement regarding the obligations that each of these institutions has. Thus, there is certainty that the authorities take action according to their specific obligations during the deployment of such procedures.

If the supervised delivery operation takes place on Finnish territory, but is carried out by officers of another party involved in this procedure, or if the supervised delivery operation is carried out by Finnish police officers on the territory of another country involved in this procedure, on the grounds of Article 40 in the Schengen agreement, the Schengen Agreement shall apply according to the Finnish law or to the law that the Finnish officers have to abide by.[147]

According to Article 40(1) of the Schengen Agreement, police officers of one of the parties involved, who during the investigations they are conducting, keep under observation in their country a person assumed to have been involved in a crime for which extradition can apply, must be authorised to continue monitoring that person on the territory of another state (party involved in this action), with the latter authorising the monitoring operation outside the borders of the first country, based on this country's request for assistance. The authorisation can have certain conditions attached. On demand, monitoring can be assigned to the officers from the country where it takes place. On the grounds of Article 40(2), the officers carrying out the monitoring will be authorised to continue the investigations if, for emergency reasons, the authorisation from the other party involved couldn't be requested in advance. On the grounds of Section 30(a) of the Finnish police legislation, a police officer – as referred to in Articles 40 and 41 of the Schengen Agreement – from another state, including Norway and Iceland, is authorised to continue supervision or technical supervision on Finnish territory, as stipulated in the international agreement that Finland is a signatory party of. In addition, a requirement applies, according to which a Finnish officer may continue supervision or technical supervision on Finnish territory, but not right away. The equipment that Finnish police officers are entitled to use according to the regulations regarding technical supervision can be used for carrying out supervision outside the borders. A report on the supervision carried out has to be submitted to the police office in the district where most of the supervising activity has been carried out.

A police officer from another state must submit a report to the police unit in Finland in charge for the supervision activities, who will forward the report to the local police office it is meant for. In this agreement, officers referred to are: police officers and, with some restrictions, customs officers and border guards.

Based on a request or in other specific situations, the relevant authorities may allow authorities from other states to take part in the supervised deliveries. Officers from other countries may participate as observers, with permission from the relevant authorities. Full replacement of the substances may be allowed; however, this would be decided on a case-by-case basis. Supervised deliveries can be carried out not only in the case of illicit trafficking in drugs and psychotropic substances, but also in the case of other goods and substances. Decisions are made on a case-by-case basis.

The request for carrying out a supervised delivery *may be refused* in the following situations: when it is not compliant to the Finnish law; when no sufficient details are provided; when Finland does not have enough resources to supervise the supervised delivery, or when it is clear that there are other reasons that might endanger the operation.

According to Section 5(1) of the Finnish law on judiciary assistance in cases of crime, a request for legal assistance can be initiated by: the Ministry of Justice; a court; the prosecution attorney; the prejudice investigation attorney. Regarding the entering into force of the European Agreement for Mutual Assistance on Criminality Issues[148], Finland submitted a statement according to which the Police, the Customs and the Border Police are juridical authorities who can request legal assistance when they investigate on damages occurred in a criminal case within their area of competence. On the

[147] European Union's Handbook for Supervised Deliveries, pag. 57.

[148] M. Pantea, D. Bucur, „*Metode şi tehnici de investigare a fraudelor*", Sitech Publishing House, Craiova, 2009.

grounds of the law regarding legal assistance in criminal cases, Finland may provide legal assistance to other authorities than the juridical authorities. The request is approved if the activity requested and the procedure regarding the respective criminal case are the task of the relevant authorities. Paragraph 2 of the decree regarding the entering into force of the Vienna Agreement specifies that, in the case of Finland, the authorities referred to in Article 7(8) of the Agreement are the Ministry of Justice, the Central Criminal Investigation Department, the National Customs Authority and the Border Police. The Central Criminal Investigation Department is also a national unit of the International Criminal Police Organisation (ICPO, Interpol), a national unit of Europol, the central authority in charge (the SIRENE bureau) referred to in the Schengen Agreement and the national unit referred to in the agreements on crime prevention signed with Russia and the Baltic States. Because of the different arrays of prerogatives that the Police, the Customs and the Border Police have, the activities of the latter are restricted with regard to supervised deliveries.

The procedure by which international co-operation on supervised deliveries can be initiated as police co-operation based on a request is widely used in international co-operation. In such cases, the request for legal assistance can be made later on, but it does have to be submitted with no delay. Finland has lined up to this principle. Considering the operational nature of this activity, a request for supervised deliveries should be sent first to the Police, the Customs and the Border Police. This type of request also has to be submitted to the juridical authorities.

Europol, DLOS, Interpol, the national central authority, the SIRENE bureau, the Police, the Customs, the Border Police or other juridical authorities can be used as communication channels both before and after the deployment of supervised deliveries[149]. Formal requests for information can be made via Interpol or through the juridical authorities. There are no deadlines to solving requests regarding controlled deliveries, but such requests are always solved urgently.

Supervised deliveries in Sweden

Supervised deliveries for all types of goods are allowed, and this is a standard technique used by customs and police authorities. There are no legislation grounds for supervised deliveries in place, but there is a handbook on how cases involving supervised deliveries should be approached.

Guaranteed seizure of the goods subject to the supervised delivery and guarantee that charges are going to be pressed against the suspected persons at the end of the operations are the basic requirements for initiating supervised delivery operations, when such operations have Sweden as a destination or transiting country. As investigation and charging of the indictees are compulsory, a preliminary investigation on the supervised delivery would be carried out in Sweden, whether it is initiated in, transiting or having as a destination Sweden.

Staff from abroad would not be allowed to act in cases of supervised delivery. Undercover agents can be used, provided that these are police or customs agents from Sweden. Continuous monitoring of supervised deliveries can be guaranteed. Total replacement is allowed for drugs. This can sometimes create problems, in cases when it is difficult to prove a crime, when the recipients defend themselves by claiming that they were unaware of the fact that the transport to reach them involved illegal merchandise.

Supervised deliveries can be refused in the following situations: when deemed that the benefit of such action is not proportional to the effort implied or the results obtained; when the action to be taken proves to be out of compliance with the Swedish law; when it can lead to crime; when the deed is not deemed as a criminal deed in all the countries involved.

Supervised deliveries in UK

As it is deemed that supervised deliveries are part of the crime investigation activity, we have no specific indications for them. There are no specific legislative grounds for supervised deliveries. There is no requirement that the perpetrators be charged in order to get an approval for the operation. Although UK authorities do expect the perpetrators to be brought to justice, there can be reasons why this would not happen. The drugs in the transport may be replaced totally or partly. The replacement has to be done in such a way, as to meet the requirements of the UK Court of Justice regarding evidence. Supervised deliveries and the afferent monitoring have to be authorised in the UK by officers and, in some cases, by the judiciary. Whoever will decide whether to grant the authorisation or not will do so by taking into account the Principles of the European Convention on Human Rights.

[149] C. Voicu (coord.), M. Pantea, D. Bucur, et all, *„Securitatea financiară a Uniunii Europene în viziunea Tratatului de la Lisabona"*, vol.II, Pro Universitaria Publishing House, Bucharest, 2010.

Supervised deliveries are also used in the case of precursors and other chemical substances. It is expected that the receiving country gets involved in the operations deployed, including with regard to supervising operations (especially in the case of chemicals). There are written instructions regarding supervised deliveries available for the UK police and customs authorities, but these only describe the way in which responsibilities are to be assigned between customs and police. No specification is made as to how supervised deliveries are to be carried out.

Formal representatives of the Member States are allowed to participate in supervised deliveries, under management of UK law-enforcement agents. They are accountable for their actions in the same way as the staff of the UK agencies.

Participating in crime during undercover operations is allowed within the limits specified for the UK agencies.

Request for a supervised delivery *may be refused* in the following situations[150]: no specific agreement from the importing and exporting authorities; potential problems with the chain of evidence to be presented in court; when deemed that the supervised delivery may get out of control; when there is room for violation of criminal investigation practices and procedures.

Requests regarding supervised deliveries would be sent to the NCIS, who will make the necessary arrangements. Both the Interpol NCB in UK and the Europol Office are at the NCIS. UK drug Liaison Officers and Europol Liaison Office may provide advice and assistance.

Formal requests regarding letters rogatory may be done through the Interpol, the UK Europol Liaison Office or the Customs. Although NCIS is the main contact point in cases involving supervised deliveries, both the UK Customs and the Police are in place as communication channels. Police force is in charge with operational issues.

Supervised deliveries in Bulgaria

The law includes provisions that allow for deployment of supervised deliveries. The key provisions are found in the Vienna Convention, the Customs Law, the Ministry of Interior Law, the Criminal Procedure Code of Law and the Law on technical elements and specific equipment. There are no Administrative Regulations in place, regulating on the deployment of supervised deliveries. Supervised deliveries can be deployed only in case of a crime sentenced with more than five years - for instance, drug trafficking, trafficking in weapons and money forging[151].

The initiating or the destination country must inform the relevant authorities on the result/consequences of the supervised delivery. The definition of supervised delivery in Bulgaria is export, transit or import of drugs, precursors or other goods (as case may be). After analysis by the relevant authorities, supervised delivery is only possible with the attorney general's permission. If Bulgaria is the country of destination of the supervised delivery, total replacement of goods is not allowed, and the law only provides for partial replacement. If the supervised delivery starts from Bulgaria, total or partial replacement of the goods is not allowed. Total replacement is allowed in case of transiting. Foreign officers are allowed to participate only as observers. Using foreign informers or undercover agents is allowed. They are allowed to use false identities. Using foreign technical support is only allowed with certain prerequisites. Information obtained through technical support can be used as evidence in court only if compliant to the provisions of the Criminal Procedure Code of Law. The prosecutor may grant permission for deployment of a supervised delivery. There has to be a written request for permission to be granted. A request from a foreign country has to be in written form. Certain exceptions are allowed.

Supervised deliveries in Czech Republic

Supervised deliveries may be deployed in compliance with art. 87b of the Criminal Procedure Code of Law of the Police and Customs, with prior permission from the attorney. The Police and Customs co-ordinate and ensure the exchange of information in the case of international supervised deliveries. A letter rogatory is required, which, in emergency cases, can also be issued during the operation. Drugs or other goods that are in connection with criminal activities can make the object of supervised deliveries. Replacement of substances/items is only possible with prior permission from the judge.

The request for deployment of a supervised delivery has to include as much information as possible (justification of operation; type and amount of drugs or other goods; manner of transport and itinerary; border points; suspect identity; details regarding the officer in charge with initiating the operation; manner of contacting the foreign

[150] European Union's Handbook for Supervised Deliveries, pag. 61.

[151] M. Pantea, „*Investigarea criminalității economico-financiare*", vol.I, Pro Universitaria Publishing House, Bucharest, 2010.

authorities; contact details for the foreign officer in charge with supporting the operation; details regarding the special techniques suggested), in order to help the Czech authorities establish the feasibility and justification of such operation.

As for supervised deliveries that are transiting or starting from Czech territory, it is required that the foreign country involved guarantees that the narcotics or other goods that endanger security and public order would be seized and the persons involved would be sent to court at the end of the operation. With regard to supervised deliveries transiting the Czech Republic, agreement of all the countries affected by the operation is required. Czech authorities would stop the supervised delivery if there is a risk that it becomes uncontrollable.

Foreign officers may participate in supervised delivery operations only as observers; they have no legal power on the territory of the Czech Republic and they have to refer to the Czech authority. They may wear weapons, with prior authorisation, but use of such weapons is only limited to self-defence action. Foreign technical equipment may only be used under control of the Czech authorities. Use of foreign undercover agents is not allowed. Persons who do not belong to the Czech Police (infiltrated persons) are not allowed to participate in supervised delivery operations. Also, the Criminal Procedure Code of Law allows for use of Czech undercover agents. The person has to be a Czech police officer and the operation has to be authorised by a judge.

Supervised deliveries in Estonia

Estonia doesn't have a legal definition regarding supervised deliveries, but it did ratify the UN 1988 Convention that includes such a definition. The current law that governs supervised deliveries is included in the 2001 Customs Code of Law, the Supervision Act and the 2002 Criminal Code of Law.

In most cases, the director general of the Police, Customs or Border may authorise such an operation. When supervised deliveries imply special supervision activities (undercover agents, recording, mail monitoring, etc.), they need to be approved by a judge[152]. In certain circumstances (terrorism, weapons of mass destruction, explosives, involvement of high level officials), the case may be investigated by the Information Service.

Foreign officers may participate in supervised deliveries only under control of Estonian police officers. They will only act according to the instructions and close guidance of Estonian officers. When foreign officers wear weapons, prior permission from the Ministry of Exterior is required. Total or partial replacement of the goods is possible in general. When replacement requires hidden penetration of vehicles/containers, this is deemed as exceptional supervision activity and requires permission of a judge. When it is not an exceptional supervision, the relevant authority is the Director General of the Police, Customs or Border.

Supervised deliveries in Hungary

Supervised deliveries may be deployed in compliance with art. 64 paragraph lf and art. 68f of the Police and Customs Law. The Police and Customs ensure the exchange of information and co-ordination for international deliveries. Use of undercover agents requires prior permission of the attorney. When recording is arranged, a court order needs to be obtained. A letter rogatory is required, and in cases of emergency, it can also be issued during the operation. Objects of supervised deliveries may be drugs or other items related to criminal activity, except for nuclear material and human beings[153]. Replacement of substances or objects is possible, but the Hungarian law especially focuses on drug possession, and partial or total replacement may be deemed as minor crime instead of major crime.

The request for deploying a supervised delivery has to include as much information as possible (justification of the operation; type and amount of drugs or other goods; manner of transportation and itinerary; border points; identity of the suspect; details regarding the officer in charge for initiating the operation; how to contact the foreign authorities; contact details of the foreign officer in charge for supporting the operation; details regarding the special techniques suggested), in order to help Hungarian authorities establish the feasibility and justification of such operation. As for supervised deliveries transiting or starting from Hungarian territory, the foreign country involved needs to provide a guarantee that the narcotics or other goods that endanger security and public health would be seized and that the persons involved would be sent to court at the end of the operation. Supervised deliveries transiting Hungarian territory require the agreement of all countries that would be affected by the operation. Hungarian authorities would stop the supervised delivery if there is a risk that it becomes uncontrollable.

[152] C. Voicu (coord.), M. Pantea, N. Ghinea, ş.a., „*Investigarea Fraudelor*", Vol. II, Sitech Publishing House, Craiova, 2009.

[153] M. Pantea (coord.), S. Constantinescu, O. Şanta, „*Jocurile de noroc în contextul globalizării*", Vol. II Sitech Publishing House, Craiova, 2010.

Foreign officers may participate in supervised delivery operations only as observers; they have no legal power on Hungarian territory and they have to refer to the Hungarian authority. They may wear weapons, with prior authorisation, but use of such weapons is limited to self-defence actions. Use of foreign technical equipment is only made under control of the Hungarian authorities. Use of undercover agents is allowed under the Police Law and the Criminal Procedure Code of Law. The person may be a Hungarian officer or a foreign undercover agent, but the operation needs to be approved by the prosecutor. Another prerequisite is to have permission from all the countries involved. Officers and undercover agents may participate in the operation. Informers are not allowed to participate. Provision of technical assistance (i.e. technical supervision, tracking devices) by foreign authorities is only allowed under supervision of Hungarian officers. The central contact point for supervised deliveries to Hungary or transiting Hungary is NEBEK, the international relations co-ordination unit. NEBEK is operational around the clock and staffed with officers fluent in several foreign languages who would right away inform and co-ordinate supervised delivery operations with the Hungarian police, customs and border. NEBEK would assign implementation of the supervised delivery to the police or to the customs. The designated unit would co-ordinate the specific aspects of the operation with the foreign unit involved.

Supervised deliveries in Latvia

Latvia is a party in the UN Conventions of 1959, 1972 and 1988. Supervised deliveries in Latvia are regulated by the Law on operational activities (art. 3 and 15), the Customs Law (art. 119), the Law on Public Revenues (art. 13), the Law on Public Border Protection (art. 15.8) and implementation of the police and customs regulations. A written request is needed for deploying a supervised delivery operation. There is no central unit that can deploy such an operation, but there are contact points within the police, customs and border services.

Legal provisions regarding supervised deliveries only distinguish between import, export and transit. Total replacement is only allowed for supervised deliveries transiting the country or those meant for export. Total replacement is not allowed for import deliveries. A sample has to be kept in each pack. Foreign or national technical support and equipment can be used during the operation. Even when foreign officers only participate in the operation as observers, they have to be available to testify in court as witnesses. Former informers and undercover agents are allowed to use false identities during the operation. If necessary, they may be asked to testify in court. Their true identity needs not to be revealed.

Relevant authorities that can accept supervised drug deliveries are the Police, the Customs and the Border Police. These institutions need an approval from the prosecutor. The request for deploying a supervised delivery needs to be done in writing (including fax).

Supervised deliveries in Lithuania

Supervised deliveries in Lithuania are regulated by the national law, the international agreements, and conventions. Objects of a supervised delivery may be illegal goods, suspect goods and/or other goods. The law on supervised deliveries (subsection 3, point 20) allows for import, transit and export of illicit goods or other suspect items. Total or partial replacement of goods in a supervised delivery is allowed, but it needs to be documented. If replacement is done in a foreign country, a foreign expert witness has to provide information regarding the quality and amount of the goods replaced. In some cases, the court may request the original proof (the goods replaced).

Foreign officers are allowed to participate in a supervised delivery, but only as observers. They are not allowed to wear weapons. Participation of foreign undercover and infiltrated agents is allowed, and they are of the same order as Lithuanian officers. Their true identity needs not to be revealed. If foreign or national technical support and equipment is needed, it can be used during a supervised delivery. The time needed for obtaining permission to deploy a supervised delivery varies on a case-by-case basis.

Supervised deliveries in Poland

The legal definition of supervised deliveries is given in the Police Law, the Border Police Law and the National Security Bureau Law. All these laws were decreed in 1990 and amended in 1995 and 1996. A supervised delivery operation is defined as 'undercover supervision of relocation, storing or handing over of items with the goal to obtain proof for the crime perpetrated, identify the perpetrators or seize the goods resulted from criminal activities'[154].

The supervised delivery operation may be deployed prior to a formal investigation and only in strict connection with the criminal activities provided for in the law. The operation may not endanger

[154] C. Voicu (coord.), M. Pantea, D. Bucur, et all, *„Securitatea financiară a Uniunii Europene în viziunea Tratatului de la Lisabona"*, *op. cit.*, pag. 68.

human health and life. The operation can only be deployed if approved by the Ministry of Interior and by the national security chief's Office Management. After deployment of a supervised delivery, investigation is compulsory irrespective of the result of the operation. The written request for assistance needs to include: identification of the goods; the amount and location where the goods are to be placed; manner of transportation; place and time of crossing the border; destination; names of officers in charge with the supervised delivery and of those accompanying the delivery (i.e. undercover agents), as well as the weapons they wear; specifications of the equipment used; the authority requesting the supervised delivery, as well as any other relevant information.

The Police, the Customs and the Border Police may lead the supervised delivery operation with prior approval from the prosecutor. The request needs to be in writing. According to the legislation in force, supervised deliveries may only be deployed in connection with the following categories of criminal activities:

A. Police prerogatives: illegal production of and trafficking in drugs and psychotropic substances; illegal trafficking in weapons, ammunition and explosives; illegal trafficking in nuclear and radioactive substances;

B. Border Police prerogatives: smuggling of goods inside or outside the country;

C. National Security Office prerogatives: espionage and terrorism; illegal production of and trafficking in drugs, psychotropic substances; possession of weapons, ammunition, explosives; trafficking in radioactive and nuclear substances (in connection with terrorist activities that threaten national security).

Total/partial replacement of the drugs (or other materials) with harmless substances (or materials) is possible in a supervised delivery. Foreign officers may not participate in supervised deliveries. Although using Polish undercover agents is allowed during such operations, use of foreign undercover agents is not allowed. The Police, the Customs and the Border Police are the authorities that can lead a supervised delivery. Deployment of the supervised delivery operation may be approved by the chief of the Regional Police and the prosecutor.

According to the Polish law, the attorney general needs to be informed right away about all authorisations issued, how the operation is to be deployed, and the result of the operation. The prosecutor will also obtain information regarding major events, and in case of existing endangerment to human health and life, or in case of existing presumption of illegality, he may stop the supervised delivery.

Supervised deliveries in Romania

There are provisions regarding the import, export and transit, as well as bilateral and trilateral agreements. Romania is a party in all international agreements in the field of fighting drugs, terrorism and any other forms of serious crime. The requirements and procedures regarding supervised deliveries are regulated by law, the administrative guide and the service instructions. All goods, as well as the source of the criminal act may be subject or object of a supervised delivery[155]. Exception is the goods that are object of national security, public order or public health. The permission to deploy a supervised delivery is given by the prosecutor.

Permission for deploying a supervised delivery is given by the prosecutor. Guaranteed interception of perpetrators and goods at any time. Guaranteed investigation on all perpetrators, seizure of goods and bringing of perpetrators to court. Total or partial replacement is allowed by law. The report or testimony of an expert regarding the quality and amount of goods is required.

With the prosecutor's permission, foreign officers are allowed to participate in the supervised delivery, accompanied by a foreign officer. Use of technical equipment is allowed and requires endorsement from a prosecutor. The time needed for obtaining an approval is 12-24 hours (about 2 hours for air traffic); (the time for obtaining permission is shorter in emergency situations).

The documents needed (the written permission) need to be forwarded to the prosecutor as soon as possible. In special situations, this can be done by phone. Foreign informers or undercover agents are allowed to use false identities and code names. They remain anonymous and are not required to participate as witnesses in court. The relevant authority is the prosecutor of the High Court for Cassation and Justice. Communication channels: the request may be sent by fax, followed by the original formal letter from the prosecutor of the country requesting permission.[156]

Supervised deliveries in Slovenia

The legal grounds for implementation of supervised deliveries are the Criminal Procedure Code of Law and the Police Law. There is a Mutual

[155] M. Pantea, *„Investigarea criminalității economico-financiare"*, *op. cit.*, pag. 11.

[156] European Union's Handbook for Supervised Deliveries, p. 74

Co-operation Agreement between the Police and the Customs Authority regulating the collaboration between these institutions. It also regulates mutual exchange of information. Both authorities co-operate within the limits of the legal framework. The police is in charge with the prerogatives of the Border Police. The Police leads all supervised deliveries. There is a distinction in supervised deliveries between import, export and transit. In the case of transit or export, the supervised delivery is only possible if all countries involved have agreed. The permission needs to include: approval for deploying a supervised delivery; guaranteed full supervision of the transport; guaranteed seizure and arrest of perpetrators.

The law provides for a possibility to totally or partially replace the goods. When replacement is done in a foreign country, the relevant authority needs to make sure that such operation is allowed by the law and recognised as proof in the criminal case. The amount, quality and type of goods need to be accompanied by documents and photos or video materials regarding the replacement.

Foreign officers are allowed by the judiciary police authority to participate in an import or transit supervised delivery. Participation of foreign informers and undercover agents is allowed. The agreement of the chief of police is needed. If false identities are used, the prosecutor's agreement is needed. The personal data of such persons need to be provided to the prosecutor at the moment of requesting permission. In such case, the foreign undercover agent has the statute of a Slovenian confidential informer. The Criminal Procedure Code of Law does not allow for use of an 'agent provocateur'.

The result of an undercover investigation needs to be presented to the prosecutor[157]. The relevant court may decide whether the foreign undercover agent needs or not to be a witness. Should he need to testify, his identity would remain secret. Usually, when entering a foreign country, a foreign undercover agent is not allowed to wear weapons. A request for approval may be submitted to the judiciary police in exceptional situations. Use of technical equipment is allowed by law. In cases of risk for losing the goods, the perpetrators need to be arrested, and the goods seized. A written approval is needed from the relevant Slovenian authorities. The time for obtaining the permit varies on a case-by-case basis, ranging between 8 and 48 hours. The relevant authority is the public prosecutor's office.

Supervised deliveries in the Slovak Republic

The rules regarding supervised deliveries are established in art. 88a of the Criminal Procedure Code of Law, as follows:

1) a supervised delivery means a transport that 'is imported, exported or transiting, and is subject to a supervision, if there are solid grounds to believe that it is an illegal transport containing narcotics; psychotropic substances; precursors; poison; nuclear or radioactive material; forged money or public works; fire weapons or weapons of mass destruction, ammunition or explosives, with a view to identifying the persons that have taken part in such transport';

2) the order to start such supervision is issued by the judge or by a prosecutor;

3) in case of emergency, the prosecutor may issue an order that needs to be confirmed by a judge within maximally 3 days, otherwise it becomes invalid;

4) supervision of a transport would be led by the competent elements of the Police Corps, in liaison with the Customs Administration, which would be informed in advance about any such procedures;

5) subject to certain requirements and rules, informational and operational technology, as well as localisation devices may be used during a supervised delivery.

Approval to deploy the supervised delivery is required from the transit countries. The following information is required: the grounds of the operation; means of transport and routes used; name of the person in charge with the operation in the country of origin, and potential contact persons or points. The request for approval of the supervised delivery may be rejected when there is no adequate information regarding the transport; when there is a risk of losing the transport, or when other countries do not agree to the operation.

Assistance or support from foreign services is possible only if they are willing to temporarily decline their legal powers and work under authority of the relevant Slovak authorities. Technical co-operation is possible under the same authority. The Slovak law provides for use of undercover agents and informers, but it forbids using foreign undercover agents or informers on Slovak territory. Total or partial replacement of drugs with harmless substances is allowed. Exchange of information with other countries on supervised deliveries goes straight through the National Anti-drug Service or through other channels, such as the Europol, Interpol and liaison officers.

[157] M. Pantea, *„Protecția penală a proprietății intelectuale în era globalizării"*, Expert Publishing House, Bucharest, 2008.

The National Anti-drug Service would contact the Customs Bureau to make all arrangements in case of a supervised delivery of narcotics, psychotropic substances and precursors, and is in charge with co-ordinating between Police and Customs. For other substances listed in art. 88a of the Criminal Procedure Code of Law, the institution in charge for the required arrangements is the National Interpol Bureau. The National Anti-drug Service would also contact the judge and the prosecutor in order to obtain the approvals needed for deploying the operation.

Selective bibliography:

- **C. Voicu** (coord.), **M. Pantea, D. Bucur**, **ş.a.**, „*Securitatea financiară a Uniunii Europene în viziunea Tratatului de la Lisabona*", vol.II, Ed. Pro Universitaria, Bucharest, 2010.
- **C. Voicu** (coord.), **M. Pantea, N. Ghinea**, **ş.a.**, „*Investigarea Fraudelor*", Vol. II, Sitech, Craiova, 2009.
- Criminal Procedure Code of Law of the Republic of Slovenia
- Criminal Procedure Code of Law of the Slovak Republic
- Customs Law in Latvia
- **D. Bucur**, „*Criminalitatea transfrontalieră şi economia globalizată*", Pro Universitaria Publishing House, Bucharest, 2011.
- European Union's Handbook on Supervised Deliveries
- Law on Operational Activities in Latvia
- Law on Police in the Republic of Slovenia
- Law on Protection of Public Border in Latvia
- Law on Public Revenues in Latvia
- **M. Pantea** (coord.), **S. Constantinescu, O. Şanta**, „*Jocurile de noroc în contextul globalizării*", Vol. I and II Sitech Publishing House, Craiova, 2010.
- **M. Pantea**, „*Investigarea criminalității economico-financiare*", vol.I, Pro Universitaria Publishing House, Bucharest , 2010.
- **M. Pantea**, „*Protecția penală a proprietății intelectuale în era globalizării*", Expert Publishing House, Bucharest, 2008.
- **M. Pantea, D. Bucur**, „*Metode şi tehnici de investigare a fraudelor*", Sitech Publishing House, Craiova, 2009.
- UN Convention against illicit trafficking in drugs and psychotropic substances drafted in Vienna on December 20, 1988

ANALYSE DES DISPOSITIONS CIRCONSCRITES À L'ASSISTANCE JUDICIAIRE APPLICABLES DANS LA RELATION AVEC LES ÉTATS MEMBRES DE L'UNION EUROPÉENNE

Lecteur universitaire Dr. Marin Claudiu ȚUPULAN,
Académie de Police "Alexandru Ioan Cuza"
Drd. Adrian ANGHELUS,
Chef de section – Direction Générale de la Police de la Ville de Bucarest

Confondue avec la criminalité transfrontalière, l'administration de la justice ne doit pas être obstruée par les différences entre les systèmes judiciaires des États membres et du manque de reconnaissance mutuelle des décisions des juges. À cet égard, il est extrêmement important d'encourager la coopération efficiente en ce qui concerne l'obtention de preuves en matière pénale. Dès que le Traité d'Amsterdam est entré en vigueur, plusieurs textes ont établi clairement la nécessité de recueillir des preuves dans un contexte transfrontalier et de promouvoir leur admissibilité devant les tribunaux. Le programme de mesures afin d'appliquer le principe de la reconnaissance mutuelle prévoit que, en ce qui concerne les ordres afin d'obtenir des preuves, l'objectif est d'assurer l'admissibilité des preuves, la prévention de la disparition de celle-ci et de faciliter l'exécution des ordres de perquisition ou de mise sous séquestre, pour que, dans une cause pénale, les preuves puissent être fournies rapidement.

Mots-clés: ordre de confiscation, État membre, protection judiciaire, principe de l'assistance mutuelle, décision de gel de biens, décision de gel de preuves.

Les conclusions de Tampere[158] identifient la reconnaissance mutuelle comme la pierre angulaire de la coopération judiciaire et mettent en évidence le fait que tant une reconnaissance mutuelle consolidée des décisions et des sentences des juges, comme le rapprochement législatif nécessaire, faciliterait la coopération entre les autorités et la protection judiciaire des droits individuels. Les conclusions souligne, également, que le principe de la reconnaissance mutuelle devrait s'appliquer aux décisions antérieurs au jugement, en particulier à celles qui permettraient aux autorités compétentes d'agir rapidement pour obtenir des preuves et pour mettre sous séquestre des biens faciles à transférer, et que les preuves recueillies légalement par les autorités d'un État membre devrait être admissibles devant les tribunaux d'autres États membres, en tenant compte des normes standards qui s'appliquent dans ces États.

Le programme de La Haye[159] stipule que le développement ultérieur de la coopération judiciaire en matière pénale est indispensable pour assurer la continuité appropriée aux enquêtes menées par les autorités qui appliquent les lois des États membres et d'Europol. Le programme indique, également, qu'on devrait achever le vaste programme de mise en œuvre du principe de la reconnaissance mutuelle des décisions des juges en matière pénale relatif à des décisions des juges prononcées dans tous les stades des procédures en matière pénale, comme la collecte et l'admissibilité des preuves, et que, dans ce contexte, on devrait accorder plus d'attention aux propositions supplémentaires. Le plan d'action pour appliquer le Programme de La Haye[160] prévoit, également, une proposition d'établir des standards minimaux en ce qui concerne l'obtention de preuves, afin d'assurer leur admissibilité.

Dans l'UE, les normes existantes relatives à l'obtention de preuves en matière pénale sont de deux types. D'un côté, il y a des instruments fondés sur le principe de l'assistance mutuelle. Parmi eux, il y a, notamment, la Convention européenne d'assistance mutuelle en matière pénale, complétée par l'Accord de Schengen et par la Convention relative à l'entraide judiciaire en matière pénale et son protocole. D'autre part, il y a des instruments

[158] Conseil européen des 15 et 16 octombrie 1999, les conclusions de la Presidence - SN 200/1/99 REV 1

[159] Programme de la Haye: renforcer la liberté, la sécurité et la justice dans l'Union européenne (JO C 53, 3.3.2005, p.1)

[160] Plan d'action du Conseil et de la Commission mettant en œuvre le Programme de La Haye visant à renforcer la liberté, la sécurité et la justice au sein de l'Union Européenne (JO C 198, 12.8.2005, p. 1)

fondés sur le principe de la reconnaissance mutuelle, qui comprennent, en particulier, la *Décision-cadre relative au mandat européen d'obtention de preuves.* Les instruments d'assistance mutuelle et ses protocoles se réfèrent à l'assistance mutuelle en général, mais ils contiennent aussi des normes relatives aux formes spécifiques d'assistance mutuelle, comme par exemple l'interception de télécommunications ou l'utilisation de la vidéoconférence. Généralement, les demandes d'assistance mutuelle sont envoyées directement de l'autorité émettrice vers celle exécutive. Sauf si l'autorité d'exécution invoque un motif valable de refus, la demande est exécutée le plus tôt possible et, si possible, dans les délais spécifiés par l'autorité émettrice. Pour assurer l'admissibilité des preuves obtenues, les autorités de l'État sollicité se conforme aux formalités et aux procédures indiquées par les autorités de l'État requérant, à condition qu'elles contreviennent pas contraires aux principes fondamentaux de droit de l'Etat requérant.

La décision-cadre relative au mandat européen d'obtention de preuves applique le principe de la reconnaissance mutuelle des décisions des juges en vue d'obtenir des preuves afin de les utiliser au sein des procédures en matière pénale. Un mandat européen d'obtention de preuves peut être délivré pour obtenir des preuves qui existent déjà et qui sont directement disponibles sous la forme d'objets, de documents ou de données. Il est émis en utilisant un formulaire type, traduit dans la langue officielle de l'État d'exécution. Les autorités de l'État doivent constater que, dans un cas similaire, les preuves pourraient être obtenue, également, conformément au droit interne et que les preuves demandées sont nécessaires et proportionnelles pour la procédure en cause. Le mandat est reconnu et exécuté dans un terme fixe, sauf s'il y a une bonne raison de refus. L'exécution d'un mandat européen d'obtention de preuves n'est pas soumise à une vérification de la double incrimination, s'il n'est pas nécessaire d'effectuer une perquisition ou de mettre séquestre ou si l'infraction est punissable d'une peine de prison d'au moins trois ans et se trouve dans la liste des infractions de la directive-cadre. Pour assurer l'admissibilité des preuves obtenues, les autorités de l'État d'exécution ont l'obligation de respecter les formalités et les procédures indiquées par les autorités de l'État d'émission, à condition qu'elles ne contreviennent pas aux principes fondamentaux de droit de l'État d'exécution.

Comme nous avons mentionné ci-dessus, les normes existantes relatives à l'obtention de preuves en matière pénale dans l'UE se composent de plusieurs instruments coexistantes, fondés sur des principes fondamentaux et différents, à savoir celui de l'assistance mutuelle et celui de la reconnaissance mutuelle. Cela rend difficile appliquer les normes et peut causer de la confusion parmi les praticiens. Cela peut, également, conduire à des situations où les praticiens n'utilisent pas l'instrument le plus approprié aux preuves cherchées. Enfin, ces facteurs peuvent empêcher, par conséquent, une coopération transfrontalière efficace. En outre, les instruments basés sur l'assistance mutuelle peuvent être considérés lents et inefficaces, en tenant compte du fait qu'ils ne nécessitent pas l'utilisation des formulaires types lors de l'émission d'une demande pour obtenir des preuves qui se trouvent dans un autre État membre ni de termes fixes pour exécution de la demande. En même temps, les instruments fondés sur la reconnaissance mutuelle peuvent être considérés insatisfaisants, parce qu'ils ne réglementent que certains types de preuves et prévoient de nombreux motifs de refus d'exécution de l'ordre.

Exécution dans l'Union europeenne de decisions de gel de biens ou des preuves

La collecte des preuves et leur admissibilité sont des questions importantes dans les étapes avant le procès et durant le procès: les preuves permettent l'identification de la personne qui a commis l'infraction, ou peuvent confirmer le contraire, à savoir son innocence.

Parmi les mesures destinées à donner vie au principe de la reconnaissance mutuelle prévue dans le programme adopté par le Conseil le 29 novembre 2000, conformément aux conclusions de Tampere d'octobre 1999, il y avait aussi l'adoption d'un instrument concernant le gel des preuves ou des biens.

Cet instrument a été adopté comme une *Décision-cadre 2003/577/JAI du Conseil du 22 juillet 2003 relative à l'exécution dans l'Union européenne des décisions de gel de biens ou d'éléments de preuve*[161].

L'objet de réglementation de la présente décision-cadre est, conformément à l'article 1, d'établir les normes selon lesquelles un État membre reconnaît et exécute sur son territoire une décision de gel émise par une autorité judiciaire d'un autre État membre dans les procédures pénales.

La décision-cadre ne porte pas préjudice aux droits fondamentaux et aux principes juridiques

[161] Publiée dans le "Journal officiel de l'Union Européenne" nr.L196 le 2 août 2003

fondamentaux consacrés dans l'article 6 du Traité sur l'Union européenne.

Par «décision de gel», en vertu de l'article 2 de la décision-cadre, on comprend toute mesure prise par une autorité judiciaire compétente de l'État d'émission afin d'empêcher provisoirement toute opération de destruction, transformation, déplacement, transfert ou aliénation d'un bien susceptible de faire l'objet d'une confiscation ou de constituer un élément de preuve. Dans le sens de la décision-cadre (article 2, lettre d), «bien» signifie tout bien, indépendamment de sa nature, corporel ou incorporel, mobilier ou immobilier, mais aussi les actes juridiques ou les documents qui prouvent un titre ou un droit sur ce bien, dont l'autorité judiciaire compétente de l'État d'émission considère qu'il:

- ✓ constitue le produit d'une infraction mentionnée dans l'art. 3 ou correspond complètement ou partiellement à la valeur de ce produit ou
- ✓ constitue l'instrument ou l'objet d'une telle infraction.

Conformément aux dispositions de l'article 3, la décision-cadre s'applique aux décisions de gel émises afin d'obtenir des preuves ou la confiscation ultérieure du bien.

L'article 5 de la décision-cadre crée le principe de la reconnaissance et de l'exécution immédiate de l'ordre de gel, sans autre formalité. L'autorité judiciaire d'exécution prend sans délai les mesures nécessaires pour exécuter immédiatement l'ordre, de la même façon que pour une décision de gel émise par une autorité de l'État d'exécution, sauf si celle-ci invoque l'un des motifs de non-reconnaissance ou de non-exécution permis par l'art. 7 ou l'un des motifs d'ajournement prévus dans l'art. 8.

L'autorité judiciaire d'émission peut solliciter qu'on respecte certaines formalités qui garantissent que les preuves obtenues sont valables, à condition que ces formalités et procédures ne contreviennent pas aux principes fondamentaux de droit de l'État d'exécution.

Un rapport concernant l'exécution de l'ordre de gel est envoyé à l'autorité compétente de l'État d'émission sans délai, par tout moyen qui permet un enregistrement écrit.

La décision-cadre permet prendre toute mesure coercitive supplémentaire qui devient nécessaire en raison de la décision de gel en conformité avec les règles de procédure applicable dans l'État d'exécution.

La décision concernant l'exécution d'un ordre de gel doit être prise et communiquée le plus tôt possible, si possible même dans 24 heures après avoir reçu l'ordre en question.

Le gel des biens doit, comme règle, être maintenu dans l'État d'exécution jusqu'au moment où l'État a résolu définitivement la demande mentionnée dans l'art. 10, para. (1), lettre (a) ou (b). Cependant, l'État d'exécution peut, après avoir consulté l'État d'émission, et conformément à la législation et aux pratiques nationales, mettre des conditions appropriées en tenant compte des circonstances du cas afin de limiter la durée du gel du bien. S'il a l'intention de lever la mesure, l'État d'exécution informe l'État d'émission et lui offre la possibilité de formuler des observations.

D'autre part, les autorités judiciaires de l'État d'émission doit informer sans délai les autorités de l'État d'exécution sur l'annulation de l'ordre de gel, et l'État membre d'exécution a, dans ce cas, l'obligation d'appliquer l'annulation de l'ordre le plus tôt possible.

Dans le cas mentionné où le certificat n'est pas émis, est incomplète ou ne correspond pas clairement à l'ordre de gel, l'autorité judiciaire peut établir un délai pour émettre, compléter ou la corriger le document, accepter un document équivalent ou, si celle-ci se considère suffisamment édifiée, ne pas appeler à cet égard à l'autorité judiciaire d'émission.

Toute décision de refuser la reconnaissance ou l'exécution est prise et notifiée le plus tôt possible aux autorités judiciaires compétentes de l'État d'émission par tout moyen qui permet un enregistrement écrit.

En même temps, dans le cas où, dans la pratique, l'exécution de l'ordre de gel est impossible parce que le bien ou les preuves ont disparu, ont été détruits, ne peuvent pas être trouvés à l'endroit indiqué dans le certificat ou parce que l'endroit où sont les biens ou les preuves n'a pas été indiqué assez clairement même après avoir consulté l'État d'émission, les autorités judiciaires compétentes de l'État d'émission doivent être immédiatement informées à cet égard.

À l'exception des motifs de refus, il y a trois raisons pour ajourner l'exécution de l'ordre de gel:

a) dans le cas où son exécution risque de nuire à une enquête pénale en cours, jusqu'au moment qu'on trouve opportun;

b) dans le cas où les biens ou les éléments de preuve concernés ont déjà fait l'objet d'une décision de gel dans les procédures pénales et jusqu'au moment où cette mesure est levée;

c) dans le cas où, lorsqu'il s'agit d'une décision de gel d'un bien dans une procédure pénale pour le

confisquer ultérieurement, ce bien fait déjà l'objet d'une décision prononcée dans une autre procédure dans l'État d'exécution, et jusqu'au moment où on lève cette décision. Cependant, ce cas d'ajournement ne s'applique que si une telle décision est prioritaire sur les décisions de gel nationales ultérieures dans le sein d'une procédure pénale, conformément au droit intern.

Le certificat, dont le formulaire est inclus dans l'annexe de la décision-cadre, est réglementé par l'art. 9 de l'acte communautaire. Cela doit être complétée par l'autorité judiciaire d'émission, qui certifie tant l'exactitude de son contenu, comme la traduction dans la langue ou dans l'une des langues officielles de l'État d'exécution, ou si l'État membre d'exécution en cause accepte, dans une ou plusieurs langues officielles des institutions des Communautés européennes.

En ce qui concerne le régime ultérieur du bien gelé, l'art.10 de la décision-cadre réglemente trois hypothèses[162]:

a) l'ordre est accompagné d'une demande de transfert de preuves vers l'État d'émission;

b) l'ordre est accompagné d'une demande de confiscation par laquelle on sollicite soit l'exécution du mandat de confiscation émis dans l'État d'émission, soit la confiscation dans l'État d'exécution et l'exécution ultérieure d'un éventuel mandat;

c) l'ordre contient, dans le certificat, une instruction sur le maintien du bien dans l'État d'exécution en attendant une demande mentionnée aux lettres (a) ou (b). L'État d'émission indique dans le certificat la date à laquelle (selon lui) la demande sera envoyée.

Dans les deux premières situations, les demandes sont envoyées par l'État d'émission et traitées par l'État d'exécution en conformité avec les normes applicables à l'assistance juridique en matière pénale et avec les règles applicables à la coopération internationale en matière de confiscation. Par dérogation des normes en matière d'assistance juridique, l'État d'exécution ne peut pas refuser les demandes mentionnées dans le paragraphe (1), lettre. (a), invoquant l'absence de la double incrimination, si ces demandes concernent les infractions énumérées dans l'art. 3, paragraphe (2) et si ces infractions sont punies dans l'État d'émission par une peine d'emprisonnement d'au moins trois ans.

L'article 11 établit l'obligation pour les États membres de prendre toutes les mesures nécessaires afin d'assurer que toute mesure de gel effectuée conformément à l'art. 5 peut faire l'objet d'un moyen d'attaque sans effet suspensif pour toute personne intéressée, y compris les tiers de bonne foi : l'action est intentée devant une cour d'assise de l'État d'émission ou de l'État d'exécution, conformément au droit interne de chacun de ces États.

Les raisons de fond qui sont à la base de l'émission de la décision de gel ne peuvent être contestées que par une action intentée devant un tribunal de l'État d'émission.

Si l'action est ouverte dans l'État d'exécution, l'autorité judiciaire de l'État d'émission est informée sur ce sujet et sur les motifs invoqués pour pouvoir utiliser les éléments qu'on considère nécessaires. Celle-ci est informée sur les résultats de cette action.

Les États d'émission et d'exécution prennent les mesures nécessaires pour faciliter la pratique du droit d'intenter une action mentionnée dans l'art. 11, paragraphe (1), en particulier en fournissant toutes les informations nécessaires aux parties intéressées. L'État d'émission veille le fait que toute terme de pratiquer le droit d'intenter une action en justice s'applique de façon qu'elle garantisse aux personnes intéressées la possibilité de recourir à un autre moyen d'attaque effectif.

La décision-cadre n° 2003/577/JAI a été transposée dans le droit interne par l'adoption de la Loi n° 222/2008 pour modifier et compléter la Loi n° 302/2004 concernant la coopération judiciaire internationale en matière pénale.

Par la loi mentionnée ci-dessus ont été désignés comme des autorités judiciaires d'émission les parquets, pour l'étape de procédure pénale, et les tribunaux, pour l'étape du procès. Dans le cas où les décisions de gel sont émises par les autorités roumaines, la traduction du certificat standard prévu dans l'Annexe 2 à la Loi sera réalisée dans la langue sollicitée par l'État membre d'exécution.

Comme autorités judiciaires d'exécution ont été désignés les parquets qui sont à côté des tribunaux, dans l'étape de la procédure pénale, et les tribunaux, dans l'étape du procès, dans la circonscription territoriale desquels est le bien pour lequel l'ordre de gel a été émis. Dans le cas où la décision de gel se réfère à plusieurs biens qui sont dans la circonscription territoriale de deux ou plusieurs autorités judiciaires, la compétence revient, selon la phase du procès, au Parquet qui est à côté du Tribunal de Bucarest ou au Tribunal de Bucarest.

[162] *http://www.cdep.ro/proiecte/2008/000/60/0/em60.pdf*

Dans le cas où les autorités judiciaires roumaines recevront pour exécution des ordres de gel émis par les autorités d'autres États membres de l'UE, conformément à la déclaration de Roumanie dans l'art. 9 de la Décision-cadre n° 2003/577/JAI, ceux-ci doivent être traduits en roumain. Par conséquent, dans cette affaire, la seule langue acceptée par la Roumanie est le roumain[163].

L'application du principe de la reconnaissance mutuelle aux sanctions pécuniaires

L'application de la liberté de circulation permet aux citoyens de voyager à travers l'Europe et aux entreprises européennes de dérouler des activités commerciales avec un minimum de difficulté. Cette liberté a créé de nouveaux défis en ce qui concerne l'application des sanctions contre ceux qui ne sont pas des résidents de l'État dans lequel l'infraction a été commise. Jusqu'à présent, l'effet a été qu'un grand nombre d'infractions transfrontalières punies de sanctions financières restaient impunies en raison de leur caractère transnational. Les systèmes précédents d'exécution soit ne fonctionnaient pas soit étaient lents et inefficaces[164].

Le principe de la reconnaissance mutuelle des décisions des juges implique non seulement la reconnaissance mutuelle des mesures juridiques temporaires, telles que le gel et la levée pour la confiscation, mais aussi la reconnaissance mutuelle des décisions définitives qui imposent des sanctions pénales, telles que celles financières, les ordres de levée pour la confiscation de produits infractionnels et des décisions qui imposent des sentences ou des mesures privatives de liberté.

Le Conseil européen de Tampere a déclaré que la reconnaissance mutuelle devrait s'appliquer aux sanctions financières imposées par les autorités judiciaires ou administratives afin de faciliter la mise en œuvre de ces sanctions dans un autre État membre. Le programme de mesures publié en janvier 2001 a donné la priorité à un instrument qui applique le principe de la reconnaissance mutuelle des sanctions financières[165].

La décision-cadre du Conseil 2005/214/JAI du 24 février 2005 concernant l'application du principe de reconnaissance mutuelle aux sanctions pécuniaires[166] est le résultat d'une initiative de la Grande-Bretagne, la République française et le Royaume de Suède, qui élargit la portée de la reconnaissance mutuelle aux sanctions financières imposées par les autorités judiciaires et administratives d'un autre État membre.

Selon l'art. 1, lettre a) de la décision-cadre, par «décision» on comprend une décision définitive par laquelle on applique une peine pécuniaire, composé d'une amende payable par une personne physique ou morale, si la décision a été prise par: a) un tribunal de l'État membre d'émission pour une infraction prévue dans la législation de cet État ; b) une autorité de l'État membre d'émission, autre qu'une cour d'assise de l'État membre d'émission, pour une infraction prévue par la loi cet État, à condition que la personne concernée ait le droit d'attaquer la décision devant un tribunal compétent en matière pénale; c) une autorité de l'État membre d'émission, autre qu'une cour d'assise de l'État d'émission, pour une violation du droit national l'État membre d'émission, à condition que la personne concernée ait le droit d'attaquer la décision devant un tribunal compétent en matière pénale ; d) un tribunal compétent dans les causes pénales, lorsque la décision a été prise pour les faits énoncés dans la lettre c).

Conformément à l'article 1, lettre a), le terme «peine pécuniaire» signifie l'obligation de payer :

- ✓ une somme d'argent en raison d'une condamnation pour une infraction prévue dans la décision;
- ✓ dédommagements accordés par la même décision aux victimes, lorsque la victime ne peut pas constituer partie civile et le tribunal agit dans la pratique de sa compétence en matière pénale;
- ✓ une somme d'argent représentant les frais judiciaires;
- ✓ une somme d'argent pour un fonds public ou pour une organisation de protection des victimes, imposée par la même décision.

La sanction pécuniaire ne comporte pas les dispositions pour la confiscation des instruments ou des produits des infractions et les dispositions de nature civile et qui découlant de demandes de dédommagements qui peuvent s'exécuter en vertu du Règlement CE n° 44/2001 concernant la compétence et la reconnaissance et l'exécution des décisions en matière civile et commerciale.

La décision, accompagnée d'un certificat dont le formulaire est prévu dans l'annexe de la décision-cadre, se transmet directement par l'autorité compétente de l'État d'émission à l'autorité compétente de l'État d'exécution. Pour sa

[163] L'information du Ministre de la Justice n° 121650 le 11 novembre 2008 adressée à tous les instances judiciares et aux parquets qui se trouvent à côté de celle-ci

[164] Ibidem, p.29

[165] Ulrike Kathrein, Cătălina-Gabriela Miron, Ana Ploscă, Florin-Răzvan Radu, Eckart Rainer, Michaela Salamun, Mariana Zainea – op.cit., p.116

[166] Publiée dans le „Journal officiel de l'Union européenne" n° L76 le 22 mars 2005

transmission on peut solliciter aussi les points de contact du Réseau Judiciaire Européen.

La décision doit être exécutée sans autre formalité de reconnaissance, et l'exécution est régie par la loi de l'Etat d'exécution de la même façon que l'exécution des peines similaires appliquées dans l'État en question. Une peine pécuniaire doit être exécutée même si la loi de l'État d'exécution ne reconnaît pas le principe de la responsabilité pénale des personnes morales.

Si l'exécution en argent n'est pas possible, en totalité ou en partie, et si l'État d'émission accepte, par le certificat, il est possible appliquer une sanction alternative, y compris l'emprisonnement.

L'autorité compétente de l'État d'exécution doit informer sans délai l'autorité compétente de l'État d'émission par tout moyen qui laisse un enregistrement écrit sur l'envoi de la décision vers l'autorité compétente, sur une décision de non-reconnaissance et d'exécution conformément à l'art. 7 ou 20 paragraphe (3) de la Décision-cadre n˚ 2005/214/JAI, accompagnée des motifs, sur la-non-execution totale ou partielle, pour les raisons mentionnées dans l'art. 8, l'art. 9 paragraphe (1) et (2) et l'art. 11, paragraphe (1) de la Décision-cadre n˚ 2005/214/JAI, sur l'exécution de la décision dès que l'exécution est terminée ou sur l'application d'une sanction alternative, conformément à l'art. 10 de la Décision-cadre n˚ 2005/214/JAI.

Les États ne doivent pas de demander l'un à l'autre le remboursement de frais résultants de l'application de la décision-cadre.

La décision-cadre n˚ 2005/214/JAI a été transposée dans le droit interne par l'adoption de la Loi n˚ 222/2008 pour modifier et compléter la Loi n˚ 302/2004 concernant la coopération judiciaire internationale en matière pénale.

Dans cette matière ont été désignés comme autorités d'émission les instances judiciaires. Celles-ci peuvent être l'un des tribunaux et cours d'appel qui, après avoir solutionner un cas, ont appliqué une sanction financière au sens de la décision-cadre[167].

Dans le cas des sanctions pécuniaires imposées par les autorités roumaines, la traduction du certificat standard prévue dans l'Annexe 3 à la loi sera réalisée dans la langue demandée par l'État membre d'exécution.

Comme autorités d'exécution ont été désignés, également, les instances judiciaires. Celles-ci peuvent être l'un des tribunaux et cours d'appel qui, selon l'objet de la cause, aurait la compétence matérielle de la résoudre. L'autorité centrale dans le domaine est le Ministère de la Justice, La Direction Droit International et Traités[168].

L'application du principe de la reconnaissance mutuelle aux décisions de confiscation

Dans les États membres de l'UE existent et coexistent différentes procédures juridiques afin de confisquer les produits de l'infraction. Les agences nationales responsables pour dépister les actifs représentent une condition préliminaire pour une confiscation de succès, mais aussi pour la coopération internationale[169].

L'objectif de la *Décision-cadre du Conseil n˚ 2006/783/JAI du 6 octobre 2006 relative à l'application du principe de reconnaissance mutuelle aux décisions de confiscation* est d'établir les règles selon lesquelles un État membre doit reconnaître et exécuter sur son territoire une décision de confiscation émise par un tribunal compétent en matière pénale d'un autre État membre.

La décision-cadre mentionnée ci-dessus est liée à la Décision-cadre du Conseil n˚ 2005/212/JAI du 24 février 2005 relative à la confiscation des produits, des instruments et des biens liés à l'infraction. Le but de la présente décision-cadre est de s'assurer que tous les États membres disposent de règles efficaces de gouvernement concernant la confiscation des avoirs qui découlent d'une infraction, notamment par rapport à l'obligation de prouver la légalité de l'origine des actifs détenus par une personne condamnée pour une infraction liée au crime organisé[170].

Selon les conclusions de la réunion du Conseil européen des 15 et 16 octobre 1999 à Tampere, on détermine la garantie de prendre des mesures concrètes pour poursuivre, geler, séquestrer et confisquer les biens liés à l'infraction. Personne ne doit obtenir un avantage en commettant une infraction. Quiconque a commis une infraction et a obtenu un bénéfice économique pour commettre une infraction, doit être condamné à payer la somme d'argent équivalente au profit gagné illégalement. Les objets utilisés pour commettre une infraction doivent être confisqués. Les biens obtenus après une infraction doivent être renvoyé aux victimes si possible[171].

[167] Information du Ministre de la Justice n˚ 121650 du 11 novembre 2008 adressé à toutes les instances judiciares et aux parquets qui se trouvent à côté de celles-ci

[168] Ibidem

[169] Judith Hester, Michael Klackl, Gabriele Mucha, Roman Reich, Birgit Schneider, Harald Tiegs, Michael Tolstiuk, Mariana Zainea – op.cit., pag.91

[170] *http://www.cdep.ro/proiecte/2008/000/60/0/em60.pdf*

[171] Judith Hester, Michael Klackl, Gabriele Mucha, Roman Reich, Birgit Schneider, Harald Tiegs, Michael Tolstiuk, Mariana Zainea – op.cit., pag.93

Selon l'art. 2, lettre c) de la Décision-cadre 2006/783/JAI, «l'ordre de confiscation" est une peine ou une mesure définitive appliquée par un tribunal suite à une procédure concernant des infractions ou des faits qui a conduit à une privation permanente de biens.

«Bien» dans le sens de la présente décision-cadre signifie tout bien, corporel ou incorporel, mobilier ou immobilier, et des documents juridiques et des outils qui prouvent un titre ou des intéresses dans ces biens qui, conformément à la décision du tribunal, constituent :

- ✓ Le produit d'une infraction ou l'équivalent de la valeur intégrale ou partielle d'un tel produit;
- ✓ L'instrument d'une telle infraction;
- ✓ Bien qui peut être saisi comme une conséquence de l'application dans l'État d'émission d'un des pouvoirs élargis de confiscation prévus par l'art. 3, paragraphes (1) et (2) de la Décision-Cadre du Conseil 2005/212/JAI du 24 février 2005 relative à la confiscation des produits, des instruments et des biens en rapport avec le crime;
- ✓ Bien qui peut être saisi conformément à toute disposition légale de l'État d'émission.
- ✓ Les dispositions relatives à la transmission et l'exécution des décisions de confiscation sont similaires à celles de la décision-cadre concernant l'exécution dans l'Union européenne des ordres de gel de biens ou de preuves.

Une particularité de la Décision-Cadre 2006/783/JAI est que, conformément à l'art. 5, paragraphe 2, l'ordre de confiscation peut être transmis simultanément à plusieurs États d'exécution, lorsque[172]:

- ✓ L'autorité d'émission a des motifs raisonnables de croire que les différents éléments du bien (la propriété) se trouvent dans des États d'exécution différents;
- ✓ La confiscation implique l'action dans plus d'un État d'exécution;
- ✓ L'autorité d'émission a des motifs raisonnables de croire qu'un élément du bien se trouve dans plusieurs États d'exécution.

En outre, conformément à l'art. 5, paragraphe (3) une décision de confiscation ayant comme objet une somme d'argent peut être envoyée simultanément à plusieurs États d'exécution, dans le cas où, par exemple, le bien n'a pas été gelé à base de la décision-cadre 2004/577/JAI ou la valeur du bien qui peut être saisi dans l'État d'émission et tout État d'exécution n'est pas suffisante pour exécuter toute la somme d'argent visé par l'ordre de confiscation.

La décision-cadre 2006/783/JAI a été transposée en droit national par l'adoption de la Loi 222/2008 pour modifier et compléter la Loi 302/2004 concernant à la coopération judiciaire internationale en matière pénale.

Comme autorités judiciaires d'émission ont été désignées seulement les instances judiciaires, de la définition que la décision-cadre a donnée à la décision de confiscation résultant que celle-ci doit appartenir exclusivement à une instance judiciaire. Ces instances peuvent être l'un des tribunaux et cours d'appel qui, après avoir résolu une cause pénale, ont décidé, parmi d'autres, la mesure de confiscation. En même temps, par instances judicaires on comprend aussi la Haute Cour de Cassation et de Justice. Dans le cas où les décisions de confiscation émises par les autorités roumaines, la traduction du certificat standard prévu dans l'Annexe 4 à la Loi sera réalisée dans la langue sollicitée par l'État membre d'exécution[173].

Bibliographie:

- **Alexandru Boroi, Ion Rusu** „*Cooperarea judiciară internațională în materie penală*", Éditure C.H.Beck, Bucuarest, 2008;
- **Gavril Paraschiv**, „*Drept penal al Uniunii Europene*", Éditure C.H. Beck, Bucarest, 2008;
- **Georgiana Tudor, Mariana Constantinescu,** „Mandatul european de arestare: aspecte teoretice şi practică judiciară", Éditure Hamangiu, Bucarest, 2009;
- **Ioan Hurdubaie**, „*Cooperarea judiciară europeană. Cadrul convențional penal*", tome I, Éditure Ministerului Administrației şi Internelor, Bucarest, 2003;
- **Judith Hester, Michael Klackl, Gabriele Mucha, Roman Reich, Birgit Schneider, Harald Tiegs, Michael Tolstiuk, Mariana Zainea**, „*La reconnaissance mutuelle dans le domaine de la coopération judiciaire en matière pénale: instruments juridiques et leur implémentation: manuel*", Proiect Twinning Light entre la

[172] *http://www.cdep.ro/proiecte/2008/000/60/0/em60.pdf*

[173] L'information du Ministre de la Justice n° 121650 du 11 novembre 2008 adressée à toutes les instances judiciaires et aux parquets qui se trouvent à côté de celles-ci

Roumanie et l'Autriche RO2007/IB/JH- 09 "Continuarea asistenței în domeniul cooperării judiciare în materie civilă, comercială şi penală", Éditure Euro Standard, Bucarest, 2010;

- La décision 2008/976/JAI du Conseil concernant le Réseau Judiciaire Européenne, publiée au "Journal officiel de l'Union européenne" n° L348 du 24 décembre 2008;
- La Décision-Cadre 2006/960/JAI du Conseil du 18 décembre 2006 relative à la simplification de l'échange d'informations et de renseignements entre les services répressifs des États membres de l'UE, publiée au „Journal officiel de l'Union européenne" n° L386 du 29 décembre 2006;
- La loi n° 101/2010 de ratification de l'Accord entre le Gouvernement de la Roumanie et le Gouvernement de la République de Bulgarie concernant la coopération policière transfrontalière en matière pénale, signé à Vidin le 19 mai 2009, et de l'Accord entre le Gouvernement de la Roumanie et le Gouvernement de la République de Bulgarie concernant la création et le fonctionnement du Centre commun de contact de coopération policière et douanière, signé à Vidin le 19 mai 2009, publiée au „Moniteur officiel de la Roumanie", part I, n° 375 le 7 juin 2010;
- La loi n° 208/1999 concernant la ratification de l'Accord de coopération pour prévenir et combattre l'infractionalité transfrontalière, signée à Bucarest le 26 mai 1999, publiée au „Moniteur officiel de la Roumanie", part I, n° 654 du 31 décembre 1999;
- La loi n° 218/2002 concernant l'organisation et le fonctionnement de la Police Roumanie, publiée au "Moniteur officiel de la Roumanie", part I, n° 305 du 9 mai 2002;
- La loi n° 311/2009 de ratification de l'Accord entre le gouvernement de Roumanie et le Gouvernement de la République de Hongrie concernant la collaboration dans le domaine de la prévention et du combat de la criminalité transfrontalière, signé à Szeged, le 21 octobre 2008;
- La loi n° 360/2002 concernant le Statut du policier, publiée au "Moniteur officiel de la Roumanie", part I, n° 440 du 24 juin 2002;
- La loi n° 39/2003 concernant la prévention et le combat de la criminalité organisée, publiée au „Moniteur officiel de la Roumanie", part I, n° 50 du 29 janvier 2003;
- **M. Pantea**, „*L'investigation de la criminalité économique et finqncière*", vol.I, Ed. Pro Universitaria, Bucarest, 2010.
- **M. Pantea, D. Bucur**, „*Méthodes et techniques d'investigation des fraudes*", Ed. Sitech, Craiova, 2009.
- **Ulrike Kathrein, Cătălina-Gabriela Miron, Ana Ploscă, Florin-Răzvan Radu, Eckart Rainer, Michaela Salamun, Mariana Zainea** „*Coopération judiciaire en matière pénale*" Manuel élaboré dans le Projet de fraternisation entre la Roumanie et l'Autriche. PHARE RO 2005/IB/JH 03, ayant le titre "Consolidarea cadrului instituțional şi legislativ în domeniul cooperării judiciare internaționale", Centrul de Competență Juridică, Vienne, 2007.

III. RESEARCH AND CRIME PREVENTION

TYPES OF GAMBLING FRAUD. PROCEDURES FOR DETECTION AND COUNTERACTING

Assist. Lecturer Ph.D. Marius PANTEA
"Alexandru Ioan Cuza" Police Academy
Student Ph.D. Octavian AVRĂMOIU
Advisor to the Minister of Finance

The complexity of surveillance and control activities, as well as the complex operations in ascertaining fraud occurring in the field of gambling implies good knowledge of how multiple types of gambling are organised and functioning, as each of the games contains particular features one needs to be aware of, in order to render police work more effective, according to the prerogatives granted by law in this field.

Key words: gambling, gambling offenses, cheating in casino fraud investigation of gambling, cheating fraudulent practices in assigning mechanical or electronic devices gains

In this article we will tackle on a number of fraudulent cheating methods and practices that can be perpetrated in casinos or in gambling saloons by players or by staff of the gambling saloons, or by the two in complicity, to the prejudice of the organisers or the players, and indirectly of the state, by diminishing the taxable revenues.

Brief history of gambling

Gambling is not an invention of the modern world, but it exists for more than 2,500 years. Erection of the Big Chinese Wall was funded from the monopoly that the emperor had placed on the Kendo game – the ancestor of the modern Bingo[174] game. Dices and drawings representing players have been found in the Egyptian pyramids. In the Ancient Age, the dice game was associated with divinity and was a ritual game. The Middle Ages came with a prohibition on gambling, perceived by the Church as a capital sin. Not earlier than 1625, gambling is legalised in Venice, where the 'crème' of the Venetian society would meet in the so-called „casini" (small houses); the term 'casino' became synonymous with vice and perdition. Taking after Venice, the gambling houses spread across Europe in many resorts. After Venice fell into disgrace, the city of Spa witnessed a real casino boom (casinos would be open even for 12 hours a day), and other cities in France, Germany and England followed the example of this city. The XIX century came with the official legalisation of casinos passed by Napoleon, in 1806. Casinos were promoting safety, high standards, quality of services, comfort and luxury; the managers started to filter in exclusively the elite clientele. In 1837, all casinos in France were declared illegal. In Germany, in exchange, casinos prospered in cities such as Baden-Baden, Wiesbaden or Bad-Hamburg, were chips were used for the first time as a tool for betting - and also the 'sole-zero roulette' was used for the first time..

Social standards and legislation regarding gambling tend to change and oscillate between prohibition and regulating. These legal alternations led professor I. Nelson Rose to identifying three waves (stages) in the history of gambling in the U.S. The *first wave* started in the colonial times and lasted up to the half of the XIX century. In 1840, most of the states abolished lotteries. Around the year 1860, the only states allowing lotteries were Delaware, Missouri and Kentucky. However, prohibition generated illegal lotteries. This is how the first wave in the U.S. history of gambling ends. The *second wave.* Expansion towards the West led to a new boom in the gambling field. San Francisco became the new gambling centre in the U.S. In 1850, both the State and the cities were granting gambling licenses in order to raise funds. In California as well, the desire to comply with moral principles generated a legislation that would curb the unprecedented boom of the gambling industry. At the beginning, the legislating initiative targeted especially professional gamblers - players associated with corruption and

[174] The origins of the Bingo games go back as far as to 1530, when the lottery game called Lo Giuco de Lotto appeared in the U.S. The game is still played in Italy every Saturday. „Le Lotto" migrated in France at the end of 1700', in a form similar to the Bingo game known today, with one sole card to play, chips and numbers announced in loud voice. All along the 1800's, these types of games spread accross Europe and several branches of the game were created. In a popular form of this game, the player's card was distributed in 3 horizontal rows and 9 vertical rows.

the economic recession. The *third wave* led to wide-scale legalisation of gambling. The attitude towards gambling changed, and legalisation was perceived as a manner of stimulating the economy. The state of Massachusetts allowed the Bingo game in 1931, in an attempt to support churches and charities. In 1950, the Bingo game was legal in 11 states. In 1933, the states of Michigan, New Hampshire, Ohio, California legalised bets, and the development of legal gambling led to the decline of illegal gambling.

Types of fraud per categories of games

Without intending to provide an exhaustive presentation, we will describe below the most frequent illegal practices in this field, some of them being perceived as criminal acts in the legislation in the field, in countries that have a tradition in the *gambling industry*; we used the casuistry of these countries to select the examples and the methods of perpetration.

I. In saloons with gambling machines:

1. Mechanical means:

The instruments used are about 20-cm long L-shaped metal rods, with the tip arched and the base bent in a U-shape. A sliding part is placed on the rod, with a groove in the shape of a clip. Sometimes it is placed on a spring.

Here is how this instrument is used:

Above the gambling machine's coin collector there is a rectangular opening. Inside the opening there is a small metal plate that slides outside horizontally. The instrument is inserted through the rectangular slit and fixed inside with the clip that is attached to the horizontal metal plate.

Due to its shape, the instrument influences the gain distribution mechanism. Also, it is attached to the contactor blade that allows the machine to count the coins given out as gains. The rod, activated manually, allows for pressure on the contactor blade.

The player plays normally, by inserting coins until he reaches a certain amount that he deems as sufficient.

From this moment on, he asks for his credit to be paid to him, and when the payment starts, he presses the micro-contact blade with this instrument, just as if a coin had been inserted. The machine releases the gains without counting the coins as paid gains.

As the machines (especially newer models) are equipped with timers, if the contactor does not receive a new instruction after a certain time (7 seconds for BALLY machines), the machine starts beeping. Therefore, it's enough for the user of the fraudulent instrument not to allow the rod to touch the contactor for too long, release pressure on it from time to time, just as if a coin was inserted in the machine, and then press again, while the coins keep being released.

In theory, such manipulation allows a player to obtain 40 coins for one coin played. The procedure works on BALLY and SIGMA machines and can be prevented by the saloon business by installing special correction kits.

2. Electrical means:

Two types of such fraudulent means have been identified. The first type of fraudulent action is to use a metallic rod, about 20-cm long, thicker than the instrument described above, made of a slim I-shaped pipe, with the tip bent in a U shape, where it has a little bulb protected by a steel tube that encases it. A case in the lower part contains a 1.5-V battery, with a detachable groove installed in the arch. The fraudulent instrument is installed above the coin collector through the slit through which gains are distributed, and it remains fixed there, due to its U shape.

Just like with the previous instrument, this one is conceived to avoid the gain distribution channel and affect the mechanism of the machine. The bulb, which is actually a „*mag light*", acts as an inhibitor for the reception photocell of the counter. Normally, gains are counted with the coins passing in front of the photocell - and thus, of the optical counter. The light beam is interrupted with the passing of each coin.

The player plays until he reaches a sufficient credit, when he asks for the credit to be paid, and when the coins start falling, he lights on the lamp of the instrument. It will emit continuous light on the optical counter receptor, as if no coin passes in front of it, while the coins are released continuously, without being counted.

There is a timer in this case as well. When the optical counter does not discover any electrical message for a certain time (*about 10 seconds*) the machine will start beeping. Thus, it is enough for the user not to let the lamp on for too long - as if some coin passes every now and then - and then turn it on again, while the machine releases the coins.

The second type works in a similar manner as the one described above; here is what it looks like:

The instrument used is about 18 cm long and is made of an arched metal rod, 2-mm diameter, with an electrical conductor wire along it. There is a small lamp like the one described above on its tip, and a spring stand sustains a 1.5-V battery in the lower part, with the metal plate at the base acting as a pressure-based switch.

The instrument is fixed into the machine using a piece of mastic.

The procedure can be used especially on I.G.T. and BALLY machines and it can be prevented by the gambling business by installing special correction kits.

Such fraudulent manoeuvres can be easily detected with careful surveillance of the gambling floor. Most of the times, they are discovered after the deed has been perpetrated, by examining the locations where the instruments mentioned above have been installed, by viewing the portions dyed by the mastic used in attaching the device to the machine.

Fraudulent manoeuvres have been identified, through which players who are winning at the machines are prejudiced. This is easy to do, by simply installing a powerful enough magnet on the gain distribution channel, which would retain a number of coins. When the player leaves, the operator simply places his hand inside the distribution orifice and recovers the magnet with the coins attached to it.

II. In casinos:

1. „*To and fro*".

This form of cheating takes place during an exchange operation between the box man and the exchange person assigned to the same table. There are several m.o.'s, but the following two are more frequent:

a. the box man sends the exchange person two chips at the same time or very briefly one after another, while the latter only releases the money for one chip;

b. the box man sends the exchange person one chip (for instance 100$), but the exchange person only returns 95$ in cash.

The complicity of the two employees is obvious, and they will split the amounts deviated in this way, easier than if the exchange person had the money at the cashier. Although it sounds difficult to perform, one should not overlook the atmosphere in a gambling room, the noise and fatigue that settle in at some point - which requires special attention to the exchange person's inventory.

2. „*Loading the box man*":

During the exchange in a card game, especially between exchanging two sabots, when the cards are shuffled, the box man can take away chips that he will put in his shirt, socks etc. In this case too, the box man needs to secure the complicity of the exchange person, who will warn him of the presence or imminent presence of any management staff if case may be. For this, they agree upon a set of warning signs or gestures: nose-rubbing, crossing arms, etc.

3. „*Sequences*":

This describes a pre-established arrangement of the cards inside the sabot. This type of cheating, commonly known as "*preparing the sausages*", can be performed before the game starts or while the cards are shuffled: a somewhat skilled box man places a few cards in a specific order, with a view to obtaining a range of 4-5 or even 10 winning rounds. This sequence is most often marked through a "*key*" - that is, one or more cards of known value - for the safety of the accomplice player, known as the "*baron*".

4. „*Marking or faking of cards*".

Although the current normative documents[175] include provisions only regarding the need to keep records of the cards, manipulation and especially deployment of card games can lead to fraudulent manoeuvres.

In practice, marked cards have been distinguished – using a pencil, for instance, or by chemically altering a colour corner, using a finger dipped in a liquid from a container hidden in one of the pockets, which is further on applied on the area established in advance, on the card. Thus marked, in a virtually invisible manner for the untrained eye, the card (or cards) will allow the partner of the "*marker*" to become aware of the value of the marked card when the card will appear at the top of the sabot.

Cards can also be "*bent*" or "*punched*" – that is, they are given a specific shape using a special mini-press. Thus, a trained eye will be able to recognise the value of the card when it will be extracted from the sabot and placed on the table.

5. „*Bordering of the tip box*".

Box men insert chips meant for or resulted from gaming in the tip box, thus deviating some of the gains for their own benefits. More than 50% tips rate against the final result of the gambling table indicates the use of this method.

[175] *Emergency Ordinance no. 77 of June 24, 2009* on organising and exploitation of gambling, published in the Official Gazette no. 439 of 26 June 2009, as updated by: 246 of December 14, 2010; 117 of December 23, 2010 and *Decision no. 870 of July 29, 2009* to approve the Methodological Norms for implementation of Government Emergency Ordinance no. 77 / 2009 on organising and exploitation of gambling, published in the Official Gazette no. 528 of July 30, 2009, as subsequently updated by 150 of February 23, 2011 to amend and complement the Methodological Norms for implementation of Law no. 571/2003 on the Tax Code, approved through 44/2004, as well as to modify and complement 870/2009 to approve the Methodological Norms for implementation of 77/2009 on organising and exploitatino of gambling, published in the Official Gazette no. 150 of March 1, 2011.

6. „*Complicity of waiters*"

The box man intentionally drops a chip, usually of a higher value, when he collects chips from the players' missed bets. The accomplice waiter comes to the gaming table right away and picks it up, simulating that he is cleaning, changing ashtrays or taking an order from the playing client.

7. „*Direct handling of chips*"

At the right time (very crowded; inciting games with significant losses or gains; negligence of the supervising staff; fatigue; routine, etc.), the box man subtly passes chips taken from the game or from the box to a player seated next to him.

8. „*Fake placing*"

The box man takes from the chips that the players lost in the game and places them on winning numbers or combinations, using subtle manoeuvres and taking advantage of the supervisor's negligence, while the partner player (known as the "*baron*") will cash the winning bets played, thus bringing prejudice to the house. This method can also be used by the player, who will place the bet after the winning number has been established, taking advantage of the negligence of the game operators and supervisors.

9. „*Delayed announcements* (bets)"

In the last minute, right before closing of the bets is called, the 'baron' gives a certain number of chips to the box man, "*mumbling*" an unintelligible number (cancellation) announcement. The box man starts placing some of the chips and keeps the remaining chips hidden in his palm. When the ball stops, he places one or more chips on the winning number, as if his accomplice had played them.

10. „*Fake money exchange*"

There are several m.o.'s, with the most frequently used being described below:

a. The box man simulates receiving from the accomplice a high value chip, which he previously had taken out, and exchanges it in smaller-value chips. Further on, there are two possibilities: he either hands them directly to the "*baron*", or he places them as bets on the gambling table and, if the number on which the bet was placed wins, the accomplice player will cash the gain obtained and thus bring prejudice to the house.

b. During an exchange, the box man does not place the high-value chip in the lower part of the marble, and thus he will be able to exchange it in favour of his accomplice for a second time, by doubling the amount exchanged;

c. During an exchange, the box man gives the accomplice an amount bigger than what is due. The same operation is possible when paying a gain.

The possibilities for cheating appear when bets are placed, when money is exchanged for chips or the other way around, and when gains are paid. The favouring factors are acceptance of equivocal bet announcements and non-compliance with the bet closing moment. The behaviour of the "*barons*" can be identified by the fact that they always play at the same table, right next to the box man. Usually, in "*baronnage*" cases, all employees at a table are necessarily accomplices.

11. „*The Las Vegas coup*".

It's the name for a clever method used in the „Punto Banco" or „Baccara"[176] game, where a fine aluminium cylinder is used, carved and painted to resemble a 5-chip tower. A real chip is glued on the upper end of the tower. Such cylinders are manufactured clandestinely by demand, in shops to which the client sends the true chip.

The principle of this method is the Trojan horse principle. The cheating player, the "*baron*", uses it as a bet, usually in the PUNTO box. If PUNTO wins, the cylinder stays for the next round. If it loses, the accomplice box man removes it and, while arranging the chips that the players lost in the game, he will make it slide over high-value chips that he will use to fill in the empty part in the "*tower*", under the real chip, which the box man hides in his hand. The "*tower*" will come back to the "*baron*" by simulation of a new purchase of chips, however made for the small value of the chip on top. For instance, if the chip on top is a 5$-chip, the other 4 would be, let's say, 100$ - chips, and thus the player will pay the accomplice box man 25$ for chips amounting to 405$. Thus, the cylinder can circulate between the box man and the player several times, with four high-value chips being taken every time from the cashing of the house, thus affecting both the revenues of the house and the state's budget, by diminishing the taxable profit. Being very effective, this manner of cheating requires careful, continuous video

[176] The name of the game is derived from the Italian word „baccara", meaning „zero" and referring to the value assigned to tens and court cards. It seems that the game was first played in the Middle Ages, using the Tarot cards, probably somewhere in Italy. Subsequently it spread everywhere in Europe, in the United States and South-America. The Baccarat game (known as „Punto Banco" in some countries) is deemed to be the most aristocratic game practised in casinos. Nevertheless, the rules are simple, easy to understand, and the actions of the player during the game are quite limited. After all, the player doesn't even need to be fully familiar with the rules of the game, since the dealer leads the game and indicates the possibilities to continue it. Every participant can bet on the ‚player's hand', on the ‚house's hand' or on an equality.

surveillance on the players' and box man's hands. The method was noticed not only in the games mentioned above, but also in games of Black-jack, Craps[177] and even American Roulette.

12. „*The push*".

It means imperceptibly moving the chip or chips that were placed on a number after the number is known as winning, when the ball has stopped. It has a variant that is more difficult to detect, namely: at the right time, the cheater will "*push*" his own chips, or a specific colour, on the winning number, together with some chips of a different colour, belonging to an accomplice who plays at the same table. If the casino staff notice the fraudulent manoeuvre and ask him to retract the delayed bet, the cheater will readily withdraw his own chips, while leaving the chips of the accomplice, who can then only cash the illicit gains thusly obtained. It is usually practised in teams of 3-4 cheaters, where each of them has a well established role, after they choose a table where the staff seems more vulnerable or the video surveillance doesn't seem sufficient. The one who will "*push*" the chips is at the end of the gambling table, and a second player buys high value chips. The third will be busy distracting the box man when the ball is rolling, while the fourth will do the same thing after the ball stops, at the most critical stage of the game. This method can also be used by the box man, who will place the chips of the accomplice player on the winning number, thus bringing prejudice to the house.

13. „*The salad*".

It is the roulette variant of the "*box man loading*" mentioned above and it can be applied at the moment when the losing chips are collected, usually ranked decreasingly according to their value. If a box man does the opposite and first collects the small value chips from the table and leaves the less numerous high-value ones at the end, it will be easier for him to "*palm-shuffle*"[178] one or two chips and hide them in his clothes or in parts of the gambling table from where he would recover them subsequently. The best moment is before the games close for the final counting of the gambling day, when the box men leave to the lockers.

14. „*The leaches*".

These are the cheaters who use a glue, usually on the inside face of their palm, using it to steal chips placed by other players. Sometimes, even without using glue, the cheaters place their bets on numbers on which bets have already been placed and which already have their chips on them. Then pretending that they change their mind and they want to bet on another number, they lift their chip, together with the chip of another player, which they will immediately hide in their palm.

15. „*Faking of cylinders at roulette tables*".

It is known that the mathematical advantage of the house over the players is 2.7 to 1. Therefore, the purpose of cylinder faking is exactly to cancel this advantage and turn it in favour of a group of accomplice players. The modern cylinders of roulette games are made of compact metal blocks, which make intervention on the wings separating the numbers rather difficult. The fixed part of the roulette, on the other hand, made of wood, on which the launched ball is rolling, can be modified by pressing it, which will favour the selection of certain numbers or sectors of numbers. The roulette cylinders can only be tampered with when the casino is closed, which implies complicity of casino staff and points to the need for periodical, unexpected technical checks, complementing the annual compulsory verification schedule.

16. „*Cheaters using micro-computers*".

The devices identified up to now are of American make, priced around 5,000 $ a piece and they have microprocessors adapted both for card games and for computing chances at the roulette game. Thus, for the four card games, they have a keyboard for entering data, a microprocessor and an impulse receptor for receiving instructions. The keyboard is hidden in the shoes or attached to the belt, as it is known that access to casinos with such devices can incur sanctions, even criminal prosecution in many countries. The microprocessor is placed under the

[177] Craps comes from an English dice game called „Hazard", which appeared in America about the end of XVIII century. The name „Craps" comes from the term „Crabs", which in the Hazard game meant a throw of two aces (two dice with the number 1 on them). During the first half of the XX century, the Craps game has become the most popular game of its type in the world. The game is played with two dice rolled by the player on a long table, surrounded by borders up to 30 cm high. The game includes two distinct stages. After the bets were placed, the player throws the dice. If he rolls a 7 or 11, this is deemed as a winning throw and the game ends here. Those who placed their bets on the player win. If he rolls 2, 3 or 12, the throw is deemed as "craps" and the betters lose. Finally, if he rolls 4, 5, 6, 8 or 9, then the number becomes the player's point. This is market using a round disk called „buck". The player will continue to throw the dice until he will either repeat this number (and thus confirm his point), and the bets on him are winning, or he will roll a 7, in which case the bets on the player are losing.

[178] hide in the palm of his hand

shirt, while the receiver is attached to the arm or even worn by a second cheater.

The devices for the roulette game aim at determining in what sector of the cylinder the ball will fall and leaving the cheater who uses it enough time to place or increase his bet. The composition of the device is the same as that of the one for the cards games. The person who enters the data, respectively the frequency of occurrence of the numbers, must concentrate on the cylinder with every game and must be placed quite close to it.

Conclusions

There are methods of observation and surveillance procedures that can detect – and thus limit – potential complicities between gambling house employees and players or individual illegal actions of fraudulent players. Thus, in a casino room, the police officer must become familiar with the type of chips used, "*photograph*" the chips by values, in order to be able to recognise them subsequently, at various stages of the game (payments, exchange, bets, etc.).

In certain cases, casino managers ask for the trajectory of high-value chips in continuous sales or purchase transactions to or from the players to be traced. The movement of such chips is usually recorded on a card that is filled in (*of course, out of the books and most of the times unregulated, not even through the house's internal regulations*) by the head of the table. The very position of the high value chips, the positioning of the box at the table next to the box man instead of in the farthest corner, as the protocol requires, can be indications that the box man has prepared a "*loading*" – the procedure described above – or, more frequently, a "*salad*".

At the same time, the frequent presence of certain players at the same table, where they achieve significant gains, or smaller, but constant gains, defies the laws of hazard and is indicative of a "*baronnage*" that requires careful surveillance. Since the box men are assigned from one table to another, it can be noticed whether the potential "*baron*" will follow them to the new table, which he would usually do under the pretext that the box man "*brought him luck*".

A table that is on a break or at which there are only 1-2 players playing must be carefully supervised from a distance, because "*intimacy*" allows the staff to "*load*" much easier. By supervising the staff's attitude, it would be possible to notice potential signs of attempts of deviating chips, displayed as agitation, throwing peeks to the right and to the left, etc.

The waiters who are allowed to wear pockets can be ideal "*carriers*" for the chips stolen, and any delay of the waiters near the tables and box men longer than the time needed for serving the clients can be indicative of a complicity in stealing value chips.

Closing and opening of the games are also critical stages in terms of their potential for allowing fraud, as the cashiers can issue assignments at the tables that are lower than the ones in the opening sheet, or, respectively, the staff at the tables may return to the cashier desk more chips than the ones recorded in the closing sheet, with the surplus created being shared in cash among the staff involved.

Bibliography:

- **M. Pantea, D. Bucur**, „*Metode şi tehnici de investigare a fraudelor*", Sitech Publishing House, Craiova, 2009.
- **M. Pantea**, „*Prevenirea şi combaterea fraudelor în domeniul jocurilor de noroc*", Simpozionul Internațional Instituții Juridice Contemporane în Contextul Integrării României în Uniunea Europeană, Romanian- American University, IIIrd edition, Bucharest, 30-31 October 2009.
- **M. Pantea** (coord.), **S. Constantinescu, O. Şanta**, „*Jocurile de noroc în contextul globalizării*", Vol.I şi II Sitech Publishing House , Craiova, 2010.

EUROPEAN LEGAL FRAMEWORK PARTICULARITIES OF JUDICIAL COOPERATION IN CRIMINAL MATTERS

Assist. Lecturer Ph.D. Claudiu Marin ŢUPULAN,
"Alexandru Ioan Cuza" Police Academy
Ph.D. Adrian Angheluş,
Head of Department - General Directorate of Bucharest Police

The transnational character of crime requires the creation of a common criminal policy in the EU, because the differentiated definition of certain crimes compromises the activity of judicial cooperation between states. The objective is to create a common European framework for combating crime and terrorism in order to guarantee its citizens a high level of protection and to promote international cooperation in this field. The main argument in favor of harmonizing the legal framework has always been that criminals can take advantage of differences between various criminal systems to escape the rigor of law, more precisely, it especially refers to the difficulties faced by authorities when criminal offenders plan crimes in a certain country and then commit them in another country or when they commit crimes in a certain country and then seek refuge in another country.

Keywords: EU Directives, legislative harmonization, operational cooperation, area of justice, the principle of *non bis in idem*, freezing assets injunction, freezing evidence injunction.

Implementation of a freedom, security and justice area and especially a real criminal judicial cooperation between Member States is a difficult task. Creating a space in which people can move freely between the Member States is a goal that can be fulfilled much easier than the establishment of criminal judgments free transfer. The expressed will to create an area within which individuals and judicial decisions can move freely, especially through the principle of mutual recognition, is not exempt from hardship to the point of achieving that objective. Applying the principle of mutual recognition has led to rethinking and modifying certain concepts, such as the concept of space or sovereignty[179].

In the area of freedom, security and justice, Member States must work together in order to achieve a primary objective: providing and guaranteeing EU citizens a high level of protection. Also, if the cooperation in conducted in criminal matters, a sovereign states attribute, these states see their sovereignty at risk[180]. If, traditionally, sovereignty can be defined as the supreme character of a power that cannot be subject to other powers in the area of freedom, security and justice, especially in the construction of a European criminal area, the internal sovereignty of States must yield to the community in order to achieve those objectives.

Despite the fact that, mainly, criminal law is not subject to European unification, since criminal law is still considered an expression of the national sovereignty of each Member State, the approximation of national criminal laws is part of the objective requirements of an efficient, organized and unified state response against crime[181].

Approximation of criminal laws is set out in Article 29 (d) of the European Union Treaty, which aims to "harmonize, as necessary, the criminal law rules of the Member States in accordance with Article 31 (e) ". Consequently, there is a legal basis for close work, both with the criminal code as well as criminal procedure[182].

Although the Community legislation cannot contain facts incrimination, it is possible, following EU directives, to incriminate some acts by the Member States. Thus, some Community regulations are directly applicable to Member States, without the adoption of any law. This is done either by establishing penalties for violation of certain

[179] Sophie Bot – Le mandat d'arret europeen, Editions Larcier, Bruxelles, 2009, p.15
[180] G. De Kerchove – *La cooperation policiere et judiciaire. De la cooperation intergouvernementale a la methode communautaire, in une Constitution pour l'Europe. Reflexions sur les transformations du droit de l'Union europeenne* (O. De Schutter et P. Nihoul coord.), Bruxelles, Larcier, 2004, p.197-237
[181] George Antoniu– Normative Criminal Activity of the European Union (I), Criminal Law Journal ,No.1/2007, p. 9
[182] *http://www.clr.ro/eBuletin/1_2009/Buletin_1_2009.pdf*

Community provisions within domestic law, or by national criminal law text assimilation, providing criminal sanctions within the Community rules [183].

Despite appearances, currently the superposition of national, regional and global provisions is no longer possible to challenge, nor the abundance of national and international institutions and courts, with enlarged powers. These new realities determine the evolution of law towards complex, interactive systems[184].

The transformation of international legal order is currently one of the prominent dynamics crossing law, viewed as an object of scientific research. By definition criminal law is one of the fundamental elements of state sovereignty, a common stake and a subject of discussion between state authorities. Across Europe these discussions have led to the construction of a freedom, security and justice area[185].

Twenty years after the creation of a Common European Area, the definition of criminal law has evolved from an exclusively national and territorial activity to an approximation between states. However, changes affecting criminal matters currently refer particularly to criminal proceedings.

Taking all of this into consideration, it is difficult to speak of an existing European criminal law or even a European judicial order. Implementation of structures such as liaison magistrates, the European Judicial Network or the "Eurojust" Unit aims above all to facilitate European assistance and does not necessarily respond to the creation of a European criminal order.

Development of a European judicial culture certainly contributes to building a Europe of justice, moving from the status of applying Community law to that of an objective in itself, or to that of a European judicial area, subsequent to the adoption of the Amsterdam Treaty[186].

Regarding criminal law, the European Union Treaty[187] stipulates that there should be cooperation which should unfold quickly, the conflict between jurisdictions must be avoided and that it is necessary to adopt measures to facilitate the extradition of defendants. Judicial cooperation is aimed at mutual recognition of judicial decisions, legislative harmonization and development of operational cooperation mechanisms for the construction of a justice area[188].

Judicial cooperation in criminal matters together with the Police cooperation policy are part of the third pillar of the EU - Justice and Home Affairs. At Community level, some framework regulations on judicial cooperation in criminal matters exists. To protect the sovereign right of Member States regarding the incrimination and punishment of offenses, Title VI of the EU Treaty - Justice and Home Affairs - does not stipulate the same types of legal provisions, as is the case of the Single Internal Market, such as regulations or directives, but provides either specific regulations, characteristic to international law (conventions), either new bills (decisions and framework-decisions) that have specific characteristics to EU Member States domestic law. This is why *framework legislation at EU level is given, in most cases, by international conventions, in the field of criminal matters cooperation*[189].

The ultimate goal of judicial cooperation between different countries is the reduction of crime to acceptable levels and the increment of safety for the citizens. The main problem that arises in the current process of accelerating globalization is the coordination of national policies and strategies with the policies, strategies and regulations stated and accepted internationally. In recent years, international judicial cooperation has seen new and diverse forms, some enacted by domestic legal rules, others provided in various international treaties and conventions[190].

The European legal framework on judicial cooperation in criminal matters has grown since 1957. The assistance between countries in criminal matters has resulted in the adoption of a *European Convention on Extradition*, concluded in Paris, on the 13th of December 1957.

This convention was followed by the adoption of the *European Convention on Mutual Assistance in Criminal Matters*, on the 20th of April 1959, in Strasbourg. The document sets out how to meet legal assistance in criminal matters, the competent authorities entitled to receive requests for mutual assistance made under the Convention, as well as the costs of fulfilling these requests.

The European Convention on Transfer of Proceedings in Criminal Matters, adopted in

[183] Gavril Paraschiv – op.cit., p. 4
[184] Delmas-Marty M. – *Les Forces imaginantes du droit: Le relatif et l'universel*, Paris, Le Seuil, 2004, p.7
[185] Antoine Megie – L'Européanisation du pouvoir judiciaire: genèse et enjeux, Centre européen Sciences Po Paris, 2007
[186] *http://europa.eu/scadplus/glossary/index_fr*
[187] Treaty on European Union signed in Maastricht on 7 February 1992, it entered into force in November 1993 and was amended by the Treaty of Amsterdam.
[188] Ionel Tiberiu-Marius – op.cit., p. 328
[189] *Justice and Home Affairs,* Center for Legal Resources, Dacris Publishing, 2004, p. 26
[190] Alexandru Boroi, Ion Rusu – op.cit., p. 5

Strasbourg on the 15th of May 1972, established the competent authorities to receive and track the processing of applications for proceedings transfer in criminal matters, both those made during the prosecution phase, as well as those made during the trial phase.

In the late 1970s, with the emergence of the fight against terrorism issue, new regulations were developed to improve the criminal cooperation between Member States. At that moment in time one could have noticed an increasing number of draft legislation, which would never be implemented because of opposition among states. The first Council of Europe Working Group was established in order to draft an agreement by which states could commit themselves to arrest and extradite those involved in hostage taking. At Belgium's proposal, on the 20th of January 1977, the *Convention for the Suppression of Terrorism* was presented. However, several states refused to ratify this bill, mainly due to inconsistencies between legal systems[191].

This blockage led to the adoption of the Dublin Agreement, on the 4th of December 1979. It provided the appliance of the Council of Europe Convention only between the Member States of the European Community, obliging all signatory countries to track and extradite the perpetrators of terrorist acts.

The European Convention on Transfer of Sentenced Persons, adopted in Strasbourg, on the 21st of March 1983, and the Additional Protocol to the Convention also adopted in Strasbourg, on the 18th of December 1987, regulated the transfer of sentenced persons abroad.

The issue of judicial cooperation in criminal matters was fully reiterated with the adoption of the Schengen Agreement, signed on the 14th of June 1985, and completed by the Convention implementing the Agreement, on the 19th of June 1990. Even if the most important objective of these agreements is the gradual abolition of internal border checks, in order to facilitate free movement of persons, it is accompanied by a device which aims to strengthen judicial cooperation in the field of extradition and transfer of criminal sentence enforcement[192].

Judicial cooperation in criminal matters is regulated by the Convention Implementing the Schengen Agreement, in Section III, entitled "Police and Security", specifically in Chapter 2 (Mutual Assistance in Criminal Matters), Chapter 3 (the appliance of non bis in idem principle), Chapter 4 (extradition), and in Chapter 5 (the transfer of criminal judgments enforcement).

Judicial cooperation in criminal matters has become, with the entry into force of the Maastricht Treaty, in November 1993, a priority for both EU Member States, as well as for the European Council. Cooperation between Member States in the JHA (Justice and Home Affairs) area is held under the third pillar of the EU. This cooperation calls for close interaction between the justice and home affairs ministries of EU Member States, as well as between their services. It allows for dialogue, support, conducting joint activities, cooperation between police, customs, immigration and justice services in the Member States.

The 1997 Amsterdam Treaty represents a fundamental step in the evolution of the third EU pillar, on an institutional and legal architecture level. Starting from this legal basis the Tampere Program would be initiated two years later by establishing a joint action. This action aimed at facilitating and accelerating cooperation between Member States on a legal proceedings level (especially in the field of extradition). It also aimed at progressively adopting measures set up to establish minimal rules concerning the constituent elements of criminal offenses and penalties[193].

On the 29th of June 1998, in Birmingham, the Council of Europe adopted another common action, aimed at creating a European Judicial Network, in order to promote intelligence exchange in judicial matters between Member States. The implementation of such a structure constituted another step towards close bilateral contacts, facilitating informal and temporary contacts.

According to the European Council meeting conclusions in Tampere, on the 15th-16th of October 1999, particularly paragraph 33, *the principle of mutual recognition should become the cornerstone of judicial cooperation within the EU*. On the 29th of November 2000, the EU Council, in accordance with the Tampere conclusions, adopted a sum of measures to implement the principle of mutual recognition in criminal matters.

The Criminal Law Convention on Corruption, adopted in Strasbourg, on the 27th of January 1999, contained procedural rules relating to international judicial assistance in criminal matters, in addition to substantial law issues. Thus, the states had an

[191] Antoine Megie – op.cit.

[192] Fontanaud D. – Les accords de Schengen, *Problèmes politiques et sociaux,* Paris, La Documentation française, no. 763-764, 15 mars 1996; Domenach J. – La sécurité intérieure en Europe, *Clefs,* Montchrestien, 1998

[193] Antoine Megie – op.cit.

obligation to provide mutual assistance in combating crime and corruption.

On an EU level, a number of conventions governing the cooperation in criminal matters between states are in effect: the EU Convention on simplified extradition procedure between Member States, adopted on the 10th of December 1995; the EU Convention on Extradition between Member States, adopted on the 27th of September 1996; the EU Convention on Mutual Assistance in Criminal Matters, adopted on the 29th of May 2000; the EU Convention Protocol on Mutual Assistance in Criminal Matters of the 16th of October 2001 and the EU Council Framework Decision of the 13th of June 2002, on the European Arrest Warrant and rendition procedures between Member States. All of these bills constitute the framework rules in criminal judicial cooperation at European level, establishing common rules for all states in order to achieve cohesion of legal cooperation policies[194].

The Nice Treaty amending the European Union Treaty and the Treaties establishing the European Communities and certain related acts, signed on the 26th of February 2001, and entered into force on the 1st of February 2003, attaches great importance to the work of judicial cooperation in criminal matters. Article 31 regulates that *"common action on judicial cooperation in criminal matters shall include*:

a) facilitating and accelerating cooperation between the competent ministries and judicial authorities or their equivalents from Member States regarding procedure and decision enforcement, including, where appropriate, cooperation through Eurojust;

b) facilitating extradition between Member States;

c) ensuring the compatibility of rules applicable in the Member States, to the extent necessary to improve such cooperation;

d) preventing jurisdiction conflicts between Member States;

e) progressively adopting measures to establish some minimum rules relating to the constituent elements of criminal acts and to penalties in the field of organized crime, terrorism and drug trafficking. "

The Council Framework Decision No. 2002/584/JHA, from the 13th of June 2002, on the European Arrest Warrant and rendition procedures between Member States, was the first concrete measure to implement the principle of mutual recognition in criminal law. Through this Community document the decision taken by the European Council in Tampere on the 15th and 16th of October 1999 was materialized. Between EU Member States the formal extradition procedure was replaced with a simplified rendition procedure, for people who evade enforcement of a custodial sentence applied after a final sentence. This is namely to accelerate the formal extradition procedure for people who evade prosecution and trial. When taking the decision to establish a European Arrest Warrant, replacing the formal extradition procedure provided in international documents, the target that the EU become an area of freedom, security and justice was first taken into account. This could not be achieved optimally in the current extradition agreement, which established a formal and cumbersome extradition proceeding[195].

Among the measures designed to give life to the mutual recognition principle under the program adopted by the Council on the 29th of November 2000, was that of adopting an instrument to freeze evidence or property. This instrument was adopted as the *Council Framework Decision No. 2003/577/JHA of the 22nd of July 2003, on enforcement, within the European Union, of orders freezing property or evidence.*

The scope of this Framework Decision is, according to Article 1, to establish the rules under which a Member State shall recognize and execute within its territory a freezing order issued by a judicial authority of another Member State during criminal proceedings. The Community Bill addresses the need for immediate mutual recognition of orders to prevent the destruction, alteration, removal, transfer or disposal of evidence. However, it concerns only a part of the judicial cooperation spectrum in criminal matters in terms of evidence, and subsequent transfer of evidence is left to mutual assistance procedures. Article 5 of the Framework Decision establishes the principle of recognition and immediate enforcement of the seizure order, without any other formality. The executing judicial authority takes the necessary measures to enforce the order immediately, without any delay, in the same manner as for a freezing order issued by an authority of the executing State, unless invoking one of the reasons for non-recognition or non-execution permitted by Article 7 or one of the reasons for postponement provided for in Article 8.

Another important piece of legislation for the principle of mutual recognition is *The Council Framework Decision No. 2005/214/JHA of the 24th of February 2005, on the principle of mutual recognition of financial penalties.* According to Article 1, letter (a),

[194] *Justice and Home Affairs*, Center for Legal Resources, Dacris Publishing, 2004, p. 28

[195] *http://www.cdep.ro/proiecte/2004/300/70/7/em377.pdf*

of the Framework Decision, the term "monetary penalty" means the obligation to pay:

- ✓ a sum of money based on a conviction for an offense under the decision;
- ✓ victims compensation granted by the same decision, when the victim cannot constitute a civil party and the court is acting under its criminal jurisdiction;
- ✓ a sum of money representing legal costs;
- ✓ a sum of money for a public fund or for an organization to protect victims, imposed by the same decision.

The objective of the *Council Framework Decision No. 2006/783/JHA of the 6th of October 2006, on the principle of mutual recognition of confiscation orders* is to establish rules under which a Member State shall recognize and enforce within its territory a confiscation order[196] issued by a court competent in criminal matters of another Member State. The provisions on the transmission and enforcement of confiscation orders are similar to those of the Framework Decision on orders for freezing property or evidence.

Also, it was considered necessary to further improve judicial cooperation in Europe through the appliance of the mutual recognition of judgments principle, under the form of a European warrant for obtaining evidence, with the purpose of obtaining objects, documents and data for use during proceedings in criminal matters. Thus, on the 18th of December 2008, *the Council Framework Decision No. 2008/978/JHA on the European warrant for obtaining evidence* was adopted, with the purpose of obtaining objects, documents and data for use during proceedings in criminal matters.

Judicial cooperation in criminal matters is also regulated in the Lisbon Treaty, in Chapter 4 of Title V, entitled "Freedom, Security and Justice Area ". Article 69A of the Lisbon Treaty provides that *"the work of judicial cooperation in criminal matters within the Union is founded on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of laws, regulations and administrative provisions of Member States ".*

To implement this goal, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures to:

a) lay down rules and procedures for ensuring recognition throughout the Union of all forms of judgments and judicial decisions;

b) prevent and settle conflicts of jurisdiction between Member States;

c) support the career training of magistrates and judicial staff;

d) facilitate cooperation between judicial authorities or their equivalents in the Member States in prosecution matters and decision enforcement.

To the extent necessary to facilitate mutual recognition of judgments and judicial decisions, as well as police and judicial cooperation in criminal matters with cross-border implications, the European Parliament and the Council, issuing directives under the ordinary legislative procedure, may establish a minimum set of rules. These rules shall take into account the existing differences between legal traditions and systems of the Member States. They include:

- ✓ mutual admissibility of evidence between Member States;
- ✓ the rights of individuals in criminal procedures;
- ✓ the rights of crime victims;
- ✓ other specific aspects of criminal procedure which the Council has identified in advance by issuing a decision; to adopt this decision, the Council shall act unanimously after the approval of the European Parliament.

If a member of the Council considers that a draft directive would affect fundamental aspects of its criminal justice system, it can request the intimation of the Council. In this case, the ordinary legislative procedure is suspended. After discussion, if consensus is met, the European Council shall, within four months of this suspension, return the draft back to the Council, which shall terminate the suspension of the ordinary legislative procedure.

Throughout Article 69B of the Lisbon Treaty, it is stipulated that the European Parliament and the Council may establish minimum rules concerning the definition of offenses and sanctions in the areas of particularly serious crime with a cross-border dimension, resulting from the nature or the impact of such crimes or from the special need to combat them starting from a common basis. These areas of crime include: terrorism, human trafficking and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting means of payment, computer crime and organized crime[197].

[196] According to Article 2, letter c of the Framework Decision, "confiscation order" means a *"final penalty or measure imposed by a court following proceedings in relation to crimes or offenses that resulted in a final deprivation of property."*

[197] Depending on the crime, the Council may adopt a decision identifying other areas of crime that meet the criteria. The Council shall act unanimously after approval of the European Parliament.

If the approximation of laws and regulations of the Member States proves essential in criminal matters to ensure effective implementation of a Union policy in an area which has been subject to harmonization, directives may establish minimum rules concerning the definition of offenses and sanctions in the area concerned.

Article 69C of the Lisbon Treaty grants the European Parliament and the Council duties to establish measures in order to encourage and support Member States' actions in the field of crime prevention, while excluding any harmonization of laws, regulations and administrative provisions of Member States.

Article 69D refers to Eurojust, a body which has the mission to support and strengthen the coordination and cooperation between national investigating and prosecuting authorities in relation to serious forms of crime affecting two or more Member States, or requiring a prosecution on a common basis through operations conducted by the authorities of Member States and Europol and through intelligence provided by them. The structure, operation, field of action and the powers of Eurojust are set out by regulations adopted by the European Parliament and Council. Also, according to the Lisbon Treaty, the powers of Eurojust may include:

a) the initiation of criminal investigations, as well as proposing the initiation of prosecutions conducted by competent national authorities, particularly those relating to offenses against the Union's financial interests;

b) coordination of investigations and prosecutions referred to in point (a);

c) the strengthening of judicial cooperation, through resolution of jurisdiction conflicts and through close cooperation with the European Judicial Network.

Article 69 of the Lisbon Treaty provides the possibility of the EU Council to constitute a European Public Prosecutor's Office, starting from Eurojust, to combat crimes affecting the financial interests of the Union. The Prosecutor's Office is competent to investigate, prosecute and bring to trial, where appropriate in liaison with Europol, the perpetrators and accomplices of crimes affecting the financial interests of the Union. Also, the European Public Prosecutor's Office exerts public action towards the competent courts of Member States in connection with these crimes.

Currently, there is no criminal code or criminal procedure at European level, nor at EU level, but we can speak of a criminal law harmonization process, in the context of the need for European states to cooperate in combating organized crime, which is constantly expanding, regardless of national borders[198].

In conclusion, judicial cooperation in the EU aims at mutual recognition of judicial decisions, legislative harmonization and development of operational cooperation mechanisms for the construction of a justice area.

References:

- **Alexandru Boroi, Ion Rusu,** "Cooperarea judiciară internațională în materie penală", C.H.Beck Publishing House, Bucharest, 2008;
- **Antoine Megie**, „*L'Européanisation du pouvoir judiciaire: genèse et enjeux*", Centre européen Sciences Po Paris, 2007.
- Council Decision 2002/187/JHA of the 28th of February 2002, establishing Eurojust in order to reinforce the fight against serious crime, published in "Official Journal of the European Communities" No. L63 of the 6th of March 2002;
- **Delmas-Marty M.**, „*Les Forces imaginantes du droit: Le relatif et l'universel*", Paris, Le Seuil, 2004 ;
- EU Council Framework Decision No. 2002/584/JHA of the 13th of June 2002, on the European arrest warrant and rendition procedures between Member States, published in "European Union Official Journal" No. L190 of the 18th of July 2002;
- European Convention on Transfer of Proceedings in Criminal Matters, adopted in Strasbourg on the 15th of May 1972;
- **G. De Kerchove** , „*La cooperation policiere et judiciaire. De la cooperation intergouvernementale a la methode communautaire*", in Une Constitution pour l'Europe. Reflexions sur les transformations du droit de l'Union europeenne (O. De Schutter et P. Nihoul coord.), Bruxelles, Larcier, 2004 ;
- **Gavril Paraschiv**, „*Drept penal al Uniunii Europene*", C.H. Beck Publishing House, Bucharest, 2008;

[198] Gavril Paraschiv – op.cit., p. 1

- **George Antoniu**, „*Activitatea normativă penală a Uniunii Europene*" (I), Criminal Law Journal, No. 1/2007;
- Law No. 302/2004, on international judicial cooperation in criminal matters, published in "Monitorul oficial al României", Part I, No. 594 of the 1st of July 2004, as amended and supplemented;
- Law No. 364/2004, on organization and operation of judicial police, published in "Monitorul oficial al României", Part I, No. 869 of the 23rd of September 2004;
- Law No. 368/2004 for ratification of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, adopted in Strasbourg on the 8th of November 2001, published in "Monitorul oficial al României", Part I, No. 913, the 7th of October, 2004;
- **M. Pantea, D. Bucur**, „*Metode şi tehnici de investigare a fraudelor*", Sitech Publishing House, Craiova, 2009.
- **Sophie Bot**, „*Le mandat d'arret europeen*", Editions Larcier, Bruxelles, 2009;

ON ILLEGAL CROSS-BORDER TRAFFICKING OF NUCLEAR, BIOLOGICAL, CHEMICAL AMMUNITION, PRECURSORS AND DUAL-USE FACILITIES

Ph.D. University Reader Cristian Florin POPESCU
Teaching Assist. Oana POPESCU

The interest of terrorist groups or organizations involved in organized crime in the procurement, marketing and use of unconventional weapons of nuclear, biological or chemical origin have also drawn the attention and concern of the whole world to the danger that they represent. Furthermore, during recent history, there have been cases when interest in the procurement, marketing and use of unconventional weapons of nuclear, biological, chemical origin or products or dual-use plants has reached the level of state policy and has resulted in repeated attempts to obtain or manufacture such weapons of mass destruction in flagrant violation of international legal framework governing activities in the field.

Keywords: trafficking in ammunition, trafficking in weapons, biological weapons, border crime, organized crime

As a result of the UN Protocol[199], most countries are aware of the urgent need to prevent, combat and eradicate the illicit manufacturing and trafficking in firearms, their parts and components and ammunition, given that these activities harm the security of each state, each region and the whole world, and that they constitute a threat to peoples' welfare, of their social progress and economic status, and their right to live in peace.

The concern about the detention and eventually uncontrolled use of unconventional weapons is fully justified. This is proved by the powerful destructive factors and long-term negative effects posed by the use of these weapons, both on living organisms and the entire ecosystem in general.

Aspects of controlling the production, marketing and use of weapons and particularly of nuclear, biological or chemical loads led to the founding of international organizations and bodies, as well as the implementation of the framework legislation in the field. Basically, these aspects aim at:

- safely holding the manufactured weapons and keeping them under strict control;
- destruction of loads (especially the nuclear and chemical ones) and decommissioning of some storage and transport facilities;
- detecting and combating the procurement, production, marketing or use of nuclear, biological or chemical weapons (NBC) for other purposes than the peaceful ones, established by international organizations in charge of the field;
- keeping record and strict control of the purchase, sale and production of precursors and dual-use facilities.

Usually NBC related equipment and facilities are especially found in developed countries and their purchase by the organizations interested in their sale or use involves cross-border transportation.

Thus, workers assigned responsibilities in border control have an important role in countering the actions of individuals and organizations interested in smuggling nuclear, biological, or chemical materials, as well as the precursors and the dual-use facilities. In order to conduct quality investigations, the personnel working in this field must have good knowledge both in NBC, plant materials, precursors and dual-use facilities, as well as documents that are required for the transportation of such materials.

Brief description of major unconventional weapons:

Nuclear weapons

Nuclear weapons are the most powerful means in terms of destructive effects, both on the population and on the various aspects of planimetry, being able to produce a very high energy in a very short time. They create large radioactive contaminated areas having a powerful moral effect by installing panic among the population.

The destructive effect of nuclear weapons resides in the intranuclear energy which is triggered as a result of nuclear reactions of explosive nature.

[199] The protocol of the 31st of May 2001 on the illicit manufacturing and trafficking in firearms, their parts and components and ammunition, addendum to the United Nations Convention against Transnational Organized Crime, adopted in New York on 15th November 2000.

Thus, nuclear explosion is accompanied by the release of huge amounts of energy and by means of its destructive effects, it exceeds the ordinary bomb explosion hundreds of times.

The nuclear weapon was tried for the first time on the 16th of July 1945 , by USA on the polygons in the Nevada desert; it was sequently used for the first time on the 6th of August 1945 against the Japanese city of Hiroshima. It was used the second time after three days on the Japanese city of Nagasaki. The total number of casualties was 60,000 people (40,000 dead and 20 wounded).

The power of nuclear ammunition is expressed in TNT equivalent required to release the same amount of energy and marked Q (in other words, Q is the amount of TNT expressed in kilotonnes, whose released energy is equal to the energy of the nuclear explosion). As a convention, according to its power, nuclear ammunition is classified according to the calibre:

- very small - less than 1 kt;
- small - between 1 to 10 kt;
- middle - between 10-100 kt;
- high - between 100-1000 kt;
- very high - over 1000 kt.

Types of nuclear warheads:

- fission nuclear warheads;
- thermo-nuclear charges;
- combined loads;
- Fission-fusion – loads with directed effect (neutron bomb).

The means of delivery of nuclear warheads ammunition are of the most varied nature. Thus, they can be seen in aviation bombs, missiles, torpedoes, projectiles and artillery mines or demolition bombs. According to destination and the means of transport to the target, nuclear explosions may occur in the air, on land or at the surface of the water and underwater or underground. The most powerful radioactive contamination occurs in the case of explosions on the surface of the earth.

The destructive factors of nuclear explosions are:

– shock wave;
– light show;
– penetrating radiation;
– radioactive contamination;
– electromagnetic pulse.

Shock wave

It is the main destructive factor of the nuclear explosion producing most of the losses and damages.

It works on all the objectives it meets.

The shock wave is a strong and sudden compression developed in an environment under pressure (several billion atmospheres) due to spontaneous freeing of energy production in the explosion area as well as the expansion of overloaded environment.

Its effect lasts between 8-10 seconds, depending on Q.

It is spread from the center outwards, at a speed higher than sound (speed decreases together with distance from the center).

The incident and reflected waves appear during the low air explosion wave. The protection of the people can be achieved by using the existing powerful obstacles in the field as quickly as possible.

Light show

Light show is a stream of light and caloric rays that arise in the area where the explosion occurred. It uses about 30% of the energy released.

Light source is the area of light that is formed from the incandescent parts of the nuclear charge and the air which has become incandescent.

The bright zone temperature is above 10 million degrees, the ends reaching about 6000.

It propagates instantaneously in all directions (it can change direction if it encounters dense areas - for example dusty areas).

It takes between 1-10 s, depending on Q.

The protection of people can be achieved by using any opaque obstacle.

Penetrating radiation

It is the flow of neutrons and gamma rays that arise from the fission of heavy nuclei or the synthesis reactions of light nuclei.

Gamma rays are electromagnetic waves like x-rays but they have a higher penetration and ionization power.

The neutron flux appears instantly as a result of fission and fusions and it has a high ionization power but a low penetration power.

Penetrating radiation needs 5% of the total energy released. It produces irradiation disease. Radiation load is influenced by the nuclear power and the environment that spreads radiation (air, water, soil, buildings, etc.).

Ionization power of gamma rays and their harmful effects are caused by a specific unit called range of gamma radiation whose unit is the röngen (R).

Radioactive contamination

Radioactive contamination consists in depositing radioactive substances (RS) resulting from nuclear explosions on the ground, living beings, buildings, vehicles etc... Radioactive substances arise from:

- high radioactive fission fragments;
- radioactive remains of nuclear charge;

– elements become radioactive after neutron capture.

The time of infection may range from a few days to several weeks or even months. It needs about 10% of the energy released in the explosion.

The most powerful radioactive contamination occurs when the explosion is produced over the surface of the earth. The effect is that of creating a contaminated surface in the zone of the explosion and another affected area created by the movement of radioactive cloud.

The extent of the contamination depends on:

– the power of the explosion;
– the time elapsed from the explosion;
– the weather;
– the nature and composition of the soil.

The extent of the contamination decreases on the axis of the radioactive cloud from the center outwards and from the axis outwards. The level of radiation is measured in röngen per hour (R / h).

Electromagnetic pulse

Electromagnetic pulse resulting from nuclear explosion is the electromagnetic field that induces currents in power lines, telephone networks, antennas and various electrical appliances in operation.

The effects of the destructive factors on the population in the area of the nuclear explosion are extremely serious. Even if they do not cause death, they may give rise to combined injuries such as bruises and injuries, burns of various degrees, " irradiation disease " (the essence of the deleterious effect is ionization of atoms entering the composition of the body, leading to cells destruction). Besides that, the damage to property and the environment contamination with radioactive substances should also be taken into account.

Chemical weapons

Chemical weapons[200] represent the following elements, taken as a whole or separately:

a) toxic chemicals and their precursors, except those whose purpose is unprohibited as long as the types and quantities are consistent with such purposes;

b) ammunition and devices designed to cause death or other harm through toxic action of toxic chemicals which would be released as a result of the use of such ammunition and devices;

c) any equipment specially designed for use in direct connection with the use of ammunition and devices specified in paragraph. b).

Toxic chemicals are any chemicals which through their chemical action on biological functions can cause death, temporary incapacitation or permanent harm to humans or animals, regardless of its origin, method of production or whether is is manufactured in plants or elsewhere.

The precursor is any chemical reactant which takes part at any stage, in the production by whatever method of a toxic chemical, including any basic component of a binary or multicomponent[201] chemical system.

The use of chemical weapons offers great prospects according to some criminal groups for at least two reasons: it does not cause damage allowing later use of materials by the aggressor; moreover, it is much cheaper than the nuclear weapon (it is estimated that, at the same cost, nuclear weapons can destroy a life while a chemical weapon can kill twenty).

Chemical weapons were first used by the Germans during the First World War on the 22nd of April 1915 at 17.00 on the river Ypres (in France) against the allied French and the Belgian troops. At that time, the Germans used the contents of 5730 bottles loaded with hydrochloric gas (over 180 tons) on a 6 km front – it was called "the gas wave attack." Because of the use of gas over 15,000 combatants were annihilated, of whom 5000 died. This date is considered to be the beginning of the chemical weapons use.

During the Second World War, toxic substances (such as cyanides - Zyclon-B gas in particular) have been used by the Nazis to exterminate prisoners of concentration camps (eg Auschwitz-Birkenau and Lublin-Majdanek).

After the Second World War chemical weapons have been used in isolated cases in some local wars (eg, Korea and Vietnam).

The possibility of using attack chemical agents has been highlighted by the incident in Tokyo subway[202].

[200] Law no. 448/2003 on the amendment and supplementing of Law no. 56/1997 on the implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction.

[201] Law no. 448/2003 on the amendment and supplementing of Law no. 56/1997 on the implementation of the provisions of the Convention Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction.

[202] See section Example of use of chemical attacks for terrorist purposes.

The main properties of toxic substances are:
- cause mass contamination of people and animals;
- do not cause destruction of property;
- maintain their toxic properties for a long time;
- access areas where conventional weapons are not effective;
- are cheaper than nuclear warheads;
- the clouds of air contaminated with toxic substances in dangerous concentrations can travel long distances;
- can be directed in time to places where they are to be used;
- can be purchased by companies that use chemicals (dual use).

Toxic substances used in aggressive actions **can be classified** depending on the type of substance (class of chemical compounds) which is characterized by various physical, chemical and physiological features, as follows:
- according to the aggregation;
- according to the time of the deleterious effect;
- according to the speed of the effects;
- according to its reaction on living organisms (pathophysiological);
- according to the intended effect.

Biological weapons

A biological weapon is a means of spreading a disease affecting the whole population and animals using pathogens and their toxins. In some cases it can be used for the contamination of different agricultural fields.

The deleterious effect is formed by bacteria means and toxins produced by pathogenic bacteria.

Pathogenic microbes are microorganisms able to give rise to specific diseases through:
- bacteria;
- viruses;
- rickettsiae;
- fungi.

Bacteria are plant microorganisms lacking chlorophyll, most often represented as unicellular. The size of a bacterium varies from 0.5 to one micron.

They are presented as:
- spheres (cocci, streptococci, staphylococci);
- rods (bacilli);
- spirals (spirillum, spirochaete).

Bacteria are able to give rise to diseases such as:
- plague;
- anthrax;
- glanders;
- cholera.

Viruses are infectious pathogens that can not grow outside the living tissues of organisms.

They have smaller dimensions than bacteria and can not be seen using a regular microscope.

They are capable of producing a large number of infectious diseases, such as:
- smallpox;
- flu;
- measles;
- polio.

Rickettsiae are microbes that make the transition from bacteria to viruses that contain common features to both groups. Like bacteria, rickettsiae can be observed under the microscope, but like viruses they can not thrive outside the living tissue.

They can cause diseases such as:
- exanthematic typhus;
- jail fever;

Fungi are parasitic microbes that cause diseases in animals, diseases which can be transferred to humans.

Microbial toxins are toxic compounds (poisons) produced by a variety of living organisms such as microbes, snakes, insects, spiders, sea animals and plants.

Toxins can produce lethal or severe disability, some of them having greater toxicity than some chemical agents. Poisoning caused by toxins is not transmissible from intoxicated people to the healthy ones.

An example of plant derived toxin is ricin (produced from castor seeds). This toxin was used in 1978 against two Bulgarian dissidents by means of an assault with an "umbrella gun". The case highlights the use of toxins for illegal or terrorist purposes, not only in the military field.

The most dangerous toxin is considered botulinum toxin - one gram can kill several million people, and 500 grams of "Type A" would be sufficient to destroy all mankind. A potential aggressor could use for the "attack" toxic substances prepared as a solid or liquid substance, or he/she could use insects, ticks, rodents to spread germs at any time and in any situation. The delivery of biological means to the scene can be made through: missiles, bombs or various projectiles (including contaminated insects). Moreover, the spread of biological resources can be made through launching contaminated objects, or spraying aerosols containing microbes or toxins. A particularly dangerous method that various terrorist

organizations employ is using various members to contaminate drinking water sources or storage of food.

On the preliminary investigation in cases of dual-use materials and facilities

Law regulates the control of dual-use goods and technology operations.

Thus, the regulating authority has defined dual use goods and technologies as "articles, software, technology and industrial services, which have dual use (civil and military) as well as articles, technologies and services, including IT and communications relating to nuclear explosive devices, nuclear, chemical, biological weapons and the missiles carrying such weapons. [203] "

In order to detect, prevent and combat theft, loss or diversion from their original purpose, or the illegal manufacturing and trafficking in firearms, parts and components as well as ammunition, each State must take appropriate measures for:

a) ensuring the security of firearms, their parts and components and ammunition since manufacture, import, export and transit through its territory, and

b) increasing the effectiveness of controls on imports, exports and transit, including border controls, where appropriate, and the effectiveness of cross-border cooperation between police and customs services. [204]

In this respect, establishing with certainty the existence of materials and / or dual-use facilities in a transport shall be performed by workers at border police points during inspection. Particularly important in this direction is the good cooperation with customs border officials.

The detection and the identification of materials or facilities need good knowledge of the criminal activity, their "cover" transport opportunities (storage and transport containers documents accompanying the goods, permit for the persons accompanying the transport, etc.), as well as the use of a certain methodology during the preliminary investigation. In fact, much of the success in the detection of illegal transport depends on the procedure of preliminary investigations. In this respect, as far as the dual-use materials are concerned it is recommended to adopt the following algorithm.

a) "Raising" suspicion

b) Carrying out the interview with companions and carriers

c) Studying and checking travel documents

d) Studying and checking transport documents

e) Studying materials / facilities and people involved

f) Handing the case to the competent authorities

"**Raising"** suspicion

In most cases a suspicion may arise in the initial phase of border control as a result of the differences between what is "normal" and regular on the one hand, and "abnormal" and unusual on the other, which appear during the body control. In this respect, border official's knowledge about the goods transported, as well as the experience in the field are of utmost importance.

The rise of suspicion is not always based on something material or a "piece of evidence", but a certain feeling that something is wrong should lead to increased vigilance and to conducting a thorough inspection.

Caution: any feeling like "I feel that it is foul play, but I do not know what" should not be ignored!

In case of an initial suspicion it is appropriate to resort to going through a questionnaire and searching some elements that can direct the preliminary investigation.

In this respect the border guard must find answer to the following questions:

– What is different in this case?

– Are there other officials or persons regarded as suspicious? (for example, the customs authorities)?

– Are the goods carrier's or passenger's gestures natural? In this respect the border guard should notice if:

• there are obvious signs of unjustified nervousness;

• provided answers are elusive;

• the states are not informed of the goods transported;

• they deny responsibility;

• the goods transported are unclearly described.

-Do sending documents arouse suspicion? Suspicion may be related to:

• the origin and destination of goods;

• vague description of goods or logical inconsistency between the goods and the recipient of goods in the accompanying documents;

[203] Law 387 on the 30th of September 2003 on export control regime for dual-use goods and technology

[204] Art. 11 - Security and prevention measures of the Protocol of 31 May 2001 against illicit manufacturing and illegal trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organized Crime, adopted in New York on 15 November 2000.

–Could or should the export need an export licence?

• are the packaging and the means of transportation in accordance with the purpose or are they unusual?

In this case it should be checked if:

• packaging or means of transport are suitable for transporting the goods declared;

• the packing or arrangement of goods in the means of transport intentionally prevent a thorough control.

- Is the destination or route normal? The border guard checks if :

• the place of conveyance / delivery of goods is known;

• the established destination for the declared goods is normal for this transport or not;

- Is it a logical business situation?

• it could be made easier, at lower cost and in less time;

• there is suspicion that the chosen method decreases the probability of a strict control.

– What are the benefits offered by the concrete conditions of the purchase / sales / shipments for all those involved in the purchase – delivery process? If the reasons are insignificant or implausible it will be taken into account that:

• businessmen always seek to reduce costs, and

• customers will always prefer quick delivery.

If the whole context has no logical explanation then the control (investigation) of the transport will continue until the situation becomes clear.

In this respect, the first step is to proceed to an interview with both the carrier and the transport attendant, as well as with the occasional passengers using the same means of transport.

The interview with the people above is based on three essential points:

-Initial contact

-Reinforcement

-Final contact

The initial contact

The person accompanying the goods transported usually:

– knows the goods better than a commercial carrier;

– knows the supplier and / or recipient personally;

– is aware of the properties and the use of the goods.

The items enable police - through a questionnaire - to learn about key issues. Thus, during the initial contact the companion can (or should be able to) answer questions such as:

– What is this article?

– What is its use?

– Where is it transported?

– Where does it come from?

– Why does he/she carry it personally?

As a result of the assessment of the answers the border guard should establish:

– the extent of the carrier's knowledge of the goods;

– the extent of the carrier's knowledge of the use of the goods;

– the relationship between the carrier and the provider, and / or end user;

– the extent of the carrier's knowledge of the reasons for the choice of the route and the means of transport;

Analysing the answers may serve as a point of comparison to responses to other questions by the same person or responses of others to similar questions.

Another person to be interviewed in the initial phase is the commercial transporter because he:

– knows or does not know the details about the goods;

– knows or does not know the supplier or the ultimate recipient;

– can give some explanations on the documents accompanying the goods;

– He/she may have noticed something unusual in the loading or packaging.

In this respect the questionnaire for the commercial transporter may include the following questions:

– Have you received special instructions from the supplier regarding the delivery procedures?

– Has the provider told you what item you carry is and how it is used?

– Have you been told or do you have any information where the goods will finally arrive?

-Have you noticed anything unusual during the takeover or about the supplier's actions?

If there are occasional passengers in the means of transport it is recommended they be also interviewed , because they can provide some information on:

– any stops along the way and people who have talked to the carrier;

– the data they know about the route (including shipping and destination points) and the goods as a result of the discussions with the carrier and / or companion;

– other data that you observed and investigated in the case investigated.

The questions addressed to occasional travelers may be:

– What is the purpose of your trip?

– When did you get on the vehicle?

– Did you stop somewhere along the way?

– What did you do after you stopped?

– Do you know the people with whom you traveled?

– Did you notice anything special on the journey?

During the interview it is recommended that the information in the statement be recorded in detail because:

– Data from the statement are a testimony of the interviewees' statements;

– It provides reliability in the activity of identifying incorrect answers and especially discrepancies between the answers;

– The recordings together with the answers to subsequent questions, in particular the discrepancies will be the basis for further detailed investigation.

Recording these discrepancies is crucial in determining the work to be undertaken.

The next step is **examining the transport**.

If possible, this activity will take place without the attendant or commercial carrier.

All packing slips and all instructions will be examined observing if there are versions in other languages and if the license matches the description of instructions and some data from the statements.

The load will be completely identified aiming at:

– Getting the description, model and serial number on the plates and identification tags;

– Observing signs on goods and containers;

– Observing if the package is adequate to protect the contents.

A commonly used method in illegal transportation cases is the over-packaging of goods in order to discourage officials when undertaking the control.

Particular attention should be given to the control of the goods. In this respect the control should:

– determine whether with the same transport there are other goods from the supplier;

– analyse if there are residues or if the product shows signs of deterioration /reconditioning.

Whenever possible, the goods observed and their components will be shot.

During this stage it is particularly important to identify the goods in terms of their utility and dual-use. For some technical or specialist details it is useful that expert advice be provided on telephone from specialists able to give some indication about the load and the possibilities of using it. The specialists in the field can be:

– trade representatives;

– professors and medical personnel;

– military personnel.

This stage will also determine whether the goods require a special license or approvals.

After having inspected the goods and got relevant data on their destination and the possibility of dual-use, it is advisable that an interview with the carrier and especially with the goods' attendant be repeated. The second interview with the attendant or carrier is necessary because:

– statements will allow comparison of results with the initial control results on the goods;

– interviewees can provide explanations for discrepancies found;

– they provide further information for the follow-up investigation and if the transport is clandestine, they may try to provide false information in order to mislead the investigation, considering that they can fulfill their purpose .

The official who re-interviews should show interest in the case without bringing charges to the respondents. He should ask questions insisting on the fact that the attendant has more information on the goods than he does. Under any circumstances must he disclose the suspicions on them.

Note that if the respective transport is a military one, then "the people involved in the enforcement of the control regime of military products become knowledgeable of information that has the value of official secret or service or commercial value, being thus obliged to observe it and to disclose it only to authorities entitled under the law. "[205]

During the examination of goods, the official gives the attendant the opportunity to explain the discrepancies.

All these explanations will be recorded step-by-step as follows:

– any change in the statement and any false statement will be put down in detail.

– details on the behavior and attitude of the person interviewed will be recorded.

[205] Law no. 595/2004 approving Government Emergency Ordinance no. 158/1999 on the exports and imports regime of strategic products

In this respect, during the re-interview and the reexamination of goods people's body language and the degree of nervousness and concern must be continuously and carefully observed.

Another very important activity assigned to the border guard is the study of travel documents. Following this activity (checking passports, tickets and receipts), the border guard may establish the places transited by the people interviewed and their destination. Most often:

– suspicions are confirmed and the real destination of the transport comes to light;

– information about the accomplices or funding sources is gathered.

For good documentation on the case it is mandatory that all relevant documents (passports, tickets, receipts, including all addresses) be copied, if possible, without the knowledge of people involved.

In addition, it is required that sending documents be analysed in order to provide a comparison of the information regarding data drawn from the documents and the attendant's or carrier's statements. It is advisable that these inconsistencies and discrepancies be put down.

Another aspect to be approached is the comparison of the documents and the notes and recordings obtained during the interview.

If the goods carried can not be completely identified and there is uncertainty regarding the need for a license or if the circumstances are not plausible or they are very unclear, then the measure taken will be proceeding to **temporarily seizing the transport.**

Warning: transport seizure is permitted up to the correct identification of goods and the complete analysis of the situation!

During the final interview with the attendant or commercial carrier the following rules must be observed:

– the reasons for which the transport has been temporarily seized will not be fully disclosed.

– the interview will be presented as "a bureaucratic matter" and that temporary seizure does not mean permanent forfeiture.

– the interested persons will be notified that it is only a delay of several hours or, depending on the situation, a few days.

– during a dialogue it will be decided how and where the attendant could be notified about the transport release.

Finally, in order to perform the expertise and solve the case, the border officials disclaim the competence by announcing the competent bodies proceeding further investigation, as follows:

– initial contact must occur by phone and request an immediate response;

– relevant information and suspicions will be provided.

Competent bodies will be informed that the attendant was notified on the temporary status of the situation so that there should offer the opportunities for a controlled delivery.

Moreover, the competent bodies will be provided all the data and the pieces of information gathered during the interview.

Example of use of chemical agents in terrorist activities

In early 1980, in Japan, Shoko Asahara, an acupuncturist named Chuizuo Matsumoto, founded a religious organization called "Aum - Supreme Truth." Nine years later, in 1989, the organization was legally recorded.

Aum was one of the thousands of similar groups that claimed to offer a spiritual haven for the Japanese who were afflicted by the turmoil of daily life.

The organization has promoted a version of Tibetan mysticism and it indoctrinated their followers with the promise of obtaining extrasensory experiences, that open up the path to enlightenment.

In the autumn of 1989 Asahara made public in the Japanese media his desire for power by declaring the intention of becoming a "spiritual dictator of the world." Thus, in 1990, Asahara and other 24 Aum members have applied to fill the seats in Japan's lower house of Parliament, attempt which failed. As a result, Asahara began to predict a war between Japan and the U.S. that would take place in 1997 and would use nuclear and chemical weapons.

In order to justify their predictions to the public opinion Asahara, by means of his organization, has created a network capable of ensuring the production of chemical and biological agents.

The interest in this field culminated in the chemical attack conducted by Aum on 20.03.1995 at some subway stations in Tokyo. According to Japanese media, the attack apparently targeted the National Police Agency of Japan, in order to create panic among the population and stop police searches of the organization's properties.

The terrorist attack took place in the morning, at rush hour at the subway, and covered three major subway lines that head to the Kasumigaseki station, station serving an area where several Japanese ministries are located.

The attack charge was placed in 11 plastic bags wrapped in newspapers, bags placed in different cars and on different routes, which had been pierced by attackers using sharp objects (most likely umbrella peaks) before leaving the cars.

According to some eyewitnesses, the attackers were dressed in regular street clothes (suits, sunglasses and surgical masks, which are often seen on the streets of Tokyo as a measure of protection against pollution).

On the three subway lines, 15 stations were affected by the chemical dispersion and there were approximately 5,500 victims out of whom 12 died, others requiring medical treatment.

Further research showed evidence indicating that the Aum organization produced chemicals (sarin and VX) and the Tokyo subway attack was not the first nor their last attack. Thus, it seems that the organization has undertaken at least two other attacks with biological agents (anthrax and botulinum toxin) and 4 attacks with chemical agents (except the attack on the subway).

Aum has legally obtained all the necessary compounds to create his own biological and chemical network employing dual-use plants. In fact, terrorist organizations interested in producing chemical or biological attack do not need a massive network like Aum, but they may simply purchase precursor substances that are available on the market, most often legally.

References and bibliography:

- The protocol on the 31st of May 2001 against Illegal Manufacturing and Trafficking in Firearms, parts, components and ammunition, supplementing the United Nations Convention on Transnational Organized Crime, adopted in New York on 15 November 2000;
- Law. No. 295/2004 on the regime of weapons and ammunition;
- Law. No. 9 / 2004 for Romania's accession to the Protocol against illicit manufacturing and trafficking in firearms, parts, components and ammunition, adopted in New York on May 31, 2001, supplementing the United Nations Convention against Transnational Organized Crime, adopted in New York on 15 November 2000
- Law. No. 111 / 1996 on the safe deployment, regulation, authorization and control of nuclear activities, as amended by Law No. 193 / 2003;
- Law. No. 387 / 2003 on the dual-use items and technologies export controls regime;
- Law. 595/2004 approving Government Emergency Ordinance no. 158/1999 on the exports and imports regime of strategic products;
- Law. 92/2004 for approving Romanian participation to the Australia Group for export control non-proliferation of chemical and biological weapons;
- Law. 448/2003 amending and supplementing Law no. 56/1997 on the implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction;
- G. D. 130/2005 on rules of implementing the regime of weapons and ammunition.

MONEY LAUNDERING-A GROWING PHENOMENON

Senior Lecturer Ph.D. Gabriela ŞERBĂNOIU
Police Faculty- "A I Cuza" Police Academy

This article focuses on money laundering crime, this victimless crime, which seems not to have any of the drama associated with a robbery or any of the fear that violent crime imprints upon people's psyche , but it still is one of the ongoing problems facing the international economy, and from the evidence studied, it has become obvious that while the fundamentals of this crime remains largely the same, technology has offered, and will continue to offer a more sophisticated and circuitous means to convert ill-gotten proceeds into legal tender and assets.

Key words: ill-gotten money, illegal proceeds, money launderer , licit use, wash cycle, token.

DEFINING MONEY LAUNDERING

There are various definitions available which describe the phrase 'Money Laundering'. Article 1 of the draft European Communities (EC) Directive of March 1990 defines it as:the conversion or transfer of property, knowing that such property is derived from serious crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in committing such an offence or offences to evade the legal consequences of his action, and the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from serious crime.

The huge profits generated to money launderers from areas such as drug trafficking, international fraud, advance fee fraud, arms dealing, trafficking in human organs and tissue, etc., will be used not only to facilitate ongoing operations, but to consolidate the wealth, prestige and respectability of those in control of the criminal business. Drug trafficking remains the largest single generator of illegal proceeds. They say that more money is spent world-wide on illicit drugs than on food. However, non-drug related crime is increasingly significant.It has been generally agreed that the characteristics of organised crime are evident in money laundering. Why? Because it a group activity, in that it is carried out often by more than one person; it is a criminal activity which is on the long run; it is a criminal activity which is carried out irrespective of national boundaries; it is large scale; and it generates proceeds which are often made available for licit use. These characteristics define a very particular kind of serious criminal activity which, at its most developed stage, is highly sophisticated and complex. The degree of organisation that is displayed in money laundering is therefore of particular concern because of its scale, its capacity to exploit and influence the legitimate business world and its capacity for internationalisation. These concerns have led to concerted international action for a solution to combat this growing menace called Money Laundering.

ASPECTS OF MONEY LAUNDERING

Business areas which are prone to money laundering could be considered: *banking, underground banking*, sometimes called 'parallel' banking, *futures*, eg due to the the 'anonymous' nature of the trading strategies, all brokers trading as principals and not in their client's name, the true identity of the beneficial owner is not known, thus commodities therefore are a 'zero sum' game, which means somebody can only buy if someone is willing to sell, and vice versa. Launderers can take advantage by a strategy of buying and selling the same commodity, thereby taking a small hit for the commission charged by the broker. They pay the losing contract out of dirty money and receive a cheque that legitimises their profits and creates a paper trail for any one who asks where the money came from; *professional advisors* represent another category, if involved in investment activity, this group made up of accountants, solicitors and stockbrokers play a major role; *finance houses/building societies,* in which case, as with banks, any suspicious transactions must be reported. Money deposits in these institutions are where the placement stage usually takes place so vigilance is called for by staff. Any unusual change in regular customers depositing habits need to be investigated and lenders also have to be aware that money laundering techniques can also involve paying off a

debt faster than income would support. A customer's declared income is manifest from the loan application; *financial transmitters* with special reference to exchange office, international money transmitters or travel agents, all offer a wide range of services that can be used by the launderers. Air tickets, foreign currency exchanges in the form of cash and travellers cheques, are recognised as being widely used techniques. Money transmitting services in the form of wire, fax, draft, cheque or by courier exist for people unable to use traditional financial institutions. Customer anonymity is a primary feature of such transmissions which identifies the inherent level of risk; *casinos and gambling* establishments are particularly attractive to money launderers. Cash can be deposited with a casino in exchange for chips or tokens. After a few turns at the table the player can cash in the remainder for a cashier's cheque which can be deposited in their account. Another method is to buy winning tickets from people in bookmakers and saying you have become the winner, thus making bookmakers vulnerable to being used. Any area that possesses the characteristics which represent high value goods that possess great portability and in many cases are used to being paid in cash is an attractive area for money launderers. At this point, it is worth mentioning the illicit activities of *antiques dealers, jeweller's and designer goods suppliers*.

THE MONEY LAUNDERING PROCESS AND OFFENCES

"Money laundering is sleight of hand... a magic trick for wealth creation... the lifeblood of drug dealers, fraudsters, smugglers, arms dealers, terrorists, extortionists and tax-evaders. It is also the world's third largest business. Though a relatively new and in vogue subject, it [money laundering] has in fact been around for centuries. Criminals throughout history have had to hide the source of newly acquired wealth in order to escape prosecution for the predicate crime."

(source; Internet: www. laundryman.u- net.com, page 14)

The wash cycle contains several stages, out of which, of a paramont importance are:

Placement;

Layering; and

Integration.

There are also common factors regarding the wide range of methods used by money launderers when they attempt to launder their criminal proceeds, among which:

- the need to conceal the origin and true ownership of the proceeds;
- the need to maintain control of the proceeds;
- the need to change the form of the proceeds in order to shrink the huge volumes of cash generated by the initial criminal activity.

As for the money laundering offences there are basically five, mainly:

- assisting another to retain the benefit of crime;
- acquiring, possession and use of criminal proceeds;
- concealing or transferring proceeds to avoid prosecution or a confiscation order (also called Own Funds money laundering).
- failure to disclose knowledge or suspicion of money laundering;
- tipping off.

INSTEAD OF CONCLUSIONS

To cut a long story short, the following questions best summarize the main ideas of the paper and give an answer to the money-laundering related questions, mainly:

WHAT IS MONEY LAUNDERING?

The goal of a large number of criminal acts is to generate a profit for the individual or group that carries out the act. Money laundering is the processing of these criminal proceeds to disguise their illegal origin. This process is of critical importance, as it enables the criminal to enjoy these profits without jeopardizing their source. Illegal arms sales, smuggling, and the activity of organised crime, including for example drug trafficking and prostitution rings can generate huge sums.

When a criminal activity generate substantial profits, the individual or group involved must find a way to control the funds without attracting attention to the underlying activity or the persons involved. Criminals do this by disguising the sources, changing the form, or moving the funds to a place where they are less likely to attract attention.

WHAT IS THE SCALE OF THE PROBLEM?

By its nature, money laundering occurs outside of the normal range of economic statistics. Nevertheless, as with other aspects of underground economic activity, rough estimates have been put forward to give some sense of scale of the problem. The International Monetary Fund, has stated that the aggregate size of money laundering in the world could be somewhere between two and five percent of the world`s gross domestic product.

HOW IS MONEY LAUNDERED?

In the initial stage of money laundering, the launderer introduces his illegal profits into the financial system. This might be done by breaking up large amounts of cash into less conspicuous smaller sums that are then deposited directly into a bank

account, or by purchasing a series of monetary instruments (cheques, money order, etc) that are then collected and deposited into accounts or another location.

After the funds enter the financial system, the second stage takes place. In this phase, the launderer is involved in a series of conversions or movements of the funds to distance from their source. The funds might be channeled through the purchase and sales of investments, or the launderer might simply wire the funds through a series of accounts at various banks worldwide. This use of widely scattered accounts for laundering is especially prevalent in those jurisdictions that do not cooperate in anti-money laundering investigations. Sometimes, the launderer might disguise the transfers as payments for goods or services, thus giving them a legitimate "look".

Having successfully processed his criminal profits through the first two phases of the money laundering process, the launderer then moves them to the third stage-integration-in which the funds re-enter the legitimate economy. The launderer might choose to invest the funds into real estate, luxury assets, or business ventures.

HOW DOES MONEY LAUNDERING AFFECT BUSINESS?

The integrity of the banking and financial services marketplace depends heavily on the perception that it functions within a framework of the high legal, professional and ethical standards. A reputation for integrity is the one of the most valuable assets of a financial institution. If funds for criminal activity can be easily processed through a particular institution, this institution could be drawn into an active complicity with criminals and become part of the criminal network itself. Evidence of such complicity will have a damaging effect on the attitudes of other financial intermediaries and of regulatory authorities, as well as on ordinary customers.

As for the potential negative macroeconomic consequences of unchecked money laundering, the International Money Fund has cited bank soundness, contamination effects on legal capital flows and exchange rates due the unanticipated cross-border asset transfers.

WHAT INFLUENCE DOES MONEY LAUNDERING HAVE ON ECONOMIC DEVELOPMENT?

Launderers are continuously looking for new routes for laundering their funds. Economies with growing or developing financial centres, but inadequate controls are particularly vulnerable as established financial centre countries implement comprehensive anti-money laundering regimes.

Differences between national anti-money laundering system will be exploited by launderers, who tend to move their networks to countries and financial system with weak and ineffective countermeasures.

Some might argue that developing economies cannot afford to be selective about the sources of capital they attract. But postponing action is dangerous. The more it is deferred, the more entrenched organized crime can become.

As with the damaged integrity of an individual financial institution, there is a dumping effect on foreign direct investment. When a country's commercial and financial sectors are perceived to be subject to the control and influence of organised crime.

The possible social and political costs of money laundering, if left unchecked or dealt with ineffectively, are serious. Organized crime can infiltrate financial institutions, acquire control of large sectors of the economy through investment, or offer bribes to public officials and governments.

Money laundering is the process by which large amounts of illegally obtained money (from drug trafficking, terrorist activity or other serious crimes) is given the appearance of having originated from a legitimate source. If done successfully, it allows the criminals to maintain control over their proceeds and ultimately to provide a legitimate cover for their source of income. Money laundering plays a fundamental role in facilitating the ambitions of the drug trafficker, the terrorist, the organised criminal, the insider dealer, the tax evader as well as the many others who need to avoid the kind of attention from the authorities that sudden wealth brings from illegal activities. By engaging in this type of activity it is hoped to place the proceeds beyond the reach of any asset forfeiture laws. As a conclusion, money laundering influences the financial system, the economy, the crime rate, and the society at large. Laundering enables criminal activity to continue so it is a phenomenon that should concern the local authorities, the national governments and international organizations so that it can be taken the best measures, in the benefit of all.

References:

- Article 1 of the draft European Communities (EC) Directive of March 1990
- Internet: www.laundryman. u-net.com
- Berchesan,Vasile si Grofu, Nicolae - *Investigarea criminalistica a infracțiunilor de evaziune fiscala si bancruta frauduloasa,* Little Star Publishing House, Bucharest2003
- Lucaci, Iosif si Marin, Robert - *Investigarea fraudelor informatice, Ministry of Interior Publishing House,* 2002
- Pantea, Marius - *Investigarea criminalității economico-financiare,* Pro Universitaria Publishing House, Bucharest2010
- Voicu, Costică si Ungureanu, Georgeta- *Globalizarea si criminalitatea financiar- bancara,* Universul Juridic Publishing House 2005.

THEORETICAL AND PRACTICAL ASPECTS ON PREVENTING AND COMBATING ILLEGAL ACTIVITIES IN THE DOMAIN OF PROTECTION OF THE GOODS BELONGING TO THE NATIONAL CULTURAL HERITAGE

Deputy (representative) Adrian GURZĂU
Ciprian SACHELARIU

As a conscious human activity, the protection of the cultural heritage is a result of the interest of the man as an individual and then as a group or collectively, manifested to the culture and the cultural act. The interest was influenced by the institutional, legislative or judiciary measures. At once with the economical and social development, human society has created specific or congruent rules and legal systems. Virtually every era of human history created, innovated and renewed its own ideas, passing them quickly from the sphere of politics or economics to the cultural domain, where settled out, better lighting the spiritual values of the time.

Keywords: national cultural heritage, crime, theft, organized crime, national criminal groups

The new political, economical and social conditions in Romania after 1989, and the legal vacuum produced by the abolition of the Law no. 63/1974, had a significant impact on the growth of the criminality rate and the perpetrators'' aggressiveness regarding the values of the national cultural heritage, in various forms and affecting the assets owned by public institutions, private collectors, places of worship, memorial houses, archaeological sites, etc.

In addition to the exacerbated violence and the diversification of the operating patterns of the gangs' structure, there is an increased internationalization regarding the connections of different types of organized border crime. Elements of international organized crime have also appeared in Romania, coming into contact with the internal criminal world, the similarity of illicit purposes representing an excellent binder. From well-structured criminal groups to the traditional gangs, they began to activate in areas, cities and even rural environment. It should be noted that offenders in this domain act deliberately, carrying out complex tasks of preparation, before committing any crime.

The lack of legal initiative from the policy makers, and also from those directly responsible for the safety of these national values and even the universal civilization, made possible the irrecoverable loss of many such values. In many cases, in this period, assets from the national cultural heritage have been temporarily removed from the country in order to exhibit them abroad, without having taken the necessary measures to ensure the absolute security and the full refund to national cultural heritage. Thus, in March 1995, the temporary export of over 200 cultural goods of particular value, from the National Art Museum, Cotroceni National Museum and Peles National Museum was approved, in order to exhibit them in the "*Art Nouveau Art Deco*"[206] exhibition, in collection from Romania, opened in Belgium. Although they were part of the national cultural heritage and their value was, at that time, over 1.5 million Euros, their transport on the route: Romania - Hungary - Czech Republic - Germany - Belgium was made with a Romanian bus, the security of the goods during transport being assured only by drivers and the exhibition commissioner. Moreover, the Peles Museum lost an "*Art Nouveau*"[207] leather frame, which was part of national heritage. The conditions under which it disappeared remain a mystery until today.

A worst case is the situation of the "Stories of the tragedies of history" exhibition, held in Israel for a period of six months, where over 82 pieces of old

[206] Art deco is an abbreviation for the French expression which defies *international exposition of modern decorative and industrial arts* , which took place in Paris in 1925 (*Exposition Internationale des Arts Décoratifs et Industriels Modernes*), reffered to an artistic movement at the begining on the 20 th century, which afterwards grew in amplitude and importance, influencing semnificatively architecture, sculpture, fashion, interior decorations and visual arts for a quater of century. To be seen Alistair Duncan, „*Art Deco Furniture: The French Designers*", Thames and Hudson, 1984.

[207] Art noveau (a term derived from French language and describing *new art*) is an artistic style which manifested plenary in visual arts, design and architecture at the begining of the 20 th century, relatively at the same time in most of the european cultures and countries, but also in North America, where was adopted mostly in The United States Of America and Canada, to be seen Patricia Frantz Kery, „*Art Deco Graphics*", Thames and Hudson, 2002.

silver were exposed, which have not been returned so far to the History National Museum of Transylvania, its owner.

For carrying out criminal activities, particularly identifying hidden coffers and their trafficking, so-called "*associations*" have been established to search for these thesauruses. One such case was that of the "Association of amateur searchers of historical documents, archives, hoards and treasures" in Caras-Severin, from which police recovered 14 silver Roman coins, while in Barza, Salaj County, police recovered 1.325 ancient coins and other archaeological items of particular value, part of a treasure found in the above mentioned cities.

The lack of specific legal framework determined the lack of a strong police intervention, making it impossible to apply measures of investigation and accountability of the guilty. These moments of legal chaos, particularly in the period 1990-1994, have favored the domestic and international movement, without any kind of control, of numerous treasures, many of which were valued outside the borders, well below their real value. In terms of criminology, this period may be regarded as the main factor favoring the establishment of networks of goods of art trafficking which include the categories of officials of the former Heritage District Offices (now named County Department for Culture and National Heritage following the merger with the County Inspectorate for Culture)[208], officials of the General Directorate of Customs or even second-time offenders, attracted by the lure of the money obtained this way.

The raise of any barriers to stem the traffic of goods of national cultural heritage immediately aroused the interest of foreign criminal organizations specializing in such illicit activities, which have sent "*emissaries*" in Romania, looking for connections among the Romanian criminals, specialized in such crimes, and also among some racketeers, thus establishing an organization and internationalization of acts of illicit trafficking of goods of national cultural heritage.

This feature was not characteristic only for Romania, the scourge also spreading over the Central and Eastern European states. Thus, in Czech Republic and Slovakia, the theft of art and religious objects, followed by illegal transportation across border took, in the 1990-1994 period, an unprecedented ampleness, when more than 30.000 art objects were stolen, only 8-10% being successfully recovered until present days. In Poland, theft and illicit trafficking of art goods, reached, in the same period, incredible levels and according to the assessments of judicial sources, almost every object of significant national cultural heritage value was stolen. This type of crime was fostered by the unfairness of certain Polish customs officers, something that determined the central Polish authorities to dismiss and bring to justice more than 200 customs officers, caught in the act of bribery.

By some estimates, about 30% of the stolen and trafficked works of art reappear in the public circuit, at the expiry of limitation periods, or after they were changed or modified, or accompanied by new acts of origin and property.

In Romania, during 1990-1994, there has been an alarming increase in the number of objects stolen from private collections, form museums and places of worship, as a result of the increasing number of private collectors – foreigners which, after consulting the catalogs of prices deliberately created (sometimes even by Romanian criminals), were tempted by the extremely low prices, requiring large amounts of art and ecclesiastical objects[209]. Thus, in 1993, in Bucharest, the painting entitled "Last Judgment" of Rubens[210] was stolen from a private collection. The criminals carried out an organized activity, extremely documented for committing the theft. Thus, the owner was visited at home, prior to the theft, by people who recommended themselves as experts of the Art Museum, who wanted to evaluate and photograph the painting to confirm its authenticity. Later, following an announcement by phone, at home, the owner was informed that he was the winner of a contest in which the prize was awarded as a stay at the Romanian seaside. In this way, the owner and his family members were deliberately sent away from the city, the value of staying being supported by the authors of theft.

In the Braila Synagogue breaking in case, the theft was commissioned by a woman, an Israeli

[208] Under the present form, respects the terms imposed by Ordinance no. 90 from 10 February 2010 which brings under regulation the organization and action of the Cultural and Nationl Heritage Minister, published in The Official Monitor no. 116 from 22 February 2010.

[209] M. Pantea, „*Investigarea criminalității economico-financiare*", Editura Pro Universitaria, Bucureşti, 2010, pag. 39.

[210] Peter Paul Rubens the most flamand painter even though he was born in Germany and improved his artistic talent in Italy. Rubens's life seems to have been governed by an inexhaustible energy. Within the space of forty years, the artist paints almost 1400 paintings and executes hundreds of drawings, to be seen David Jaffé, Elizabeth McGrath, Minna Moore Ede, „*Rubens. A Master in the Making*", Londra National Gallery Company 2005.

citizen, former Romanian citizen, who emigrated to Israel and, prior to the theft, visited the synagogue and set eyes on the goods to be stolen. To commit the theft, she contacted a group of gypsies who were specialized in trading objects of worship, offering them the "*business*" for a sum in foreign currency. Initially, the offenders, not knowing well the concerned objects, stole items of large size but smaller value, so they had to commit a second burglary for the theft of the ordered goods.

Criminals in the field, choose their entry modes and tools to commit the theft after the previously studied target objectives, establishing their vulnerabilities and conditions that favor them in their criminal activity.

In 1992, 72 robberies were committed in places of worship, of significant importance being the thefts committed in churches located in the Valeni village, Neamt County, Bogdăneşti and Parjol parishes in Bacau, from where there were stolen 42 icons painted on wood, 36 icons that came from the sixteenth and seventeenth centuries, as well as other religious objects. Other thefts of this kind were those committed in the "*St. Archangels Michael and Gabriel*" church, in the Rozavlea parish, Maramures County, where nine icons painted on wood, from the eighteenth century were stolen and the theft committed in the "St. George" church in Bucharest, from where religious objects that were part of the national cultural heritage, whose value exceeded the sum of 11.000 RON were also stolen.

In most cases, these goods from the national cultural heritage were illegal traded to foreigners, who organized their trafficking abroad, which subsequently were recovered in large amounts. One such case is the commercial attaché of the Italian Embassy in Bucharest, who, on the 24th of September 1994, left Romania through Bors custom, and in the train used for the transportation of personal goods, 102 items of decorative and fine art, 48 old books and 44 old icons were found, and following the specialized expertise, it was established that 36 books, 38 icons and nine paintings were part of the national cultural heritage, none of those assets having the approval of the competent organ for transportation outside the national borders.

Another Italian citizen tried to transport across the border, hidden in special places, in the car he was driving, a total of 17 icons painted on wood, which belonged to the national cultural heritage, according to the evaluation that followed.

As a result of police checks and controls, it was found hat more than 400 economic agents in almost all counties, who specialized in the sale, appraisal, restoration, evaluation and approval of the works of art export, did not have the necessary approvals for functioning, issued by the bodies of the Ministry of Culture, according to Government Ordinance no. 27/1992 and Law no. 11/1994[211], and most people did not have specialized studies needed to carry out such activities. The "*explosion*" of these units of commercialization, evaluation, expertise and even authentication of works of art of precious metals and stones, with no evidence of the depositor or purchaser, has created a large number of hazards for the "*art trade".* These activities were carried out in most cases, by the so-called "*experts*", employed by the above-mentioned companies, acting according to their interests, to the applicant's interest or to the offered amount depending on the service. Thus, inestimable values of the national cultural heritage could disappear without a trace, assessments could me made under the real value of the cultural goods, circumvention of the customs taxes or other legal provisions could occur and the market could be flooded with fake art, authenticated as original works.

An example is the former director of the "Muzica" store in Bucharest, cooperator of the Office for the National Cultural Heritage Bucharest, in the domain of musical instruments expertise. In 1991, he founded a private company specialized in the authentication and expertise of musical instruments, and issued approvals for the definitive export of such goods, illegally issuing certificates of authenticity, while being unauthorized by the Ministry of Culture.

Due to the lack of legal regulations that incriminate the illegal transportation of goods from the national cultural heritage across border, the police were unable to pursue and investigate, by Interpol, the cultural objects valued in the country and the foreign citizens guilty of committing such acts.

Amid the lack of an adequate legal framework, which protects the goods of the national cultural heritage, the degradation processes, damage and destruction of movable, historical and archaeological monuments have increased. As was the case of the National Library prints fund, totaling over 8 million titles, of which many were incunabula, manuscripts and old books (some are even unique), which were scattered in six locations in the country and 19

[211] with further modifications and addendum active until 01.05.2011

buildings in the capital city, in improper storage and preservation spaces for these categories of goods in terms of total insecurity.

Due to the lack of intervention from the responsible authorities, the "*Royal Hunting Mansion*" in Ruşeţu village, Buzau County, which has been declared an historical monument of architecture, was left to degrade and was eventually completely destroyed, on the grounds that it is under the administration of the "Ruşeţu" stud farm.

According to the makers of the Ministry of Culture, it is estimated that "*the ignorance towards the heritage values led, in time, to the disappearance of about three quarters of Romania's historical monuments*".

Even in the context of the emergence of new legislation on the protection of national mobile cultural heritage, due to its imperfections, but also due to corruption whose subjects are officials from various sectors, with responsibilities in the protection of national cultural heritage, it is estimated that annually, heritage assets, whose value amounts to over 20 million U.S. dollars, were illegally taken outside the country through various ways.

With the legal changes in the field, results occurred. Thus, a great success, a result of the cooperation between Interpol and Romanian police, was the recovery of the 4 paintings stolen 36 years ago from Brukenhal Museum in Sibiu: "*Portrait of a Woman*" by *Rosalbla Carriera,* "*Man with the pipe at the window*" by *Franz von Miierys* (1635-1681) – Flemish School, "*Portrait of a man with the skull*" by the master of the legend of St. Augustine – Flemish School, (XVth century) and "*Ecce Hommo*" by *Tiziano Becellioda Codore* (1477-1576) – Italian School. Through a laborious task, Interpol Washington recovered the art and returned the works to the Romanian museum in 1998[212].

The criminal groups that assault the national cultural patrimony, activate by their own initiative or the order or request of the Romanian and foreign collectors. Due to the multitude of crimes which may affect the values of national cultural heritage and diversity of ways to commit these crimes, we will present only the most common modes of operation used.

The theft of patrimony goods from homes (private collections) and public collections (museums), theft from places of worship (churches, monasteries, convents, parish houses, cemeteries) represents the most common method used in the field. According to the UNESCO study, the value of the stolen goods that are part of the states' cultural patrimony is more than one billion Euros annually[213].

For example, on the 18th of May 2011, an offender who had his face covered by a hood entered a villa in Piatra-Neamt, through a basement door left open, after the house was surveyed at least three weeks from an abandoned building located across from it. He restrained the 72 years old owner and spent almost seven hours in the house. When preparing to leave, a 60 years old neighbor entered the house. He restrained her also and then ran. Nine paintings by Tonitza, Grigorescu and other Romanian painters were stolen, several ivory statues and a gold watch[214]. The nine stolen paintings were: "*Bullock cart*", "*Boy*", "*Girl on rock*" and "*Landscape*" by Nicolae Grigorescu, "*Yellow Flowers*" by Nicolae Tonitza, "*Fruits*" by Octav Bancila, "*Flowers*" by Stefan Potop, "*Dead Nature*" by Corneliu Baba and "*Cows*" by Stefan Luchian.

Also under the category of theft fall **the theft by substitution** and **the theft by correction**. In the case of theft by substitution *(replacing the originals with fakes)*, it occurs after the originals are photographed and studied to the smallest detail, then an order is issued to an artist who makes copies, which are placed in museums and memorial houses, mostly with the aid of the employees, and the original object is stolen and exploited. Theft by correction, stealing an item form a museum open to the visitors, is performed during the functioning program, due to the negligence of the supervision staff.

Theft "to tip" is committed as a result of agreements between the employees of museums or memorial houses with the offenders or, in the case of private collections and places of worship, with people from the owners' entourage, who facilitate the theft of cultural property by providing information or participating with criminals in stealing the exposed values. Theft committed "***to order"*** requires a prior understanding between the

[212] N. Balint, „*Icoane, statui, tablouri din Patrimoniu: jaful continuă*", Ziarul de Mureş, 4 octombrie 2005, a se vedea http://www.hotnews.ro/stiri-presa_regionala_arhiva-1730444-icoane-statui-tablouri-din-patrimoniu-jaful-continua.htm?p_64025__action=arhiva&p_64025__paramMonths=9&p_64025__paramYears=2009

[213] Lygia Negrier-Dormont (coordonator), C. Voicu, I. Vintileanu, G. Ungureanu, A. Boroi, „*Introducere în criminologia aplicată*", Bucureşti, Editura Universul Juridic, 2004, pag. 283.

[214] http://www.b1.ro/stiri/eveniment/piatra-neamt-furt-de-opere-de-arta-printre-care-tablouri-de-grigorescu-si-tonita-4967.html

perpetrators and the person who gave the order, and the operation mode is different, depending on the number of network's members, the role of each in the commission of theft, and on the nature of the goods which are to be stolen.

Other types of crimes that are committed are:

- ***Art forgery,***
- ***Detections and unauthorized excavations in archeological sites,***
- ***Preparing false documents either for stolen goods or for the legal owners, followed by the illegal transportation across the borders,***
- ***Deception and false.***

In the case of theft, operating modes used by criminals are:

- Forcing doors and locking systems with jacks, crowbars (levers), grips vices to pull the hub out of the door lock, using the "*bulldozer*".
- Use of copied keys, pontoarcelor[215], lock-picks or original keys;
- Annihilation or avoidance of the alarm systems;
- Cutting bars from windows and escalating them;
- Forcing the protection systems of windows, pulling the window out of the wall or breaking their glass or glass case in order to reach the seal;
- Forcing doors and windows by using physical force;
- Entering the house under various pretexts and committing the theft, taking advantage of the victims' lack of attention;
- Climbing walls;
- Breaking less resistant walls (drywall, chipboard) and entering the house.

The smuggling of mobile cultural goods is done through the following fraudulent maneuvers:

- Obtaining "*illegal*" export certificates for mobile cultural objects, which may be part of the national cultural patrimony, with the aid of the specialists from the directions, specialized in culture, religions and national cultural heritage. Often times, table appendix are created, without additionally describing the exported cultural asset, making only a brief mention, thus creating the possibility of exporting goods belonging to the national cultural heritage;
- hiding the painting that is part of the national cultural heritage, frameless, under the one for which it was obtained an export license, which has a frame, because during the customs control, the paintings are not removed from their frames and the seal certifying that the painting was examined by the Directorate of culture, religions and national cultural heritage is applied to the frames or the cardboard that protects the back of the painting;
- smuggling mobile cultural objects, especially those with a small volume through the border crossing point, hiding it in luggage or other vehicles, using the "*cover*" method to hide smaller cultural assets in larger ones *(e.g. old furniture)*, for which export licenses were obtained according to law;
- Smuggling movable cultural goods through border crossing points in diplomatic luggage that is not usually controlled;
- Border crossing through places other than those controlled, taking advantage of the negligence of the workers at the border crossing points;
- Adding, in the table appendix of the export certificates, goods that are part of the national cultural heritage and having been rejected by specialists of the *Departments of Culture, Cults and National Cultural Heritage.*

In the case of fraud and forgery crimes, these are committed:

- in the "*antique*" or "*antiquities*" shops, the art galleries or auction houses, at the sale exhibitions, where fake works of art are deposited, but are presented as being authentic, while the professional advisers attached to these companies are in collusion with the depositors, customers being deceived, capitalizing on the fact that most of them are not familiar with these works of art;
- When returning to the depositor the unsold movable cultural goods, fakes are surrendered and the genuine are valued by those interested. The same aspect can be met when the goods are deposited in workshops or restoration laboratories, or when they are borrowed for various reasons, usually elderly people being deceived.

Regarding the "*detections and unauthorized excavations in archeological sites*" crime, this represents:

- Using of metal or non-metal detectors to locate archaeological objects and various tools for taking them to the surface, appropriating them and exploiting them in the country as well as abroad. The prejudice is represented not only by the losses of the national cultural heritage, because of

[215] pontoarcă, *pontoarce s. f.* 1. (*intl.*) „gadget at the size of a nail file used at restraining car". 2. (*la pl. – cart.*) „incomplet package of playing cards", a se vedea http://dexonline.ro/definitie/pontoarc%C4%83

the goods commercialization outside the legal framework, but also by the damages that are caused both to the mobile and immobile property.

¬ Omitting to surrender, within the period prescribed by law, the archaeological items that are accidentally discovered or are a result of the authorized archaeological researches, carried out systematically.

The main crimes committed in the domain of protecting historical monuments are, as follows[216]:

- Unauthorized abolition
- Partial destruction
- Desecration of historical monuments
- Expropriation without the consent of Culture and Cult Minister

Regarding the activity of commercializing goods came from heritage, economic crimes are committed (embezzlement, extortion, tax evasion, crimes regarding accountancy law), through:

- Merchandising goods through different ways, commercializing them, through the aid of different societies which have as main activity the commerce of mobile cultural goods, antiquities and the omission of registering them in the society's accountancy or the usage of double accountancy with the purpose of peculation in one's own interest the purchase and the elusion of paying taxes and dues that these operation support.
- The omission of registering in the accountancy, as a whole, of the goods manufactured and commercialized;
- The process of commercializing through the aid of commercial societies of the goods which are illegally procured, came from the commission of crimes, as well as the omission of registering the commercial operations in the accountancy;
- The existence of unreal accountancy regarding the goods derived in a regime of *consignment*, in the entrance register being written smaller quantities of goods than those received in reality;
- The acquisition of mobile cultural goods from persons, followed by the unreal elaboration of justificative documents (acquisition registers), resulting in the distorted registration in the accountancy of the expenses resulted from the acquisition of the goods;
- since the maximum for out of country by individuals, goods of any category is 1.200 euros, according to existing customs legislation at this time, individuals, Romanian or foreign citizens, under a prior agreement with owners of such stores "consignment", enter these goods on consignment, on behalf of others (often on behalf of employers) and then redeemed at a price much lower than the real value of the property, getting a tax bill they use as justification for the organs customs, taking advantage of the fact that departments of culture, religions and national cultural heritage, the export certificate permanently, does not mention the true value of the asset at the expertise. In exchange for the provision of this work, shop owners of "consignment" receives a "commission", which varies depending on the value of the property and is not found recorded in the accounts of the company.
- Avoidance of management or other management officials, from the religious institutions of goods from its inventory and then selling them to individuals or legal entities or their submission to be valued in the shops of "consignment" amounts obtained the money appropriated for themselves, for their own interest;
- movable cultural loan made between institutions or private individuals, without drawing up legal documents, which leads to failure to return or restitution in their state of degradation.

Most often are being sold, illegally, paintings, old books, jewelry, coins, furniture, old tools, icons,religious objects and antiques. In Europe, this type of crime is common in Italy, France, Belgium, Greece, Czech Republic, Russia and Bulgaria, where approximately 50% of goods are stolen from individuals, 35% of places of worship and 15% of public institutions, as such as galleries, museums, exhibitions etc.[217] Significantly for this is the theft of paintings worth about 1 billion euros[218] on 19 May 2010, committed at the Museum of Modern Art in Paris. These works of art are the masterpieces belonging to famous painters such as: PabloPicasso, Henri Matisse, Georges Braque, Fernand Leger and Modigliani. The breaking in was given by an unknown author who entered through the ventilation system of the museum, according to French judicial declaration data sources[219].

[216] M. Pantea, *„Investigarea criminalității economico-financiare"*, *op. cit.*, pag. 39.

[217] Lygia Negrier-Dormont (coordonator), C. Voicu, I. Vintileanu, G. Ungureanu, A. Boroi, *„Introducere în criminologia aplicată", op. cit., pag. 284 şi urm.*

[218] *„Cinci tablouri de* un miliard de euro, furate la Paris", la http://www.ziare.com/stiri/furt/cinci-tablouri-de-un-miliard-de-euro-furate-la-paris-1016863â

[219] see the following link: http://www.lepoint.fr/societe/musee-d-art-moderne-100-millions-d-euros-de-tableaux-voles-20-05-2010-456943_23.php

The concern for criminal groups trafficking in antiquities and cultural goods of a value practically, difficult to estimate, is highlighted by massive thefts committed in Iraq during the war, when from the galleries and stores in Baghdad National Museum of History, were removed over 170 000 objects and exhibits[220].

Following the legislative vacuum in the period 1990-2001, the General Inspectorate of Romanian Police – Directorate of stock records and criminal record, could not achieve an implementation of criminal convictions on the line of national cultural heritage. Offenses relating to heritage assets were recorded as crimes of "theft", so that we can not achieve statistical evolution of this phenomenon. However, without risk of mistake, we can say that during this period, the aggressions experienced by the national heritage experienced a resurgence of cultural heritage, being the affected property as public property and those of private property (in its various forms). During this period, police were not in the possession of specific legislation in this area, especially since the evolution and trends in crime, domestically and internationally in this field required the initiation of complex measures, designed to counter criminal structures (specialized) with links outside the country, with high technical equipment (for detection equipment, computers with Internet access, speed of vehicles, etc.). This made possible the removal of goods from country of heritage with a value practically incalculable for the history and civilization of our ancestors, with little hope of being recovered and given back to the national heritage.

Cross-border crime was strongly favored by the weakening of control at customs on movement of persons and goods transported. Despite restrictions imposed by the"Schengen Convention", they were avoided by recruitment, the structure of criminal networks, of foreigners or people who travel frequently in countries of destination, the object of ofense. Huge gains obtained by selling stolen goods heritage has enabled by the funding of other activities with legal aspect, tangent with the marketing of heritage assets (transport companies, pawn shops, auction houses, etc..), and also the corruption of people with power in thr control line endorsement or export of cultural goods in controlling ownership (provenance) bid of the good.

In 2007, there were data for tracking and recovering a total of 2644 mobile cultural goods[221]. Of these 2644 objects pursued are 713 pictures, 747 icons, 259 statues and sculptures, rare books and old 220, 306 objects, and another 658 are other goods. In terms of archaeological objects pursued by the Romanian Police, the total number was 18,983. These goods are part of the archaeological goods claimed stolen from museums or other institutions or the dismantling of ancient monuments and archaeological sites. They are ancient coins, metal or ceramic pots, statues, equipment or items of military equipment and other antique jewelery[222].

Analysis of the remaining work and criminal cases with unknown authors demonstrate the increasing trend to expand such files on the one hand, due to permanent and relatively constant agression holders of the national cultural heritage goods (regardless of ownership) and on the other hand, the increasing of difficulties of identification and research of the authors of the facts, they travel fast, featuring a county to another, and through the multitude of external transport companies, goods, with the complicity of employers and drivers of these companies may be removed and transported to the country where cultural property stolen is recovered, being lost, most often, any possibility of recovery. The statistics show that the most powerfull bullying is exerted on the existing cultural goods encountered in houses of worship - churches, in particular, but also in monasteries and cemeteries. A significant example in this respect, it is theft committed for the second time of the sculpture "Prayer" by Constantin Brancusi, the funerary complex in the cemetery "Grove Buzau" case remained unclear until our days.

Another example is the theft happened on 29 October 2010, when a descendant of Dr. Petru Groza notified Hunedoara County Police Inspectorate that three of the paintings belonging to private collections of Dr. Petru Groza memorial house were stolen and replaced with fakes contemporary by strangers. Two paintings valued at 220,000 euros - "Landscape" by Nicolae Grigorescu, and "Landscape of the Delta," by Nicholas Dărăscu - stolen from the house of Dr. Petru Groza of Deva, were recovered by police, and a third picture, " bullock cart, "belonging to all Grigorescu and rated at 175. 000, was given on national and international prosecution. The

[220] Lygia Negrier-Dormont (coordonator), C. Voicu, I. Vintileanu, G. Ungureanu, A. Boroi, *„Introducere în criminologia aplicată", op. cit.*, pag. 285

[221] Aurel Condruz, *„Cooperarea judiciară internațională privind urmărirea și recuperarea bunurilor culturale mobile"*. Conferința internațională de la Alba-Iulia, noiembrie 2007.

[222] *ibidem*

paintings, which belong to national cultural heritage, were stolen during 2004-2005, and the theft was noticed after five years. Following investigations by the police Criminal Investigation Department and Hunedoara County Police have identified suspects in this case. Members of the criminal netwaork are being investigated for criminal theft and complicity. Investigators determined that the paintings were valued on the black market antiques and purchased two people in Bucharest. The two panels of three, that landscape, and landscape of the Delta Nicolae Grigorescu, Nicolae Dărăscu were found stolen from collectors in good faith. Following house searches carried out from 9 to 18 March 2011, members of the criminal network were found and nine other goods, or five paintings by the Romanian artists of national and four icons. None of these goods do not have documents of origin[223]. But besides these usually notified offenses criminal acts are committed, under special laws, which should be sought. This includes detection and unauthorized excavations in archeological sites, forged works of art belonging to famous artists, putting these fakes into commerce, through consignments, bookstores, art galleries, auction houses etc.., trafficking of such items .

At an international level, in order to counter theft and illegal trade in works of art, was created a data base administered by the UNESCO[224] International, a "red list" of cultural goods from South America[225] and it was proposed the establishment of an international police unit[226] specialized in preventing and combating the illegal activities in the field.

Selective bibliography:

- **Aurel Condruz**, „*Cooperarea judiciară internațională privind urmărirea şi recuperarea bunurilor culturale mobile*" – International conference Alba-Iulia, November 2007
- **C. Nasui**, „*Galerii de artă din Capitală, percheziționate în cazul unui furt*", in Modernism tabloid de artă şi stil Magazine, 12 May2011
- **Lygia Negrier-Dormont**, (coordonator), **C. Voicu, I. Vintileanu, G. Ungureanu, A. Boroi**, „*Introducere în criminologia aplicată*", Bucureşti, Editura Universul Juridic, 2004.
- **M. Pantea**, „*Investigarea criminalității economico-financiare*", Pro Universitaria Publishing House, Bucharest, 2010.
- **M. Pantea, D. Bucur**, „*Metode şi tehnici de investigare a fraudelor*", Sitech Publishing House, Craiova, 2009.
- **N. Balint**, „*Icoane, statui, tablouri din Patrimoniu: jaful continuă*", Ziarul de Mureş, 4 October 2005

[223] C. Nasui, „Galerii de artă din Capitală, percheziționate în cazul unui furt", în revista Modernism tabloid de artă şi stil, 12 mai 2011, to be seen the following link: http://www.modernism.ro/2011/05/12/galerii-de-arta-din-capitala-perchezitionate-in-cazul-unui-furt/

[224] see the following link: http://www.unesco.org/culture/en/natlaws/db/brochure.pdf

[225] see the following link: http://www.museum-security.org

[226] see the following link: http://www.cultureconflictcooperation.com/1/post/2011/07/what-about-a-cultural-heritage-police.html

THE ECONOMIC AND SOCIAL COSTS OF ILLICIT DRUG PRODUCTION, TRAFFIC AND CONSUMPTION

Chief Commissary, student Ph.D. Adrian Marcel IANCU
Romanian National Antidrug Agency
Chief Commissary Gheorghe POPESCU

Drugs trafficking and organized crime are a huge threat for humanity and drugs production is a great factory that provides important incomes for mobsters, armed groups and States. This paper try to present a short analyze the economic and social costs of production, trafficking and illicit drug use.

Key words: drug trafficking, drug abuse, organized crime

The traffic and consumption of drugs represent a serious threat to mankind, having dramatic consequences on both the economic and the social levels. From various sources we become aware, on an almost daily basis, of the fact that considerable sums of money are diverted to antisocial purposes, as traffickers and organised crime groups continually defy the laws and the authorities. On the other hand, there are millions of people who join annually the ranks of those who have already fallen prey to the "white death," an alarming percentage entering the sad procession of those who are irretrievably lost to society.

The global extent of the phenomenon is exceeding the sphere of medical concerns and the preoccupations of law enforcement authorities; it is becoming a threat to the economic and social order of the entire world, overstepping the national borders between states, the production, trafficking and illicit consumption of drugs generating a wide range of social, economic and political effects.

The cultivation of the coca bush or of the opium poppy represents a source of income, ensuring the subsistence of millions of people who have been marginalised by fate and who live in the poor areas of countries afflicted by serious economic, social and political issues.

On the other hand, drug production provides an important source of income for certain groups of organised crime, for paramilitary groups or even for certain states (for instance, Afghanistan, with its provinces Hilmand, Kandahar, Balkh, and Farah, or Lebanon, with Bekaa Valley).[227]

Given its high selling prices, cocaine is a drug that tends to be prevalently trafficked, the profits derived from its sale and distribution being enormous. In 2008, the market value of cocaine[228] was estimated to have reached 34 billion dollars in Europe and 37 billion dollars in North America.

The price of heroine[229] increases from $ 3,000/kg in Afghanistan to $ 10,300-11,800/kg in Turkey, eventually reaching $ 44.300/kg in Central and Western Europe. These figures reflect only a part of the vast income accumulated by traffickers as a result of illegal drug-trading activities.

In Romania, the average prices of 70 up to 120 EURO/gram and of 45,000-90,000 EURO/kg,[230] depending on the amounts negotiated for transactions and on the level of the buyer (first hand/"importer", or second hand, etc.) determined the emergence, from the very beginning, of a rather "exclusive" clientele for cocaine, which is a rather inaccessible narcotic to average consumers, being consumed only in small, private circles, or in closed-circuit clubs.

The re-conversion of economies based on drug production involves the implementation of alternative development programs, which aim to replace the income obtained by the population from drug cultivation with other types of revenue, derived from alternative sources. It is a long and difficult process, and the international community has invested heavily in these actions; however, to this day, such efforts have been far from commensurate with the results envisaged.

Given the inefficiency of other measured designed to hold the phenomenon at bay, the states' fight against traffickers has come to the point where

[227] *Afghanistan Opium Survey 2010,* pp. 111-117/ www.unodc.org

[228] UNODC, *World Drug Report 2010*, p. 19, United Nations Publication, Sales No. E.10.XI.13.[229] Idem, p. 22.

[230] The National Report on the Situation of Drugs, 2010. NAA (The National Anti-Drug Agency)/The Romanian Monitoring Centre for Drugs and Drug Addiction. Available at www.emcdda.europa.eu.

political systems have been militarised, civil rights have been restricted, individual freedoms have been affected, and even the death penalty has been enforced for drug trafficking offences. Where state control has disappeared, traditional values have been eroded and people have become averse to compliance with the rules imposed by the political power.

The illicit revenue obtained from drug trafficking acts as a valve designed to compensate for a low income achieved through legal means, and contributes to undermining the economy of drug producing states or of drug transit states. Traffickers infiltrate the bureaucratic apparatus, buy public decisions at a local or national level, and conduct their business through intimidation and violence-based strategies: the Medellin cartel members in Colombia have offered the government a "*plata o plomo*" ("money or bullets") alternative, and those who have turned down bribery have risked violent attacks on them and their families.[231] They manage their activity outside any legal framework, outside any governmental control, demanding and obtaining substantial sums of money from the public funds in order to build and make operational a system that is necessary to keep this phenomenon under control.

In the social sphere, traffickers conduct an intense effort of indoctrinating the population for the purposes of drug abuse, attracting the younger generations within the drug trafficking chain, encouraging the so-called subcultures or gang cultures through the various media (internet, entertainment shows), glorifying the model of individuals who position themselves outside the law, and contributing thus to the disintegration and disorganisation of institutions with a legal basis, whether they pertain to one's status, social morality, or family.

There is also a proved connection between drug trafficking and criminality. The activities of traffickers are connected to the "chain of organised crime" whereby unions, drug cartels, the groups involved and the corrupt officials ensure the proper course of these activities, sheltered by their financial benefits and attempting thus to acquire or maintain their privileged social positions and their influence at the top political level by any means. Immense amounts of money derived from drug trafficking are deployed for the corruption, undermining and destruction of the institutions and the people that stand in their way.

We may also not exclude the possibility that traffickers are involved in triggering the economic decline of the population from the rural environment in underdeveloped countries or in countries with severe economic problems, with a view to ensuring the workforce necessary to produce the raw materials they need, or even in fostering the economic decline of the respective states, with a view to gaining control over the state or over the forces entrusted with combating illegal drug trafficking.

In countries without strong institutions, drug dealers engage in a fierce battle against the state order, attempting to gain total control over the populace and the territory (as is the case in Colombia and Peru). Moreover, they evince an extremely high mobility and cannot be confined within the borders of a single state. The chain of "white death" virtually envelops the entire planet, as they keep moving their laboratories and modifying their trafficking routes, preferring to go wherever the state control bodies are weaker and easier to corrupt.

A more comprehensive approach to the socio-economic dimensions of the drug-related problem ought primarily to appeal to society as a whole. Public institutions cannot achieve everything on their own. Interventions tend to be far more efficient if various civil society actors (families, non-governmental organisations, the media, etc.) become involved in common goals and programs.

The connections that exist between drug trafficking, organised crime and the financing of terrorism have been placed at the forefront of international current affairs since 2003, when the governments of the member states of the United Nations Organisation emphasised the need for adopting a global drug control strategy and for continuing to develop initiatives on the basis of observable factors, relying on both data collection and analysis and on various necessary assessments.

There are still many unknown facts in the data and statistics referring to drugs, especially in those relating to the developing countries. From another point of view, only very little is known about the structure and the dynamics of national, regional and world drug markets, which demands the imposition of new measures for the improvement of drug-related data collection and analysis, as well as the development of a vigorous research program on the structure, functioning and evolution of the drug market. If the

[231] Riley, 1996, p. 156.[232] Menarchik, D., "Strategic Crime and Romanian National Security Strategy dealing with 'Non-traditional' Security Threats, Organised Crime, Drug Trafficking & Terrorism in East and Central Europe," in *Romania's National Security Politics*, Bucharest, 1997.

manner in which the drug market evolves is correctly understood, it will become possible to schedule and wage interventions in a much more efficient way. It will also become possible to improve the allocation of resources over time and across sectors, which will allow for the enhancement of the efficiency of drug-control strategies and, implicitly, for interconnecting the demand reduction policies with policies targeted at the reduction of drug supplies, because only a unitary approach may entail a positive result in this field.

In his work entitled "Nontraditional Threats to Global Safety," Douglas Menarchik[232] shows that the proceeds of crime have reached 800 billion dollars, the crime industry being far more efficient than many multinational commercial companies. The magnitude of this phenomenon can no longer be assessed due to the speed at which it escalates, a relevant example in this sense being the different estimates on the proceeds of organised crime that have appeared in two reliable sources:

- in the North Atlantic Assembly held on 8 April 1998, the proceeds of crime for 1997 are estimated to have amounted to 1,000 billion dollars.[233]
- in the "International Crime Control Strategy" developed by the White House, Bill Clinton, the President of the United States of America, estimates that the proceeds of organised crime networks for the same year amounted to 1,200 billion dollars, "an amount exceeding the total annual military expenditures."[234]

The analysts of the phenomenon of organised crime consider that it possesses a tremendous force of infiltrating and corrupting political and legal systems, very rapidly reaching the stage where it starts exerting its influence upon the political, economic and legislative decision-making authorities.

According to several British experts, due to certain envisageable nationalist and secessionist movements, about 50 new states are expected to appear on the world map in the near future; however, many of these will not be viable, and they will be governed from the wings, both politically and economically, by criminal organisations. Political groups that want to accede to power by force are in need of funds for weapons, equipment or external aid and, in this sense, organised crime has found both legal and illegal business opportunities. Dominant factions have created true business partnerships, the cooperation between them aiming to ensure their hegemonic role in the field.

Organised crime acts within the legal economic system with the purpose of accruing power and profit by exercising violence and by utilising illegally accumulated capital; it adroitly exploits the fissures and contradictions existing in society, and it compromises the social welfare and the healthy development of the economy.

In practice, it has been observed that criminal structures cannot be liquidated; some people are incessantly tempted to earn profits illegally and in a relatively facile manner, so much so that despite the states' efforts, the phenomenon can only be kept under control and maintained in a balance to a certain extent.

After analysing the effects that organised crime has had on various economic factors, we may ascertain that the action of organised crime has a major negative impact on the world economy, which could be quantified to about 15% of the gross world product.

The states' economies may be affected to a greater or a lesser degree by the actions of organised crime, depending on several factors that pertain to their economic and administrative capacity, to the political will, to the mentality and the education of the citizens, etc. Thus, the states where organised crime works in a generalised system exclude themselves from the world economic system, but fully contribute to undermining it, since criminal structures, whose operation bases are located on their territories, are part of the global criminal circuit.

The criminal economic system functions as an integrated economic circuit in which criminal structures permanently assail and misappropriate part of the public and private sector resources. In addition to this, due to the significant proceeds gained from illegal activities, to which many members of the political class may also aspire, organised crime systematically strengthens its relations with the power structures, which are oftentimes entirely subservient to crime groups.

According to UNODC[235] estimations concerning the annual value of global markets for organised

[232] Menarchik, D., "Strategic Crime and Romanian National Security Strategy dealing with 'Non-traditional' Security Threats, Organised Crime, Drug Trafficking & Terrorism in East and Central Europe," in *Romania's National Security Politics*, Bucharest, 1997.

[233] In the work entitled *Organised Crime at a Transnational Level. A Growing Threat to the Global Market*, the 1998 NATO Summit

[234] http://www.whitehouse.gov/[235] UNODC, *World Drug Report 2010,* p. 33, United Nations Publication, Sales No. E.10.XI.13.

[235] UNODC, *World Drug Report 2010,* p. 33, United Nations Publication, Sales No. E.10.XI.13.

crime, drug trafficking occupies the topmost positions:

UNODC *Source*

Synthetic drugs (amphetamines and, in particular, ecstasy) represent a growing illicit industry, analysts maintaining that there are close links between drug trafficking and market forces, and noting that "supply chains are set into motion to meet the demands."[236] These drugs are easy to produce and difficult to control because their production usually takes place close to the retail market. The European Commission has recommended the establishment of a European remote warning system and of a legal instrument that should enable the prohibition of these drugs. The new production technologies run by organised crime have created drugs that, by virtue of their slightly modified chemical compounds, circumvent their inclusion on the list of banned substances established in 1971 by the United Nations Convention on Psychotropic Substances.

Over 30,000 ecstasy tablets are consumed on a monthly basis by Romanians aged between 17 and 27.[237] The estimation concerning the 30,000 tablets consumed has been made by taking into account the information available for the city of Bucharest and for the counties of Cluj, Timiş, Constanța, Braşov and Prahova.

The confiscations of ecstasy tablets made over the past few years, the information obtained by anti-drug officers concerning the trafficking and consumption of ecstasy, as well as the growing availability of pills on the Romanian drug market have increasingly emphasised the orientation/ reorientation of Romanian members of the underworld towards ecstasy trafficking; in Romania, this phenomenon may be said to be only in its beginnings, ecstasy ominously foreshadowing itself as a drug of the future, which may surpass, in terms of its scale and the social threat it poses, even the scourge of heroin trafficking and consumption.

Another important source of income is the sale of "ethnobotanical plants" , a phenomenon that seems to have gone out of control, skyrocketing not only in our country but also in other European states. Some of these countries, such as Germany and France took early measures to prevent or reduce the phenomenon, while in other states like Romania and Poland, these measures were initiated only after an escalation of the trade in such products, especially after the consequences of that trade became visible: the large number of casualties due to consumption, serious medical conditions associated with it, the huge revenue obtained by traders (the returns of a "dream store" are estimated at 100,000 euro per month) and tax evasion in the field. Given the sheer scale of the phenomenon and the consequences of consumption, this type of trade has been included in the working agenda of the European Commission and of the Horizontal Drugs Group (HDG).

The problem of "ethnobotanical" drugs in our country emerged in 2008, when the Romanian Police received information regarding the sale, *via* the internet, of certain products containing so-called legal psychoactive substances, since they were not included in the Annexed Tables of Law no. 143/2000. Subsequently, they were distributed directly through the generic "Weed Shops," where both psychoactive products and objects/ materials necessary for the consumption of "legal drugs" were sold.

The tremendous profits derived from the sale of these products caused their intense advertising, the target consumer category comprising mainly young people.

The generic terms of "ethnobotanical plants" and "smart drugs" are manipulative trade names designed to induce their positive perception at the level of the society. In reality, the effects of these substances are equivalent or similar to those of risk drugs and high-risk drugs; they cause hallucinogenic states, they are addictive and attack the central nervous system, their effects being irreversible.

From the existing data, it has been established that the main producing country of these substances is China, but there are also imports from Germany and England.

---

[236] The Ministry of Administration and Interior. The Information-Documentation Department, *Information and Documentation Newsletter* No. 2(61)2004, p. 107

[237] *The National Report on the Situation of Drugs, 2010*. NAA (The National Anti-Drug Agency)/The Romanian Monitoring Centre for Drugs and Drug Addiction. Available at www.emcdda.europa.eu.[238] Steven Belenko, Nicholas Patapis, Michael T. French – "Economic benefits of drug treatment: a critical review of the evidence for policy makers" February 2005, Scaife Family Fundation and Missouri Foundation for Health

Substances are introduced in Romania primarily through the fast courier companies (DHL, TNT, UPS), the distributors purchasing them at a relatively small price, about 2 euro/gram, the retail price reaching around 22 euro/gram.

The actions undertaken by the police have identified all the distribution stores for such products and the people dealing with their sale, as well as all types of substances classified as "soft drugs" or "ethnobotanical plants."

Also, after the entry into force of Government Ordinance 6/2010, which amended and supplemented Law 143/2000 on preventing and combating illicit drug trafficking and consumption, there has been a tendency for people to continue selling these products illegally, to purchase new psychotropic substances which are not prohibited, and to export these substances in the neighbouring countries, where they are not under control.

As for the consumption of drugs, it affects not only the individual's health, psychological development and capacity of concentration and effort, but also the ability to work, the financial situation and the social relations.

Drug addiction involves enormous costs: the punishment of an individual affected by drug addiction for the violation of the laws in force is threatening to become, under the circumstances of their rigid application and sole orientation towards their legal effects, a burden for the entire society, due to the increased costs incurred in the long run, as well as to both the direct and the indirect medical and social consequences they entail:

- the loss of human and financial resources due to drug abuse in the workplace;
- car and household accidents caused by drug abuse;
- healthcare costs for the treatment of drug-related diseases (HIV/ AIDS, hepatitis B/ C, mental illnesses);
- social problems caused by crimes related to drug trafficking and consumption;
- deaths caused by overdoses;
- high relapse rates;
- low rates of reintegration into the community and the labour market;
- a decrease in the feeling of security, etc.

Most of these costs are difficult to quantify, but the few available studies indicate a direct correlation between them.[238]

Addicts are often involved in individual criminal activities or in organised crime, becoming dealers, engaging in prostitution-related activities, burglaries, thefts, robberies, mugging, violence against other traffickers or grievous bodily assaults of others with the purpose of procuring drugs. All these criminal activities converge in causing material and/or moral damages, incurring, therefore, costs for the entire society, for the law enforcement institutions and, last but not least, for the citizens.

To all these are added indirect costs, which include costs resulting from losses incurred as a result of undermining the legal economy and the state's control over it, as well as of generating fiscal problems related to the impossibility of imposing charges/ taxes on the drug market operations.

Costs at level of the state institutions, of the repression forces/ of the law-enforcement agencies

Crime costs every household in Britain 3,000 pounds (3,350 euros) annually. Added up, these sums amount to 78 billion pounds (87 billion euro). According to a study,[239] a "crime wave caused by the recession" could lead to a further increase of these costs. The report shows that out of 39 countries in Europe, Great Britain, with about five million criminals, occupies the fourth position in a top based on the rate of criminality.

Also, 43% of the Britons are concerned about criminality, which has a much higher rate than in France, Italy, Spain and the United States. Every year, approximately 100,000 young people are punished for various crimes they have committed; over the past decade, the number of children who have appeared in court for theft has increased by 76 percent, while the number of those who have been sentenced for drug trafficking or drug abuse has increased by 142%. Vandalism offences have risen by 61%, while the number of sexual offences against minors has increased by 14%.

The report shows that after 12 years of activities carried out "from the office" and after unprecedented expenditures in the field of policies concerning the courts and prisons, Great Britain remains a country with soaring crime rates and with significant increases in violent crimes. The cost of criminality is estimated at 78 billion pounds per year. One third of the total (which, according to the Home

[238] Steven Belenko, Nicholas Patapis, Michael T. French – "Economic benefits of drug treatment: a critical review of the evidence for policy makers" February 2005, Scaife Family Fundation and Missouri Foundation for Health

[239] James Slack - *The £3,000 cost of crime for every home in the UK*, http://www.dailymail.co.uk/news/article-1180240/The-3-000-cost-crime-home-UK.html#ixzz1IASvCirS.

Office, amounted to 60 billion pounds nine years ago) represents the cost of stolen or destroyed goods, one third the cost of the impact on the victims – for medical treatment – while the remainder of the sum is spent on apprehending and punishing offenders.

This study also shows, however, the lack of crime prevention efforts, highlighting the fact that two years ago, the British Government created the National Crime Reduction Board (NCRB) but allocated no budget for it. Moreover, there have been recorded 25 absences of the ministers, during the five meetings of the Board, while prevention initiatives have been brought into discussion solely once.

The report suggests that counsellors should pay the expenses for children who end up in custody – thus providing them with an incentive to intervene early in the case of young offenders.

On the basis of this report, Gavin Lockhart (Policy Exchange) has said that England and Wales have a crime rate that is twice higher than the average at a European level: "Prevention will not replace compulsoriness. Since the 1970s, in Western Europe and even elsewhere, there have been implemented methods that have reduced both criminality and its costs. We must urgently do the same thing."

The report draws attention to the escalating crime rates, pointing out that the last economic recession triggered an increase of 19%. This report comes after a humiliating attack waged by Paul McKeever, Chairman of the Police Federation, against the "soft" justice system.

The direct costs incurred by the state on account of drug trafficking and drug consumption include expenses destined for police actions, for judicial and legal activities related to the national programs of drug abuse prevention, the treatment of addicts, as well as the modernisation and maintenance of drug detection means, which are located in the key points of drug transit routes.

For example, the United States of America allocate an annual budget that exceeds $ 11 billion solely for drug control,[240] a large part being destined to the recovery of addicted persons.

Bibliography

1. *Afghanistan Opium Survey 2010 pag. 111-117*/ www.unodc.org
2. *Crima organizată la nivel transnațional. O amenințare în creştere la adresa pieței globale*, Summitul NATO 1998
3. http://www.whitehouse.gov/
4. James Slack - *The £3,000 cost of crime for every home in the UK*, http://www.dailymail.co.uk/news/article-1180240/The-3-000-cost-crime-home-UK.html#ixzz1IASvCirS
5. Menachik D., *Strategic Crime and Romanian National Security Strategy delaing with „non traditional" Security Threats, Organized Crime, Drug Trafficking & Terrorism în East and Central Europe*, în Romanian's National Security Politics, Bucureşti, 1997.
6. Ministerul Administrației şi Internelor, Serviciul Informare-Documentare, *Buletin de informare şi documentare* Nr.2(61)2004, p. 107
7. Raportul Național privind Situația Drogurilor, 2010. ANA/Observatorul Român pentru Droguri şi Toxicomanie. Disponibil la www.emcdda.europa.eu;
8. Steven Belenko, Nicholas Patapis, Michael T. French – *„Economic benefits of drug treatment: a critical review of the evidence for policy makers"* February 2005, Scaife Family Fundation and Missouri Foundation for Health
9. UNODC, *World Drug Report 2010,* United Nations Publication, Sales No. E.10.XI.13.

[240] http://www.whitehouse.gov/

IV. MANAGEMENT OF CRIME INVESTIGATION

THE ROLE OF DECISION-MAKING MANAGEMENT IN HIGHLY FORMALIZED ORGANIZATIONS

Ph.D. Ştefan PRUNĂ
Dragoş BĂSESCU

The present article analysis's the process of thanking a decision into organizations, highly formalized through factors and cultural conditions, as well as specific psycho-social factors. Also, it is being analyzed, the impact of barriers in the process of taking a decision, especially subjective barriers, as obstacles directly decided by the responsible person.

Key words: the management of taking a decision, subjective barriers, the decedent's profile, the perception of the problem, decoys in the process of taking a decision.

Introduction

In general, making decisions is a moment of great responsibility because it ensures the passage from creative thinking to efficiency generating actions. Most decisions made in daily practice are the work of management teams. Both theoretical and practical research have confirmed that a decision made by a team is in most of the cases better than a decision made by a manager, however valuable he may be. If the decision put into action does not lead to expected results, the decision itself is measured by the results obtained in use and not according to their theoretical correctness. Recognition highlights the importance of the decision, since the decisions made ensure the functionality and viability of the organizations. The efficiency of the decision team is closely related to the manager and his/her influence. The influence is obvious not so much in his direct technical, operative contribution in solving tasks, but in his ability to motivate his subordinates to use their resources, to plan and coordinate their efforts. From this point of view we can not ignore the key role that the manager has in the foundation of the management system of the organization.

The paper will tackle this problem because it is the first theoretical and conceptual framework in decision making. According to this framework, there are more types of substantiation. A framework based on a team develops highly participative decision-making styles, whereas an individual framework essentially generates autocratic decision-making styles. This seemingly hopeless situation has constantly been analysed and studied by theorists and practitioners, their solution being based on situational decision-making strategy, which essentially states that a decision making system must be built according to the contextual situation in which it operates and which involves several elements - the quality of the management system, labor quality, the technical nature of the tasks and the general logistics of the organization. This idea led to the development of an entire management subsystem in the company, namely the decision subsystem. Its understanding is based on knowing the decision- making panel, the decision simulation as well as the replanning decision strategy.

Decision substantiation within the organizational environment is based on the management and correct use of information. The importance of information and information systems has been synthesized by J. Naisbitt. He calculated the percentage of the U.S. workforce directly involved in the creation, use or distribution of information. Given that the study was conducted in the early 80s results are impressive, even for the United States - the percentage of the so-called knowledge workers turned out to be around 70% of the total number. The development of information technology rated information as the sixth organizational resource, with human resources, equipment, financial and material resources and management. Even under the condition of its intangibility, information is a highly efficient and economical way to meet other company resources.

Factors of decision making

A decision is made depending on certain factors which render an organizational reality. Knowing these factors is crucial for the decision-making process. Even when management decision-making stages are respected, the chance to make an effective decision without knowing and understanding these factors, is slight. The philosophy of decision-making approaches these factors. They are the key in decision-making. There are four broad categories of factors that must be taken into account.

Authority factors - relate to issues of power within organizations. They include the authority level of the decision-maker - The decision will reveal whether the manager is part of the strategic, tactical or operational management. Moreover, other examples of authority factors are the existence of regulations, procedures and institutional rules that can control the decision and the existence of formal or informal authority. Discretionary powers require a careful analysis which involves studying how the manager uses power, essential aspect related to decision-making, which can be seen as a proof of power.

Human factors - relate to aspects of decision-maker's personality and subordinates' behavior that are subject to decisions. Human factors deal with the knowledge and experience of the person who makes decisions, his value system and the ability of the person who makes decision to provide arguments for his choice. Other examples of human factors deal with the other people involved having similar values to the decision maker or subordinates' need for safety, protection.

Logistics factors - refer to the organization's ability to bear the costs of implementing the decision. Financial materials, technology resources, must be consistent with the decision made; they must be a support and not an impediment to implementing the decision. The ability to use decision making techniques to reduce costs as much as possible becomes an important quality indicator in assessing the implementation of a solution.

Cultural factors - relate to aspects of the organizational culture promoted by a certain management system. The organizational culture answers to questions on work processes within an organization, the employees' mood and attitude regarding what they do. Cultural factors also deal with being open to the new, the label, the image, the prestige, "organization's personality".

Psycho-behavioral profile of the decision maker

Despite discussions that the following statement may raise, the main element in decision-making is the manager because he is the person who decides. He has the formal authority to choose courses of action, to motivate his subordinates so that they fulfill them.

Moreover, the manager makes a series of decisions which are different, and have varying degrees of complexity. Decision-making involves choices, aims at results of a particular type and depends on many internal and external factors. Among these, the most important are:

- Knowledge and experience of the decision-maker;
- Information available at a certain time;
- Ability to use the decision-making techniques;
- Time scale according to which a decision is made;
- Decision-maker's authority;
- Decision-maker's value system – personality, traits, characteristics;
- Decision-maker's ability to uphold his decisions.

On a closer analysis, we observe that most factors are directly related to leadership and the manager's skills. According to the studies and research undertaken, the most important skills and abilities that underpin decision-making powers and which build his personality are:

The ability to have an overall insight - understanding the organization as a system, its dynamics and the interdependence of activities. Very few problems appear isolated, most of them are caused or they cause other problems. This ability enables the manager to understand the place and the role of the problem related to the whole system. Most problems have hidden causes, system-related, thus being more easily detected.

Listening skills - listening as a mechanism which occurs in verbal communication is a complex process, which is not synonym to hearing. It has an impact on people because it shows respect for others. On the one hand, by listening, one receives more accurate, more efficient information, increasing the objective side of communication and on the other hand, one shows respect and consideration for the speaker, proved in non-verbal communication, or by asking questions directly or by paraphrasing, showing to the speaker that we have been listening carefully.

Being open to the new - aims at the person's ability to accept and understand other points of view, new situations. The most complex problems are new, unusual and that is why accepting other ideas is efficient. In addition, accepting other ideas is a sign of respect and trust in co-workers or subordinates.

Risk-taking - is the manager's ability to control fear, stress and uncertainties related to lack of information or how the actions will take place.

Ability to seek solutions –skill referring to the decision maker's ability to seek more solutions to a problem and learn effective search methods. We analyze in detail this very important skill in "the economy of the game."

Ability to work with people according to ethical considerations - the interpersonal relationship

between people is asymmetrical because in its dynamics it can not stipulate achieving and maintaining balance. Instead, in a relationship there is always one that dominates, imposes its will and the dominated person who accepts another's wish. In our organizations there is a common pattern that reflects the reality that the manager may always tell his subordinate to leave unless they adapt, whereas the subordinate can not tell the manager to leave unless he agrees.

This reality indicates that the manager is the one who dominates in the relationship with the subordinate and that the subordinate is the dominated one. There are certainly exceptions, but they prove the rule. Using ethical considerations when working with people firstly means not making use of this power. The more able the manager is to control this power towards his subordinates and not use it irrationally, the more effective decision maker he becomes.

Barriers to effective decision

Managers are limited in their ability to obtain and process information. This limitation is due to objective and subjective barriers. Many specialists draw a parallel between the logical rationality and human rationality, focusing on the idea that from a human perspective, a manager's rationality is limited, which is reflected in his decisions.

There are managers who do not follow all the stages of decision-making. Although these stages are supported by experts, managers may not know their recommendations. In addition, managers face many barriers in decision making. These barriers can be grouped into objective and subjective barriers.

Four barriers

Before presenting the main objective and subjective barriers, we will consider ways of overcoming four important barriers in decision-making, namely:

- accepting the challenge of the problem;
- looking for proper alternative;
- considering emerging trends in decision making;
- avoiding the phenomenon of expanding the decision.

1. Accepting the challenge problem

The researchers David Wheeler and James Irving have identified four basic **reactions** which characterize individuals' behavior when faced with challenges or opportunities. The first three reactions are barriers in decision making. These are:

- ***self-contentment;***
- ***defensive-avoidance;***
- ***panic;***
- ***determination to decide*** –it is a more recommended approach to be followed by decision makers.
- ***self-contentment*** occurs when individuals either do not see signs of danger or opportunity, or they ignore them. This is the result of a faulty analysis of the environment. Ignoring the signals received is called the "ostrich approach", as managers try to avoid the problem hoping it will solve itself. Complacency can occur even when an individual seems to react to the situation. In this respect, it happens when an individual spontaneously accepts a job which seems to be an opportunity, without devoting much time and effort for its evaluation.

Defensive avoidance occurs when individuals deny either the importance of the danger or the opportunity or the responsibility to act. This reaction can take three different **forms**:

rationalization ("*It can not happen to me*"), ***delay*** ("*it can be solved later*") or passing it to others ("*it is someone else's problem").*

Panic. People become very concerned to find a way to really solve the problem. In their haste, they quickly state an alternative, without noticing the disadvantages and without considering other maybe better alternatives. Panic may occur in crisis situations, when pressing problems must be solved.

The decision to decide. Those who decide, accept the challenge to decide on an issue and to seek an effective decision-making process. Of course, managers can not find alternatives for each problem that arises. However, decision-making can use several benchmarks, which are the answers to the following questions:

Assessing the reliability of information:

- Is the source who provided the information able to know the truth?
- If so, is the source reliable?
- Is there any evidence and if so how significant is it?

Establishing the importance of the threat or opportunity:

- What are the chances for the danger or opportunity to appear?
- In case of danger, how important would the losses be?
- In case of opportunity, how much would the gain be?

Establishing the emergency:

- Will the threat or opportunity appear soon?
- If they occur, will they appear gradually or suddenly?

- If action is urgent, can it be solved in early or later stages?

Looking for proper alternatives

Especially as far as unscheduled decisions are concerned, the decision-maker can often neither identify all the alternatives, nor calculate all the advantages and disadvantages. Obtaining information is limited mainly by the need of time and money. Thus, it is necessary that decision-makers determine and specify how much time, effort and money they need in order to obtain the information necessary to make a certain decision and to search for adequate alternatives.

Recognition of emerging trends in decision making

The psychologists Daniel Kahneman and Amos Tversky have identified several **trends** that characterize the way in which decision makers process information: - ***framing*** - r***epresentativeness*** - ***accessibility - anchoring and - adjustment.*** They can influence the evaluation of alternative solutions, and the way according to which decision-makers identify problems and opportunities. Framing is the tendancy to make different decisions according to the manner a problem is presented. In order to explain these contradictory decisions, the two authors have developed ***prospect theory***. Based on the belief that decision makers prove "aversion" to loss, prospect theory argues that they consider more unpleasant to accept a certain current loss, than to give up the possibility of a probable gain. Probability theory suggests that a fact is more likely to produce individually than combined with another factor. This case illustrates a common rational method of decision making - r***epresentativeness*** - that is, the tendancy to be influenced by stereotypes regarding the likelihood of a fact. Making decisions becomes even more difficult if we consider the theory of probability. The feature called ***accessibility***, is the inclination to judge the likelihood of a phenomenon depending on the extent to which the subject recalls other similar phenomena. The availability of information is the cause of overestimation of likelihood in cases such as aviation accidents, fires or murders and underestimating some common causes, less spectacular, such as heart stroke. Managers are often victims of these inclinations.

Inclinations of ***anchoring and adjustment*** in information processing suggest that decision-makers, should be cautious regarding the correctness of their estimates, given the likelihood of events. Such observations suggest that managers are often too confident, which is obvious in that they are more confident in the likelihood of future events than in the accuracy of current realities. Furthermore, this confidence is clear when managers work in less known areas, being the result of misunderstanding the existing pitfalls.

Therefore, managers should be scrupulous when planning to act in unknown areas. Managers can avoid some inconvenience caused by these trends in information processing, being aware of how they may influence their reasoning. Possessing sufficient information, directly related to the decisions to be taken, is very useful. In addition, decision-makers should consider the grounds for which reasoning could be wrong. Thus, some contradictions and inaccuracies can be traced.

Avoiding the phenomenon of expanding the decision

When managers make a decision, they choose among several solutions suggested. Later, according to the results of the initial decision, other decisions can be made. On the other hand, it is possible that future decisions improve or worsen the situation. These situations are called ***expanding situations*** because they signal the possibility that the commitments expand in time, and losses accelerate. Researchers suggest that when managers bear costs associated with an initial decision, they respond by allocating more resources, even when giving up prospects is clear. These situations can evolve; reaching what the expert MAX H. BAZERMAN called "irrational expansion". ***Irrational expansion*** is the attempt to increase commitment to a previously chosen action, beyond the situation that could be registered if managers had followed a process of decision making. According to what experts in economics and accounting state, the costs that have already been recorded should be considered "*buried costs*". These are neither recoverable, nor should they be taken into account in the evolution of future actions and yet they influence managers.

One cause of this phenomenon of expansion is that decision makers tend to consider losses. Thus, the trend could be related to prospect theory, discussed earlier. In addition, decision-maker may consider that changing the course of action may lead others to believe that it was a mistake or a failure. Methods of avoiding irrational expansion include setting limits up to which commitment may be extended, finding strong arguments for continuing the activity, reanalyzing the costs involved and finding expanding situations that may change into pitfalls.

Objective barriers

Objective barriers are beyond the decision maker's control, behavior and personality. The main objective barriers relate to:

- the availability and objectivity of information;
-the time available;
- the value system of the organization;
- external circumstances - the pressure of time, the social impact of the problem;
- managers' / leaders' image in the communities or in the senior leadership;
- the quality of people that the manager works with.

Subjective barriers

Subjective barriers are related to the decision maker's ability, knowledge and personality. We must understand these barriers in the particular context in which a manager chooses to engage in decision making, in his desire to be better, more informed and closer to the organization' interests.

In management literature the following subjective barriers are considered the most important:

Perception of the problem – It is related to the delivery of the problem and information about it so that decision-makers agree. This barrier is an extension of Audley's reasoning, saying that managers already have in mind what is to be done and gathering information simply justifies what is already decided. I have already explained the effects of this reasoning. A dispute between two subordinates on a matter can offer an example in this respect. Each of them sees details differently; each wants to lead the discussion in order to defend their views and to promote their own interests and perceptions, even though both admit that there is a problem. In this case, and many others, it is not the existence of the problem an important issue but how details are perceived.

Cognitive bias – managers' attempt to gather and process information in a subjective way, determined by decision makers' beliefs, skills and attitudes. What kind of information is to gather ? What sources are credible? How do I select information? Which one should be taken into account? Response: the information the manager wants to keep. The conclusion may seem childish, but it is true. Manager's level of understanding, his skills, attitudes, conservatism and authoritarianism determine the manner to seek solutions. If a manager defines a situation as to be real (real, efficient, good), then the situation becomes true by virtue of being defined (designed) to be true.

The temptation to prove that you were right is the attempt to seek information and solutions that firstly correspond to the decision maker's point of view regarding the issue. Learning some techniques to find solutions will prevent bias and will move the responsibility from finding the best solution to choosing the best solution. The manager must learn techniques for maintaining objectivity and avoid imposing an inefficient subjectivity, as much as possible. There are many situations when problems are less important than they seem to be (see conjectural model of decision-making).

Information overload involves receiving more information than it is necessary for a decision to be effective. The more aware of a higher risk (uncertainty) and of the confusing problem one is, the more information is looked for. The problem is that a bigger amount of information may be as useless as a smaller number of information not to mention the time spent with its processing. A high amount of information may disconcert, create confusion or simply astound the decision-maker, who is no longer able to make the right choices. This phenomenon occurs when problems are complex and they require corresponding solutions.

Threshold to meet involves establishing an adequate level of acceptability for the solution to a problem and scanning the solutions only to find one that meets this threshold, not to find a solution that maximizes solving the problem. This barrier can be easily overcome if a distinction is made between searching / listing and choosing solutions. Satisfaction level is the main parameter of the decision-maker's expectations. Even if a lower level of acceptability is established, there are organizations that consider: "in our case it works like this" it is a good idea to have in mind the high acceptability thresholds so that subordinates get used to them.

Avoiding adaptation – the inclination not to assess the process, the action based on information that is revealed gradually but to adjust emerging information to that existing from the beginning. Solving problems and solutions are processes, involving a period of time and some stages. At any time new information which can throw off the chosen solution may occur. When implementing a solution it is a good idea to have support plans for these situations, in order to avoid adapting or hiding them, only to show that decision-maker was right from the start.

Some interesting conclusions

Research studies on the philosophy of decision-making show that:

- managers tend to be too confident in the value of their decisions;
- managers tend to seek information which confirms the definitions and solutions they provide;
- managers tend to look for more information than necessary when there is an obvious risk;
- managers overestimate their ability to have predicted events after they happened, assuming the success of their decisions and denying the responsibility for the failures;
- managers overestimate the use of complex networks that provide data and information;
- managers do not adjust enough or they do not adjust at all the initial estimates as they get more information.

Pitfalls in decision-making practice

The existence of subjective barriers is a drawback, which can be overcome only through the awareness of its effects, and by building skills that limit its harmful action. These barriers form the basis of many pitfalls that decision-making practice has pointed out. The main pitfalls are:

1. "I have been there already, so I know what to do." This is a misleading statement because the solutions change. The approaches that worked before may be inappropriate in new contexts, so that one should always consider several options before deciding on the best one.
2. "I must do something now, because that is my job and that is what people expect from me." "Haste makes waste". One will say that there are situations when you are obliged to be quick. I will respond "festina lente-make haste slowly". Give oneself time to fully reflect and analyze the problem before turning to action. A well thought out approach will always work better than a "quick" solution. One will be judged on the final outcome and not according to the speed with which you got to it. Success value shadows the quick response.
3. "I do not have all the pieces of information I need, so I will tackle the problem later." Considering how to address the problem, does not waste too much time. Identify the information you need in order to make the most effective decision. Avoidance of immediate commitment is it at conception or understanding level may be the cause of forgetfulness. If you have a personal model of decision making, you should set your coordinates. The rest comes by itself. Remember to record the activity in the weekly activity plan.
4. "With my experience and understanding, I can handle on my own." One may be an autocrat, a well trained person. Do not forget that there are almost always others who can contribute information to the problem solving process. Using others' experience just makes you stronger, and leads to a better solution. The logic of modern organizations is based on cooperation, participation and not on individual elite far from people. Do not avoid shaping your skills, which can highlight your willingness to dialogue."
5. "I have to solve the problem which is the subordinates' task."Encourage your people to make their own decisions and learn from their actions. Otherwise, you will also do their work. Do not refuse to delegate. It is a smart way to accustom your subordinates to responsibilities. Have them work in a controlled environment that is trying to supervise them so that they should not be aware of it. Delegate small projects to subordinates. Get them used to design and complete projects. Practical skills will be easily built.

In management area, the role of decision-making is consciously directing the organizational activity. One of the primary functions of management is decision making. Decision-making is the vital factor of the organization's economy management due to its content, nature and role. Decision-making is a process that changes reality, natural, financial and human resources that the organization has and it contributes to changing the needs' objective system and thus, it leads to achieving performance.

Reference

- **Audley, R.**, "*What makes up a mind, decision making*", BBC Publications, 1967
- **Drucker, Peter**, "*Management: Tasks, Responsibilities*", Practices, New York, Harper &Row, 1973,
- **Simon Herbert**, "*Making Management Decisions: the role of intuition and emotion*", Academy of Management, 1968
- **Ştefan Prună**, "*Organizational psychosociology*", Prouniversitaria, 2008,
- **Ştefan Prună**, "*Police management*", Sitech, Craiova, 2008

THE MANAGEMENT OF INFORMATION SECURITY INSIDE THE NATIONAL CENTRAL UNITS OF INTERNATIONAL POLICE COOPERATION

General Deputy Secretary
Quaestor Ph.D. Petre TOBĂ

The present article analyses the core elements that form the management of security information inside a central unit of international police cooperation, as well as the security-risk relationship.

Key words: management of security information, risk management, security breach, operational support, change management.

Security systems, measures and mechanisms

In the "Governing for Enterprise Security" issue, The Institute of Software Engineering at Carnegie Mellon University defines the characteristics of an optimal security management, such as:

- approaching security as a problem for the company (unit);
- leaders are responsible;
- the information security is a functioning requirement;
- the measures for ensuring the information security are based on risk analysis;
- roles, responsibilities and function separation;
- information security, as a company policy;
- a sufficient and adequate level of dedicated resources;
- trained and aware personnel;
- the existence of change management;
- security measures are planned, managed, countable and quantized;
- Security measures are audited and revised.

What set apart the national unit of police cooperation from the other structures of law enforcement, are the categories of informational emitters the unit can access.

Thus, at the level of this structure, not only the security of the information that can be obtained or accessed from the other law enforcement structures must be managed, but also the security of the information obtained from the other partner structures outside the country.

The phenomenon of police data and information "liberalization" led to the reorientation of the security policy inside the national unit of police cooperation (unit which until the 80's did not seem to blend with the national system of public order and safety) towards assuring an active security, not just at the owner's level, but also at the moment of transmission and processing by the receiver.

At the present moment, the largest information system providing data and information exchange between law enforcement structures is the one managed by O.I.P.C. – Interpol. Interpol is the largest international police organization with 188 member states. The General Secretariat is located in the city of Lyon. There are seven regional offices – Argentina, Cameroon, Cote d'Ivoire, El Salvador, Kenya, Thailand and Zimbabwe – and one representative at the United Nations headquarters in New York and the European Union in Brussels. A National Central Bureau operates in each member state. This is the official contact point of the member state with the Organization's General Secretariat, with regional offices and with other member states which require police assistance or locating and apprehending people who evade law enforcement forces.

INTERPOL assures four essential functions:

1. A secure and global communications system – The INTERPOL manages a secure communications system called I 24/7, allowing police forces of the member states to solicit, provide and access data of police interest in a secure environment. This system is continuously expanded to allow greater access to the services offered by the Organization.

2. Databases of police interest – The INTERPOL has created and manages a range of databases containing identification data of wanted persons, fingerprints, D.N.A. profiles, lost or stolen documents, stolen vehicles, stolen works of art etc. Also, the Organization disseminates information about suspects and crimes through the system of international notes. There are seven types of notes of which the best known is the red Note, an international request for the arrest of a person.

3. Operational Support – The INTERPOL has jurisdiction over six main types of crime: corruption, drugs and organized crime, economic, financial and cybernetic crime, wanted persons, public security and terrorism as well as human trafficking. At the General Secretariat operates a command center that can provide support for member states faced with crisis situations, by coordinating the exchange of information and/or by playing a role as crisis manager.

4. Training – The INTERPOL provides support in training police forces and creating specialized units to fight crime. The goal is to increase the operational capacity of police forces in the member states in combating cross border crime and terrorism.

These basic functions cannot be fulfilled unless two conditions are present: the confidence that each member state grants to the other in terms of common interests in fighting crime as well as implementing and maintaining a secure communications system.

The Interpol National Bureau as well as The Europol National Unit are components of the national unit of police cooperation, and the responsibilities of these structures, regarding the assurance of a high level of security, in accordance with the statutes of the organizations they belong to, have become a necessity for managing the exchange of police data and information.

At the national unit level, at the present moment of development of the still disparate components that make up the mechanisms and channels for international police cooperation, it is essential to ensure an adequate level of resources allocated to information security, both administratively and technically, as well as implementing a change management model, given the planned changes of the interoperability of different systems and a greater guidance of the information owners towards the recipients outside the national organizations.

Essential in the context of developments in informatics and telecommunications is the change management in the line of information processing and storing. This includes changes to desktop computers, network, servers and software. The objectives of change management are to reduce the risks generated by the changes in the information processing environment, and improve the stability and reliability of the processing environment at once with the changes implementation. The purpose of this mechanism is to prevent or impede the implementation of changes.

Any change in the information processing environment is capable of introducing a risk element. Even those changes that are, apparently, simple, can have unexpected effects. One of the responsibilities is risk control. Change Management is an instrument for managing the risks created by changes in the information processing environment. A component of this process ensures that changes are not implemented at inopportune moments, when they can disrupt critical business processes or they can interfere with other changes that are implemented.

Not every change requires to be managed. Some changes represent the daily routine of information processing, and are part of a predefined procedure that reduces the overall level of risk of the processing environment. Creating a new user account or setting-up a new desktop computer are examples of changes that do not require, in general, change management. However, upgrading or replacing the e-mail server or the hardware encrypting machine has a much higher level of risk for the processing environment and are not day to day activities.

The critical steps of change management are:

a) The definition of change (and communicating this definition);

b) Defining the domain of applying the change system.

Change is usually supervised by a committee composed of representatives of the operational structures and specialists in the domain of information security, networking, systems administrators, database administrators, application developers. The tasks of this committee can be eased by implementing an application of tasks management and escalation through a flux of automated approvals.

The essential responsibility of the Committee is to assure that the formally approved procedures for change implementation in the organization are met.

The steps of change management can be summarized as follows:

- **Solicitation.** This can be addressed by any interested party, not just by the owners, administrators or auditors of communication networks or informatics systems through which information is exchanged. After receiving the request, it is subjected to an analysis intended to determine whether the requested amendment is compatible with the purpose of the institution with its operational model and, also, if its implementation would require undue amounts of material and / or financial resources.
- **Approval.** The board of the national unit of police cooperation is coordinating the functional

activity of the structure and manages the allocated resources. Therefore, the approval of changes requests and assigning priorities for the proposed changes depend entirely of it. A request to implement a change may be rejected, for example, if it is not compatible with the organizational structure of the unit, with its operating rules or simply because its implementation requires the allocation of resources that are not available

- **Planning.** Planning a change involves the identification of the supplication domain and the impact on daily activities; analyzing the complexity of change; resource allocation and development, testing and documenting both the actual application of the change and backup plans. Reaching this stage involves defining the criteria under which a certain change implementation can be waived.
- **Testing.** Any change must be tested in a safe environment, which closely reflects the real production environment, before it's set up on the production environment. The backup plan should also be tested
- **Programming.** During its activity, the Committee supports task programming by correlating the date of the change implementation with other envisioned changes or other important activities.
- **Communication.** Once a change was programmed, it should be communicated. The role of this communication is to offer to all those who are concerned, the possibility to notify the committee about any presumable conflicts with previously established plans. Also, it is designed to train the staff it referrers to in connection with the changes in the informational flow or security mechanisms
- **Implementation.** At the established date, the changes must be implemented. At this point, there must be an implementation plan, a testing plan and a backup plan. If the implementation of the changes cannot be completed or has taken other major impediments, the backup plan should be available immediately for implementation in order not to endanger the functionality of the national unity of police cooperation.
- **Documentation.** All changes must be documented. Thus, the file includes: formal documents drawn up while covering the above mentioned steps and the results of the change implementation.

The change audit. Change management committee should also conduct an analysis of the proper way to implement the change. Not the analysis of a successful implementation is highly important, but the causes that led to its failure, in order to identify areas for improvement

The existence of formal change management procedures, easy to follow and use, can significantly reduce overall risks created when changes are made to the information processing environment. These procedures can improve the rate of successful implementation of changes.

The implementation of change management procedures can take place only through the exchange of best practices, planning, documentation and communication

The security-risk management relationship

The central national units of international police cooperation should be able to provide two major features:

a) Assuring fast and secure access to as much data and information as possible;

b) Assuring data processing and information security, both at the moment of their production and transmission.

Thus, the potential risks to the unit of police cooperation are closely related to the information security component, and the latter aims to reduce the risks.

In order to identify the risks, the tool of risk analysis is used, a procedure leading to the identification, evaluation and ranking risks. There are several common types of risk analysis and their choice is made after the proposed objectives and the available resources (people, information, time):

- The qualitative risk analysis – is characterized by assessing the level of risk by risk evaluation, according to the experience of some experts and ranking by enclosure in a small number of classes, usually three (small, medium, high) or five (negligible, low, medium, large, catastrophic);
- Quantitative risk analysis – is characterized by assigning a numerical value to the risk, probability and/or value, which usually is the financially expressed value of the prejudice caused by attacking the value (economically calculated).
- The costs-benefits analysis – is that analysis which is characterized by introducing the "costs of security measures" factor in the equation of risk assessment and their ranking, according to

the costs of security measures/prejudice saved ratio;

- The return of security investments (Return of Investment - ROI) - is characterized by introducing the time factor in the evaluation and ranking of risks. Evaluation and ranking is done by comparing the annual rate of return of security investments with the annual rate of value dumping.

We can define the risk management of a certain national unit of international police cooperation as being the iterative process of identifying vulnerabilities and threats to the informational resources used by it and deciding on actions to minimize the effects, depending on the value of the informational resource. What is essential is that risk analysis is not only an iterative process, but its iterations are indefinite, as a process that is permanently ongoing. The choice of actions to minimize the effects should pursue a balance between cost, efficiency and the protected informational value. Risk is defined as the likelihood that the information or the informational resource may be affected. The vulnerability is a weakness that can be used to endanger a certain informational system or informational resource. A threat is an action that may affect information security. The probability that a threat takes advantage of the existence of weaknesses in order to cause damage creates risk. When the risk becomes real, the impact occurs. In the context of information security, the impact is a loss of information availability, integrity and confidentiality. It should be emphasized that not all risks can be identified or eliminated. These are defined as residual risks.

The ISO / IEC 27002 Standard *Information technology – Security techniques – Best practices in the domain of information security* recommends that, in order to carry out the risk analysis, the following factors must be taken into consideration:

- Security Policy;
- Organization of information security;
- Informational resources management (inventory and classification of information and informational resources);
- Human resources security (security measures at the time of employment, removal or departure of an employee);
- Physical protection measures (protection of servers, computers, etc.);
- Communication management (the management of the technical mechanisms which assure the security of systems and networks);
- Access control (the policy of systems, networks, resources and data access rights);
- Acquisition, development and maintenance of computer systems;
- Security Incident Management (anticipating and responding appropriately to security incidents);
- Business continuity (protection, preservation and recovery of critical systems and data);
- The observance of how the security policies, standards and other regulations are abided to.

In applying these standards to the central national unit of police cooperation, the risk management process is the completion of six stages:

1. Identifying the information and the informational resources – the identification of the focus point of the information and equipment used for information storing for its later processing and transmission.

2. Threat assessment – identifying potential threats to information security, both external and internal, whether human errors and potential technological gaps.

3. Vulnerability assessment – evaluation of policies, procedures, standards, training level, physical and technical security, in order to identify the potential vulnerabilities and to calculate the probability of their exploitation.

4. Impact assessment – estimating the effects that can be produced by the threats identified in step 2. The assessment may be qualitative or quantitative.

5. The identification and implementation of the appropriate measures – identifying appropriate responses in order to obtain a balance between cost, efficiency and value of protected information.

6. Assessment – the analysis of the efficiency regarding the measures which were implemented.

The actions to follow after the risk has been identified can be divided into three categories:

- Risk acceptance, based on the relatively low importance of an informational resource, the relatively low frequency that occurs and the minimum impact it has on the activity. An example of accepted risk in case of central national units of international police cooperation is compromising terrestrial telephony.

-**The acceptance of risks** based on the relatively diminished importance, of an informational resource, the relatively diminished frequency encountered in the minimum impact occurred in the activity. An example of an accepted risk in the case of national central unities of international police cooperation is the compromise of terrestrial phone.

- **The address of risk** through the implementation of certain politics aimed to reduce its impact – an example can be even the installation of automatic systems of putting out fire which may occur in technical chambers where equipment of communications and severs are to be found.

This can sometimes be transferred to another entity. For example, the assurance of intervention in case of bursting dire, by a specialized unity of firefighters.

-**The denial of risk –** this action represents itself a risk.

The moment the decision taken is that of implementing means an security systems aimed to diminish the probability of producing risks or to diminish the impact had on the activity, these means are to be found, usually, in the field of administrative, technical or physical measures.

Administrative measures refer to the accomplishment and implementation of formal procedures which form the frame in which a certain activity is developed. The legislative documents can be considered procedures only when the state a certain activity:

For example law 677/2001 which talk about the persons' protection when thinking the publicizing personal data. Certain sectors of activity have procedures and standards which are compulsory and that is the case of international police cooperation. As a result, at the level of national central unities of international police cooperation the implementation of standards and procedures of each mechanism of police cooperation – Interpol, Europol, SIRENE, has to be assured through the creation of personal procedures, each of any one referring to the exchange of information through the aid of the aforementioned systems. Other examples of administrative politics which have to be implemented at the level of central unities of international police cooperation are the periodic development of access passwords, of screening politics of security at the moment of employment and their periodical renewing as well as disciplinary procedures.

Administrative measures are the base of identification and implementation of technical and physical measures, the latter being only simple concrete manifestations of the implementation procedures. As a result, administrative measures represent the base of information' security in the national and central unities of international police cooperation.

Technical measures refer to the software dedicated to monitoring and control of access to the informational systems. For example, firewalls, detection systems of unauthorized access to a network, cripts. The principle which fundaments technical measures implemented in the central national unities of international police cooperation is the principle of necessity of access. As a result, a person does not have to have more rights than other persons, other than the necessary ones for accomplishing their work activities.

Many times, this principle is not taken into consideration as it should be and a concluding example is the logging as admin for verifying the mail box or for accessing internet resources. The infringe of this principle may take place even at the moment in which an employee is moved into another sub-division of the company in which he works and his rights related to the accomplishment of his new duties are added to the existing ones. Physical measures are designated to monitoring the environment in which one works and to the informatics facilities.

For example, smoke and fire alarms, automatic systems of putting out fire, internal tv, controlled access. Among national, central unities of international police cooperation an important physical measure is the separation of networks and work places according to the fulfillment of ones aims. Also, is extremely important the separation of tasks. This assures the fact that a critical task is not the responsibility of a single employee.

The organization of the security system

A national unity of efficient international police cooperation in the field of information exchange means a unity which has to accomplish, at the same time, tow main conditions:

- To have the ability to be identified, appreciated and valued and the information that can provide the necessary assistance to the operative structures
- To have the ability to manipulate, administer, elaborate and garner in excellent security conditions the data and information detained.

Apart the aspects mentioned above, the security system encountered at the national central unities of international police cooperation has to implement another two essential demands:

A. The assurance of functional continuity

B. The assurance of recovering essential systems and data in the case of security incidents of in cases of their corruption.

A. The assurance of functional continuity

The assurance of functional continuity is the activity developed with the aim to accomplish

continuous access in the informational data and information exchange. This activity includes activities such as copying fund documents, the management of change and continuous technical support. Functional continuity is not treated in accordance with an event such as natural disaster, it refers to those activities taking place daily, which help assuring the access, the consistency of their data and it's reclaiming.

The base of functional continuity is the standards and politics in accordance to them, the necessary procedures to assure continuous functioning, regardless any external circumstances. Systems design, their implementation, their technical support and maintenance has to consider also this aspect. The continuity term of functionality describes a methodology of managing the national central unities of international police cooperation and the planning of assuring continuity is exactly the procedure to follow for each of any employee in any corporation, with a view to assuring the unity's functionality.

In order to achieve functional continuity, at national central unities of international police cooperation one has to follow a number of levels:

1. Analysis

Managerial process which aims to respect identifying procedures of accidents, disasters, urgencies and/or threats. These imply:

a. The evaluation of the effects of this kind of situations

b. The development of certain strategies of reclaiming data and information

c. The maintenance of a high level of self-awareness through the aid of personal training

2. Politics

The creation and implementation of certain instruments necessary to lead to the fulfillment of automatisms, of pre-established actions according to tested plans is essential for diminishing risk impact.

3. Assurance plan of continuity

This has to include documents, instructions and procedures which all together to allow national central unity of international police cooperation to react in extreme cases without interrupting informational flux or any other essential activity.

4. The planning of functional continuity

Represents the joint of taken measures with the aim to identify, develop, obtain, document and test procedures that can assure functional continuity. These can be divided into two main categories: abridgement measures of risk procedures and impact diminishing and measures of assuring continuity when talking about incoming risks.

5. Resource planning

Resources have to be implemented and used in a way that they can be later reused and relocated, whenever needed. This level of flexibility demands attached resources to be planned and distributed in depth preliminary to informational systems' design. Any other strategy leads to an uncertain and un-flexible national central unity of international police cooperation, difficult to administrate, maintained and adapted to demands.

6. The organizing of human resource

Personnel have to know what the essential tasks are and are prepared to accomplish them. The redundancy of personnel's capacity, parity a national central unity of international police cooperation is essential in the event that risk occurs, availability of personnel who has knowledge of technical information necessary, is doubtful.

7. Impact analysis

The concept of assuring continuity in functioning is based on identifying and prioritizing each functional responsibility. An impact analysis is an essential instrument used to gather this kind of information and in order to assign priority over each functionality.

This can be used in order to identity the ampleness and timing of the impact at different levels of national central unities of international police cooperation. This instrument allows examining the effects a breach of activity or a major disturbance of it can have on operational or strategic activities. Also, through the aid of impact analysis, one can determine the effect the introduction of new software can have, for example, or changing work program into an organization.

This kind of analysis has to be realized al least annually but also in these following cases: an alert rhythm of functional changes, major changes in the case of internal or technological procedures and major changes in the informational field, foreign of national central unities of international police cooperation.

8. DMS – document management system

Personnel dynamics is impending and has to be carefully planned as part of assuring functional continuity. The solution to all problems associated with personnel dynamics is the keeping, in electronic form, in a complete and up-to-date data base of all documents existing into a national unity of international police cooperation.

In this way, the personnel will have access to the necessary information in order to be operational in the shortest of time. This aspect implies document release, in an automatic manner, not only amongst informational systems but also paper.

9. Change management

Change management imposes a certain level of stability that concerns the functioning of the unity, in that is demands documentation and coordination of all changes.

10. Internal audit management

One of the most expensive aspects of information management and technology information management is the audit. A necessary solution which has to be implemented at national central unities of international police cooperation is the creation of a ***data center*** which can offer the necessary data of accomplishing the audit or it can generate audit reports based on predefined criteria. This all leads to important diminutions of the necessary time of accomplishing this kind of activities by human operators.

B. The assurance of reclaiming essential systems and data in case of security incidents or in case of corrupting them

Reclaiming of data in case of disaster it refers to the processes, politics and procedures linked to the training of reclaiming and pursuit of critical processes of the national central unities of international police cooperation after the happening of a natural disaster or a provoked one by human causes. The reclaiming of data can be considered an important part of assuring functional continuity. Whereas assuring functional continuity implies the planning of all aspects concerning the exchange of data and information, the reclaiming of data is focused of informatics systems which assist the exchange of data and information.

In proportion as informatics systems have become critical in the daily activity of a national central unity of international police cooperation, the importance of assuring their functionality and the rapid reclaiming of data and information has grown proportionally.

In private environment it has been estimated that main companies spend between 2% and 4% from the budget allocated to IT development necessary for the implementation of certain measures needed to assure the reclaiming of data. Among companies which have suffered great data losses 43% have gone bankrupt, 51% have closed in the following 2 years and only 6% have managed to continue their activity.

Disasters can be classified into two main categories:

- Natural disasters – floods, earthquakes etc. Even if is difficult to prevent this kind of disaster, the measures of planning people's reaction can considerable diminish the risks.
- Disasters provoked by human – the fall of communication infrastructure or accidental overrunning of dangerous substances and materials. In these cases, the surveillance and implementation of backup plans is essential.
- As regards IT infrastructure, many types of measures can be implemented: preemptive (measures meant to admonish against any other event), measures of detection (meant to discover unwanted events) and coercive measures (meant to recondition the system after the happening of an event). It is extremely important that these measures be well periodically documented and tested.
- In order to implement these demands at a national central unity of international police cooperation, the following measures have to be taken:
- The implementation of safety copies, kept off-site;
- The automatic implementation of safety copies on-site;
- The replication of data into another location;
- The implementation of a growing availability of the system;
- The installation of an electrical generator, UPS or the alimony from tow different sources of electrical energy.

SOME CONSIDERATIONS REGARDING RECRUITMENT, SELECTION AND INITIAL TRAINING OF POLICE FORCE IN SOME EUROPEAN STATES

Lecturer Ph.D. Petrică-Mihail MARCOCI
„Alexandru Ioan Cuza" Police Academy
Chief Cms. Reader Dr. Gabriel TĂNASE
Dâmbovița County Police Inspectorate

Recruitment, selection and initial training are defining stages of the police career for any person interested in accessing and going through such a career. This study tackles on the relevant experience of some national police systems of EU member states that can be used as model or generate corrections in the career policy of Romanian policemen.

Keywords: Career, initial training, admission requirements, testing, admission tests and training courses

This study intends to provide a descriptive-analytical inventory of models and policies that some European states are using with regard to recruitment, selection and initial training of policemen. The selection of states is not random, as it is the effect of similarities that come from belonging to the same legal pool (except for Denmark), from somewhat similar social models and shared European aspirations, which can sustain the statement that their experience may be useful to the Romanian police in case of a structural re-optimisation of the police career system.

French police

The minimum age for a candidate for an agent position to be accepted is 18 years, and the maximum age is 26 years, with minimum 1.60 m height. All candidates have to go through 12 weeks of schooling followed by 2 weeks of practical trial period.

For officer ranks, starting with lieutenant, the maximum age for an officer to be admitted is 35 years, with the possibility of granting a grounded waiver for each case evaluated, but without exceeding 37 years of age.

The requirements for being admitted into the study programme are as follows:

For police agents no school-leaving diploma is required.

For officer ranks, it is compulsory that the applicant have a diploma from a university or a diploma recognised by the French state in case they have graduated from a university outside France.

Candidates for agent positions are tested in the following fields:

Medical tests looking at:

- night-time and daytime vision
- height
- weight
- blood pressure
- hearing capacity
- heart
- respiratory system
- reflexes
  - medical testing of certain parameters under effort
  - psychological testing
  - for those who pass the 2 previously mentioned forms of testing, additional specific checks are performed regarding the candidate's psychological-moral profile

After passing the 3 forms of testing mentioned above, the applicant goes through a complex interview focusing on:

3 preliminary admissibility tests:

- ❖ presenting an essay on a given topical subject;
- ❖ a questionnaire with multiple answers (grid test) and questions with short answers;
- ❖ another psycho-technical testing focusing on ascertaining the candidate's psycho-moral profile;

3 admission tests per se (for the candidates who pass the 3 preliminary admissibility tests):

- interview in front of a board of specialists;
- physical tests;
- foreign language test (with the only languages admitted being English, German, Arabic, Spanish and Italian).

Performance appreciated as unsatisfactory on each of these tests results in the application for employment being rejected automatically.

The basic training is carried out in the 13 schools with this profile, located in a relatively homogenous pattern all across France. The duration of training is 1 year, and specialisation training takes place in 14 training centres after the initial training.

Admission in the police structures for officers is organised in a similar way, with the medical tests being identical with those for agents. Candidates for an officer position would take preliminary admissibility tests and proper admission tests.

Thus, the preliminary admissibility tests consist of:

- general literacy test
- written test: writing a synthesis on a general or topical issue
- general criminal law and/or criminal procedure test compulsory test in one of the following fields, by choice:

a) public law (constitutional law, administrative law, public liberties) and European institutions

a) private law (civil law, business law)
b) economic geography
c) contemporary history
d) information technology and communications
e) economic sciences
f) sociology of human resources organisation and management
g) mathematics and statistics
h) psychology

Passing the preliminary admissibility tests is followed by the psychological testing, which is of a different complexity compared to the tests for agent candidates. After it is ascertained that the applicant matches the required performance criteria from a psychological point of view as well, the last stage – namely the admission per se – begins and consists of:

- an evaluation interview that aims at testing the quality of the candidate's thinking and knowledge, as well as his/her motivation for occupying the requested position;

- a verbal interview in one of the fields that were not chosen for the preliminary admission (choice is again made by the applicant);

- a foreign language test in one of the languages: German, English, Arabic, Spanish, Italian

- physical tests

- an additional test (for which marks are given) for applicants that ask for it, in one of the following foreign languages: Greek, Japanese, Mandarin Chinese, Dutch, Polish, Portuguese, Russian and Anatolian Turkish.

After admission, the applicant takes the courses of the Higher National Police School for two years, where he/she will specialise in the police field in which he/she would work. After training completion and graduation, he/she will sign a contract taking obligation to work on the force for 7 years.

Persons who have ever received a criminal sentence cannot be admitted on the force, irrespective of the nature of the sentence, except for sentences on which rehabilitation was given and which are not deemed as serious or very serious. Personal statements regarding convictions are subject to verification against the records of the Ministry of Interior and the Ministry of Justice.

It is compulsory that the following are declared:

- convictions, even if rehabilitation has been given;
- criminal fines or other forms of replacing criminal liability accepted by the French criminal law;
- situations in which the person was subject to a criminal investigation, even when criminal proceedings were not initiated.

The French Police is not interested in analysing the candidate's bank situation (potential lags in bank instalments or payment incidents, except if subject to criminal investigation). However, it is compulsory to declare shares owned in commercial businesses, situations in which the applicant has acted as administrator of a company or other situations that may be relevant from a commercial or conflict-of-interests point of view.

Candidates for a position with the police need to have French citizenship or be citizens of a EU member state.

Also, having a driving license is not a requirement for admission into the police structures. Obviously, when the position would imply driving a vehicle, such position could only be occupied by someone who owns a driving license. Interviewing boards may ask questions regarding potential traffic offences sanctioned by the police or gendarmerie.

Candidates who have any personal marks on them that are obvious and visible, tattoos, piercing, etc. may be disqualified. Such situations need to be examined by the medical board and communicated to the preliminary admissibility board.

Italian police

The minimum age for applying for an agent position is 18 years, maximally 26 years, with minimum height 1.65 metres. All candidates have to go through a 1-year schooling period and a 2-month practical trial period.

For officer ranks, starting with deputy inspector, the maximal age up to which an officer may be admitted is 35 years, with waivers possibly granted

only for those who activated in the military structures and want to move to police.

Training admissibility requirements are as follows:

For police agent ranks, at least a school-leaving diploma is required.

For police officer ranks staffed directly from among civilians it is compulsory that the applicant have a university diploma.

Candidates for agent positions are tested in the following fields:

- medical testing looking at:
  - height
  - weight
  - cardio-respiratory system
  - hearing capacity
  - potential ophthalmologic issues
  - also, a full medical history of the candidate is taken, in order to identify potential health problems that might prevent them from performing to the standard requirements of the sports tests.
- psychological testing

For those who pass the 2 forms of medical and psychological testing, specific additional verifications are conducted regarding the candidate's psycho-moral profile, including checks in the databases of the state's information structures to identify potential associations with organised crime groups, mafia or groups which, through their ideology or activity, are a threat to Italy's national security. Participation in such groups leads to the candidate being forbidden to join the police force structures.

After going through the above-mentioned tests, the applicant for an agent position goes through an exam consisting of:

- eliminatory physical tests – strength, endurance and speed

a) written exam in Italian history, Constitution, Italian legislation

a) written foreign language exam: English, French, German or Spanish

- interview with a board of specialists;

Performance evaluated as unsatisfactory in any of these tests automatically results in the application for joining the police structures being rejected.

Admission into the police force for officers is structured in a similar way, with the medical tests being identical to those for agents. Passing of medical tests leads to psychological testing. Candidates for an officer position would take tests consisting of:

- general literacy test
- written test in the field in which the candidate has a university diploma, namely:

-law

-economic sciences

-sociology

-psychology

-electronics and information technology

-mechanical engineering

-other specialisations, when there is a need for such within the structures

- foreign language test – English, French, Spanish or German

Passing all these tests leads to the final interview, taken in front of a board composed of specialists and staff of the Police Academy.

After admission, the candidate pursues the courses of the Police Academy for one year and a half, where he/she would specialise in the police field he/she would work in, followed by a 6-month service in one or more police units. As a principle, on completion of Police Academy studies, the graduate is specialised in a specific police field. After graduating, he/she will sign a contract taking the obligation to work in the police structures for 10 years.

Persons who have had criminal sentences cannot be admitted into the structures, irrespective of the nature of the sentence, except for sentences on which rehabilitation was given. Personal statements regarding convictions are checked against the records of the Ministry of Interior and the Ministry of Justice or of the Italian information structures – SISME and SISDE.

It is compulsory that the following are declared:

- convictions, even if rehabilitation has been given;

- criminal fines or other forms of replacing criminal liability accepted by the Italian criminal law;

- situations in which the person was subject to a criminal investigation, even when criminal proceedings have not been initiated.

The Italian police is interested in the potential situations when the potential candidate to a position with the police structures has used banking or financial systems to perpetrate serious crime, or has been associated with criminal groups or has favoured such groups – reason why the person needs to give a statement in this sense and undergo some checks. Also, the applicants must declare all situations in which they are involved in commercial interests or may be in a conflict of interests or compatibility. Italian policemen may not be affiliated to political movements or parties or publicly declare their sympathy for such groups.

Candidates to a position within the police structures need to have Italian citizenship or be

citizens of a EU member state, but have good command of Italian language.

Candidates to a position within the police structures are not required to own a driving license, but owning a driving license does play as an advantage in the personal evaluations that are conducted, or in front of the examination board. Also, the candidate's behaviour in traffic, identifiable through sanctions that were given, may count as an element in the candidate's personal evaluation.

The medical examination must also clarify the existence of tattoos or personal marks, respectively the visibility of such when the policeman wears a proper outfit. For marks that can be removed, the candidate may be asked to do so.

Spanish police

The minimum age for applying for an agent position is 18, with the maximum age being 30 years. Also, candidates need to be at least 1.70 m high for men and 1.60 m for women. At the same time, men need to have their military service completed. After the admission per se, candidates need to pursue the courses of a training school for 1 year. After graduating, all agents start with street police activity (equivalent of the public order or traffic police in Romania), where they need to work for at least 7 years – in which period transfer to other profiles is not allowed, except for situations when certain qualities of the policeman plead in favour of such transfer (such as command of a rare language, exceptional skills in computer science, etc.).

After graduating the initial training course, policemen do not go through a trial period, but we should mention that the period of practical trial training during schooling adds up to 6 months. In other words, initial training for agents is very much practice-application-focused.

The candidates undergo medical tests for the admission, looking at all the health problems that might impair the candidates' capacity to cope with the tasks they would have to attend to in the future:

- neurological and neuro-psychiatric problems
- ophthalmologic problems
- cardio-respiratory problems
- digestive or abdominal problems
- motor problems
- other problems, such as recent surgery or acute or chronic conditions that would have a negative impact on the candidate's general health.

Persons shorter than 1.70 m or persons whose overweight condition is an impairment for physical performance are not admitted.

With regard to educational requirements, the Spanish police requires candidates for an agent position to be high school graduates with a school-leaving diploma, and candidates for officer positions to have a diploma in a field that is relevant for the force - most frequently law, economic sciences, electronic engineering, telecommunications or computers.

At the same time, all convictions against the applicant are declared and evaluated. The Spanish police is one of the few police structures that allows persons to join if they have been sentenced for negligent crime on which rehabilitation has been given, or even for intended crime, provided that such deeds are not in the category of serious crime; the person has not been forbidden by court sentence to occupy public positions, and he/she has been rehabilitated. Even if rehabilitation has been given, persons who have been convicted for homicide, corruption, tax evasion, money laundry, treason felony, conspiring, assault or joining into a terrorist group, organised crime, etc. are not accepted.

Personnel verification structures are obliged to check the realism of the candidate's statements against the data in the records of the Ministry of Interior, the Ministry of Justice and the Ministry of Defence.

We should mention that existence of a conviction on which rehabilitation has been given does not result in disqualification as such, but such circumstance would place the candidate in a delicate position during the evaluation.

Another level of preliminary verifications carried out by the Spanish police on a candidate has to do with joining into an organised crime group (especially for drug trafficking or trafficking in human beings) or into a group suspected for terrorist conspiracy; such circumstances are deemed as unacceptable for a future policeman.

To become a policeman, the candidate needs to be a Spanish citizen or a citizen of a EU member state with good command of Spanish language. As the Spanish police is included in the system of public authorities, persons who are not Spanish citizens or citizens of another EU member state, but do have a residence and work permit for Spain may not apply to join the police force. The distinction is necessary, because Spain has a numerous Hispanophone minority sourcing from South and Central America or the Philippines who are interested to join the police structures, as the Spanish police is deemed to be the best paid police force in the EU.

Spanish police requires the candidate to have a driving license when applying to join into the structures. Behaviour in traffic, as reflected by the sanctions received, are deemed as an indicator for personality traits.

Tattoos or personal marks are not a criterion for exclusion, but depending on the specific characteristics of certain specialised executive positions, these may hinder access to such positions.

For persons who have had other employment previous to asking to join the police force, a characterisation from the previous jobs may be required, or checks may be conducted in this sense.

For both officers and agents, a computer-assisted psychological test is taken before the admission tests as such; the psychological test is extremely complex, and failure to pass excludes the person from taking the examination tests. The psychological testing can be rescheduled only once, with failure to pass resulting in final exclusion.

Sports testing is also extremely complex, and performance to all the minimum standards is compulsory. Sports tests include strength, running endurance and speed, self-defence tests. If the test is not passed, it cannot be repeated.

The admission exam for agents is taken at the agent training schools and includes the following:

- Grid questionnaire
- Essay on a given topic, followed by presentation of the essay in front of a board
- Test in a foreign language of international value
- Structured interview.

The admission exam for officers is taken at the Avila Police Academy and includes the following:

- Written test in elements of Spanish law
- Questionnaire in a subject matter chosen from the field of competence and accepted by the Avila Academy
- Complex essay on a given topical theme, followed by presentation of the essay in front of a board
- Exam in a foreign language of international value
- Final interview.

The tuition schemes of the Avila Police Academy include speciality and forensic subject matters, with other subject matters added when specialisations in the police force so require (for instance, history of arts – for those who will work in the unit that deals with the PRADO Museum security or with trafficking in art objects).

The speciality subject matters are structured on three levels: informative, investigative and forensic (criminal investigation). We should also mention that speciality evaluations of the Spanish police officers are legally deemed as expertise source in criminal trials, which is why the forensic level is deemed as extremely important.

Professional training schemes are designed by the police structures where the agents and officers work. These schemes may be organised by the police units in the form of speciality training, by the improvement training centres, or through training programmes within the Police Academy or Spanish universities.

Austrian police

The minimum age for applying for an agent position is 18, and the maximum age is 30. The admission includes medical and physical tests extremely similar to those seen in other European police structures.

Educational requirements

The Austrian police requires the candidates to agent positions to be high school graduates and have a school-leaving diploma. Those who want to go straight to being officers through recruitment from an external source (and only for speciality positions within the central structures) are required to be graduates of a university and have a diploma.

Convictions

Existence of a conviction prevents the applicant from taking the contest organised for admission into the police structures in the case of both agents and officers. If rehabilitation has been given for a conviction and the sentencing was not for a serious deed, the candidate may participate in the admission contest, while he/she would need to declare:

- any conviction
- the convictions for which rehabilitation was given
- any involvement with any criminal investigation that did not result in criminal proceedings being instituted

The candidate's statements are subject to subsequent detailed checking by the employing police structure.

Nationality

In order to be admitted into the police force, the applicant must exclusively be an Austrian citizen.

Vehicle driving

It is compulsory to own a valid driving license when applying for a position within the police structures.

The initial training of policemen takes place at the Vienna Internal Security Academy, which is not ranked as a higher education institution. The Academy provides initial and continuous training for the Federal Ministry of Interior staff in ten training centres homogenously distributed across the country, according to the formula below:

❖ Executive service (police agents) – basic training is done within module I and lasts 21 months; after graduating, the staff is assigned to operative units, and after 5 years of activity they may - following a rigorous selection procedure - move to a new training stage in order to advance their career.

❖ Training for heads of services – these are selected from the executive service. This type of training is done in module II and lasts 7 months. When completing this module, trainees are appointed as group inspectors.

❖ Officer training – these are selected among staff in leading positions (heads of services, uniformed executives and forensics). This type of training is done in module III and lasts for 2 years, following a contest organised by the Internal Security Academy together with the Federal Ministry of Interior. On completion of training, graduates receive an officer degree (according to their age) and may be appointed as heads or commanders, Staff officers, and speciality advisers.

Belgian police[241]

The minimum age for applying for an aspiring agent position is 18. In principle, there is a higher age limit for aspiring agent positions of 33 years, with the limitation representing the need for a minimum period of 25 years of paying dues in order to get a professional pension such as policeman pension. For officers, the maximum age for starting a career with the police force is also 33 years, except for people who are hired in specialist positions from external sources (outside the police structures).

Similarly, admission into the Belgian police force is conditioned by eliminatory medical tests for both officer and police agent candidates.

Educational requirements

The Belgian police does not require candidates to aspiring agent positions to be graduates of high school, but high school completion becomes compulsory in order to advance to agent status. Officer candidates have to be high school graduates and have a school-leaving diploma. A higher education diploma becomes compulsory in order to advance to aspiring commissary positions.

Convictions

The Belgian police does not allow for people who have been convicted to join the police structures, in the case of convictions for deeds deemed as serious or highly dangerous, such as homicide, robbery, rape or sex crime, tax evasion, corruption, treason felony, etc. Administrative fines are not considered, but may facilitate drafting the candidate's psycho-behavioural profile, and questions regarding such may be asked in the psychological testing or the job interview.

The following need to be declared:

- any conviction;
- prescribed convictions;
- any involvement in any criminal investigation that has not resulted in criminal proceedings.

Individual statements are compared to the results of subsequent, extremely detailed checks performed by the employing police structure or by other structures, such as the Belgian information services.

Financial infringements

Financial infringements – such as delays in paying taxes, fees, fines or bank instalments cannot result directly in rejection of a job application. In connection to these, the aspirant can provide statements and explanations that can lead to a favourable interpretation on the circumstances that surrounded such infringements.

Nationality

In order to be accepted within the police structures, the applicant needs to be a Belgian citizen or a citizen of an EU member state.

Vehicle driving

In principle, it is not compulsory to own a driving license when applying for a job with the police structures, but if the position that is targeted requires driving a vehicle, the job application may be rejected.

The preliminary interview is conducted when the application is submitted and looks at the following:

- Personal data

Name, date of birth, address, etc.
Details about the family
Financial data
Nationality
Convictions
Political interests
Medical aspects

- Employment history

Current / most recent employment

[241] www.polfed-fedpol.be

Subsequent employment
References
Previous job

- Education and skills

Educational background
Professional qualification and training
Additional skills

Physical tests

Candidates for a job on the police force are required to take a number of physical tests that look at the following skills:

- athletic endurance
- strength
- self-defence skills

If the test is not passed on the first time, it can be re-taken three times at the most.

Training

After admission, the candidates pursue the one-year courses of an initial training school in the case of agents; there are 10 such schools, corresponding to each region of the country; officer trainees would take the 2-year courses of the Federal Police School. Completion of tuition organised by the Federal Police School is not perceived as equivalent to university diploma. The courses of the Federal Police School focus on subject matters and sciences that pertain especially to the field of public order and safety (equivalent to the public order and traffic police in Romania). The School has its headquarters in Brussels.

As for external-source candidates or for those who are already employed in the police and have graduated from some form of university-level education and move to the forensic field within the police, initial training courses are organised at the National Forensic Investigation School, based in Brussels; the training focuses especially on elements of criminal law, civil law, criminalistics, criminology, informative sciences, psychology, psycho-sociology, etc. This institution also provides specialisation training courses for police officers, whether it's local or national police, as long as it is a forensic speciality, at the request of the Professional Training Department of the Royal Belgian Police; this department could be seen as an actual manager and integrator of the careers of policemen in this country.

Candidates applying for a managerial job are required to complete the training courses organised by the National School for Higher Officers, where the focus is on police organisation management or on certain sectoral speciality courses. The National School for Higher Officers is also subordinated to the Professional Training Department of the Royal Belgian Police.

In principle, professional training programmes are co-ordinated by the Professional Training Department of the Royal Belgian Police, at the request of national or local police units. These programmes can be delivered at the police units, in training and improvement centres, or by pursuing courses at one of the three institutions presented earlier. Assignment or transfer of policemen is conditioned by the policeman's own express agreement. Transfer of policemen is conditioned by the approval of the unit receiving the transfer, and the approval of the unit they leave, and needs to be endorsed by the management of the Royal Belgian Police.

Danish police

The minimum age for applying for an agent or officer position is 21 years. For Denmark and the Faroe Islands, training of police officers and under-officers is carried out at the National Police College in Copenhagen. Greenland, paradoxically (given its small population), has a Police College with similar requirements for admission and training programmes to those from continental Denmark.

The applicant interested in a career with the Danish police must be a Danish citizen or someone who has applied for Danish citizenship (even if not granted at the time). Unlike other European countries, Denmark does not accept persons that are citizens of an EU member state to become policemen, and the fundamental condition is that they be Danish citizens or applicants to Danish citizenship.

Medical tests are conducted for admission, looking for:

- Ophthalmologic problems, especially colour vision and distinguishing capacities. Persons wearing correction contact lenses for various ophthalmic deficiencies are accepted;
- Also, special attention is given to ear problems, and the hearing test is eliminatory;
- Psychiatric or psychological problems;
- Neuro-motor problems;
- Any other medical problems or chronic conditions;

The following health aspects must be evaluated during the medical examination:

- Height. Although the Danish law does not stipulate for a minimum standard, the candidate's height is evaluated by the medical board, who will decide accordingly.
- Body weight;

The medical examination includes biological samples meant to identifying drug users, users of other forbidden substances, chronic diseases that the candidate may be unaware of at the time of the statement on his own health status.

Educational requirements

The Danish police requires candidates for agent positions to be graduates of high school education or of vocational secondary courses (which in Denmark can be assimilated to 3 years of high school). The persons who want to participate directly in the contests organised for taking an officer position should have a university diploma recognised by the relevant Danish authorities. Also, candidates for agent positions should have solid computer operating and foreign language skills.

Convictions

The Danish police does not allow in any way employment of people who have been convicted, irrespective of the nature of the deed, its seriousness, or whether it was rehabilitated or not.

The following must be declared:

- any criminal conviction;
- prescribed convictions;
- any involvement in any criminal investigation that has not led to criminal proceedings.

In any case, the individual statements are subject to subsequent extremely detailed tests performed by the staff structure in charge for preliminary staff checking. Existence of a conviction results in exclusion from the structures. One ought to mention that Denmark has in its collective mentality a high degree of social non-acceptance for people with a record (especially those who were convicted for serious deeds), which is why potential Danish criminals need to think several times before moving to the criminal action; in time, this situation has developed Denmark into the country with one of the lowest crime rates on the globe (one should also add that a great deal of the forensic crimes - theft, robbery, rape, etc. are perpetrated especially by foreigners, European or not, or by legal residents on the territory of the Danish kingdom).

Financial infringements

The Danish police requires expressis verbis that the applicant make proof of achievement of good standards in terms of standards of their own life, as well as in connection to payments of fees and debts of any kind. In connection to financial incidents, the candidate must provide statements and explanations that can lead to a favourable interpretation on the circumstances surrounding such incidents. However, on the other hand, we should mention that, when a candidate cannot bring proof of an acceptable financial condition, meaning the sources of revenues and the absence of financial incidents, he/she is excluded from the recruitment process. Although it may seem odd, this procedure is also seen in most cases when an applicant applies for a job with a Danish administrative structure, and it's not a rare practice in private companies either. The key effect of these actions is to prevent the possibility of access to persons who may be vulnerable or bring with them risky personal circumstances in connection to corruption deeds. One must also mention that, beyond this action, the Danish police, as well as other police structures in the Northern Saxon countries – Sweden, Norway and Iceland – only shows absolutely sporadic cases of corruption amongst its policemen and magistrates.

Vehicle driving

In principle, it is compulsory to own a driving license when applying for a job with the police, and the absence of one results in rejection of the application. All sanctions that the traffic police has given to the applicant have to be declared.

Physical tests

The physical tests prior to admission into the police structures look especially at the following:

- agility
- physical strength
- static strength
- movement co-ordination capacity
- running speed and endurance

If the test is not passed on the first time, it cannot be re-taken.

Passing the physical tests leads to knowledge testing, looking at the following:

-a written test checking Danish language skills (grammar and essay) and English language skills - compulsory

-team spirit and ability to inter-relate in a team (testing is performed during a task assigned to a team of candidates)

Passing the written test and the team spirit test leads to the final interview; the goal of this interview is to evaluate the performance tested previously, and evaluate the match of the candidate's psycho-behavioural characteristics with those in the standard psycho-behavioural profile of the Danish policeman[242].

Admission after the interview allows the applicant to start the training programme. It lasts 3

[242] www.politi.dk

years for both officers and agents. The courses are organised within 3 modules over 36 months, as follows:

module I- initial training – 9 months;

module II- practical training period in police units - 18 months;

module III- final training and graduation exam.

Theoretical training is focused on acquiring and consolidating knowledge in the field of law, legal and forensic procedures, police theory, criminalistics, criminology and victimology, human rights, psychology and educational sciences, management, etc.

Obviously, the course structure is different in the case of officers, compared to the training curriculum for agents. It is extremely interesting, however, that Denmark, as well as the other Northern Saxon states, are the only states where training programmes for police agents and for police officers have the same duration.

Professional training programmes are co-ordinated by the departmental structure that ensures continuous training for policemen. Such programmes may be delivered in police units, by training and improvement centres, or by pursuing courses at the National Police College in Copenhagen.

The Danish police encourages its own staff who wish to pursue courses in a university, to the extent to which such courses do not interfere in a significant manner with their working hours with the police. The general staff policy of the Danish police is to promote senior, experienced agents to police officers. We should mention that, in the case of experienced agents, occupying an officer position does not compulsorily require graduation from university.

However, the condition of holding a university diploma needs to be met when the applicant applies for a medium or high level management position.

Bibliography

- Buttice- Forze dell'ordine e comunicazione- Bariletti Editori 2000
- Ciencia Policial, no.88, May/June 2008
- MEPA (Mitteleuropaische Polizeiakademie) Journal- Wien- nr. 3/2007
- www.polfed-fedpol.be
- www.politi.dk

CRISIS DECISION MAKING
THE DRUG PROBLEM IN ROMANIA

Police agent Elena – Irinuca GHIZDEANU
DGPMB

Nowadays we are facing a real problem and at the same time very dangerous for mankind. It is very important that people be aware and very careful about the dangers around them everywhere. In this study I have proposed talking about one of these dangers, namely, drugs. Whether the production, trafficking or drug consumption, we must be aware that we are facing a real crisis. Because this problem is extended throughout the world, having a very large range of coverage, I could not point out all the important aspects of drug, so that I am going to do an analysis of the crisis that takes place in Romania.

Keywords: analysis, drugs, risk, crisis, National Anti-Drug Agency, prevention, cooperation.

A crisis is a sudden change of situation, perceived by a decision maker, which fulfils three conditions: the threat of fundamental values, urgency and uncertainty.[243]

Drugs are narcotic or psychotropic substances and plants or mixtures which contain such plants and substances provided by the law in force on preventing and combating drug trafficking and illicit drug consumption.

In what follows, for a proper analysis of the chosen crisis, I apply a model, known as the model in four steps[244], as follows:

Step 0

- *Defining crisis*

As I said before, Romania is going through a serious period in terms of drug, bringing to grips with a real social crisis, as drug production, drug trafficking and toxicomania have a high share in the world with very serious consequences on Romania. I say this because it is known very well which are the disadvantages of drugs for human health and security, regardless of drug type, and meeting at the same time the extraordinary benefits obtained by those who produce or by traffickers. I do not mention the same thing about consumers, because benefits I do not think that exist, only on a very short term so that the toxicomania is becoming more, leading to addiction, which in turn leads to major problems for the individual life, that toxicomania which increasingly tends to adapt the trends of the entertainment industry globalization.[245]

Romania is facing this crisis, and I refer to this aspect because there is the inclination to drug consumption and trafficking, even at an early age, and the determinants of this crisis are: entourage, information on the Internet, bad relations with others, family, poverty (by the fact that, especially the young, easily influenced and influenced by others, are challenged, as to obtain various amounts of money, to traffic drugs). To solve this crisis is imperative that the decision maker acts for the welfare of Romania. But before their action, they must be well informed on the negative aspects, to know the status on drug crime, because when it comes into action, he has to take the decision which is needed.

- *The decision maker*

National Anti-Drug Agency

- *It starts*

I have started the analysis of this crisis since 2004. Post-Cold War period is a transition one that with the economic growth, industrial, technology, communications of any kind development, leads to negative aspects, as Romanian society is also facing less favorable factors that are unavoidable in any change and negatively influences the development of Romania. And these factors I mention, apply to drugs, to consumption and drug trafficking, in this case Romania is facing a crisis. This problem being somehow at an early phase for Romania, it is clear that this crisis was in its incipient stage, but what I want to point out is that since 2004 this issue has

[243] Stern E., *Crisis Decision-making: A cognitive-Institutional Approach,* Dept. of Political Science, University of Stockholm, 1999, p. 133
[244] *Idem*
[245] Botescu A., *Consumul de droguri în spațiile recreaționale.* Research report, National Drug Agency

grown ever more - the result being just a very large-scale crisis.

- *It ends*

To reach this point, I insisted upon the analysis of drug crisis until now, namely the year 2010, and I can not determine exactly when and how is solved this crisis, but I could bring into question the ways which could lead to the end of the crisis.

- *Are affected*

Mainly are affected human health and human security, but also the security of Romania. Moral conscience is also affected, to some extent, especially for those who are forced (by threats) to seek such action. In this way are filled the crisis conditions, because the fundamental values are threatened, also meet emergency component, because the decision maker must take as quickly as possible a decision regarding drug trafficking and drug consumption in order not to affect further other values, and also uncertainty component, because the decision maker could not know exactly who are those who use drugs or where is their destination.

1st Step

Contextualization

- *International Context*

The drugs problem is very diversified and a risk of particular importance for many countries, including Romania, also implies "legal drugs" which have taken a great extent at national level so far having been identified almost 500 "stores of dreams" that distributes herbal products containing psychotropic drugs, which are not conformed to legal control. This phenomenon has been reported also on the international level, being held meetings on this subject at the United Nations - United Nations Office on Drugs and Crime (UNODC) and European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) and also at the Union European.

Many states have already introduced under control these plants and their active ingredients, taking into account the harmful effect on human health.

- *Socio-Economic Context*

Drug crisis in Romania appears as a problem with serious consequences for the Romanian society. Only the expression of drug makes us think to negative results. The seriousness of this thing lies in the fact that today "soft drugs" have entered legally, as evidenced by the various stores where these drugs are sold. I believe it has no importance that they are called "soft", because all drugs are known as doing anything but to affect fundamental values.

In Romania these "soft drugs" are not placed under the control of legislation on drugs, narcotics and psychotropics, but efforts have been made since 2008, for placing it under control. Regarding this, the Ministry of Health, Ministry of Agriculture, Forests and Rural Development, Ministry of Administration and Interior, Ministry of Public Finance and National Authority for Consumer Protection has developed a Plan for setting the conditions for marketing of some plants, herbal products and some substances that may be similar to plants, narcotics and psychotropic substances and preparations which comes into effect after January 29, 2010.

- *Institutional Context*

In Romania there is within the General Inspectorate of Romanian Police, General Directorate for Combating Organized Crime, which also has in its component the Anti-Drug Service and the National Anti-Drug Agency[246], which are representative for combating the production, consumption and drug trafficking in Romania - these central units appear only in the Ministry of Administration and Interior; but on this issue are also involved other ministries such as Ministry of Health, Ministry of Education, Research and Innovation - by preventive training of students, parents about the disastrous consequences of the drugs, Ministry of Justice - by the implementation of legislative programs to combat drug trafficking and drug consumption, as well as numerous Non-Governmental Organizations - that promote prevention of drug consumption and trafficking.

- *Historical Context*

About the drug phenomenon is information for a very long time, but this problem was not exacerbated because one could not speak accurately about the term of drug; just for example, the opium which, by the fifteenth century, was used for medical purposes, it was found that offered a special pleasure inducing in this way dependence.[247]

With these drugs the Chinese have been confronted since the XVII-XVIII centuries, who have made a habit of smoking opium, thus suffering unpleasant consequences on the medical and social plan. And in England of the eighteenth and nineteenth centuries, opium was consumed orally in general, and also smoked, but it was never more than a rare event.[248]

[246] http://www.igpr.ro/unitati_centrale.htm
[247] Griffith E., *Drogurile – o tentație ucigașă*, Paralela 45 Publishing House, Pitești, 2006, p. 110-112
[248] *Ibid*, p. 119

About cannabis there is written pleadings since 450 BC, where Herodotus described how to obtain that drug by the Scythians who, once they inhaled the smoke from burning cannabis seed, they began to wander.[249] Consequently, drugs problem follows an early path.

All these aspects are merely to reinforce the idea that today we face a great crisis, given that in the past it had a stable base.

2nd step

As an analysis on a longer period of time which does not stop on a single moment of crisis on drugs, which would be impossible, because the crisis is continual in this regard, namely a rampant crisis[250], I will focus on a period from 2004 to the present, because this crisis has taken a very wide scope and I may not accurately specify the items related to the temporal side. This enhancement also appears from the number of persons sought by police for committing crimes to the Law 143/2000 on combating illicit drug trafficking and consumption, so in 2004 it was about 1197, in 2005 about 2008, and in 2006 about 2446, an alarming thing for the situation in Romania.

This crisis is a particular problem for rich countries, for which we also find in our country. Romania does not belong either from the richest countries, or from the poorest, which makes this crisis to achieve high rates. This is evidenced by the results of various assessments, programs of the NAA.

The specific elements of this crisis, summed up, which Romania is facing at present are mainly related to harmful factors resulted from drug trafficking and consumption. Romania has faced less with drug production, but drug trafficking and especially drug consumption is vast. I could give an example in this direction: A Bulgarian citizen carrying a suitcase of cocaine went on the route Valencia - Athens, making a stop at Henri Coanda Airport, Bucharest. Here he notifies the loss of the suitcase. As it is found later, it is scanned, finding out three packages of drugs. As a result of the tests conducted by the Anti-Drug Department resulted 4.5 kg of cocaine, related to about 500.000 Euros.

These figures represent an alarming image for Romania. And to reduce this negative image and to annihilate the network of high-risk drugs, research is underway in cooperation with other countries.

Trafficking and drug production in other countries can have serious consequences for Romania. There are various types of information on drug trafficking. Estimative, annual appear dozens of new types of drugs and the earning from their sale increases very quickly, which leads to a rapid consumption which, of course affects human health by acting on central nervous system, causing memory loss, the victim could not remember any moment spent under the influence of the drug.

The drugs problem can be approached from different perspectives, from political to health perspectives, scientific research and everyday practice in this field and to operational cooperation against drug trafficking. Legislative framework and policies which finally approach about this problem, must take into account all these aspects and to reunite them into a coherent and realistic manner.[251]

Therefore, the action against this problem will be discussed in the next step of analysis, which outlines the opportunities for making decisions by the decision-maker, in this case, the NAA.

3rd Step

In this case, the NAA has faced several issues in what implies the moment for making decisions in the drug crisis. So, at the beginning of its activity, the opportunities of making decisions might be based on close cooperation with other institutions, which should be now, a moment when Romania has become appropriate for the situation due to increasing drug cases and, thereby, increasing the experience of this Agency in combating drugs, and thus of solving this crisis. If this cooperation and collaboration would not be there, obviously it had not been made the correct decision or not taken at all.

Despite the gaps, there were sensitive steps in knowing the precursors abuse and the problem drug of different psychoactive substances, these precursors have begun to call themselves risk factors and provided the basis of theoretical model of risk and protective factors.[252]

As the institution which deals with the drug, it is required to make the best decisions to solve the problem we face. Thus for trafficking, but especially for drug consumption, there are negative effects in the Romanian society, the most common being

[249] Griffith E., *Drogurile – o tentație ucigașă*, Paralela 45 Publishing House, Pitești, 2006, p. 176

[250] Chifu I., Ramberg B., *Managementul crizelor în societățile de tranziție. Experiența românească*, Rao Publishing House, Bucharest, 2008, p. 89

[251] According to *Strategia UE pe Droguri (2005 – 2012)*, http://www.ana.gov.ro/rom/str_ue0.htm

[252] Dr. Cicu G., *Factori de risc şi de protecție în consumul şi abuzul de droguri*, http://www.ana.gov.ro/rom/studii2.htm

death, for which NAA functions are to prevent and combat these factors. To address this crisis NAA brings into question various ways of action, which currently lead to real solutions of solving, and in this way, is the Prevention, Evaluation and Counseling Anti-Drug Center - CPECA, as collaborating with organizations or institutions which have responsibilities in the field of drugs demand.

In 2004, the European Council proposed the establishment of a European Strategy on Drugs for the period 2005-2012. This strategy is based on the fundamental principles of EU law and supports throughout the Union's founding values: respect for human dignity, freedom, democracy, equality, solidarity, rule of law and human rights. The strategy aims to protect and improve the welfare of society and of man, safeguarding public health, ensuring a high level of security for citizens and dealing with a balanced and integrated drug problem.[253]

The current drug situation is presented in the annual reports of the EMCDDA (European Monitoring Centre for Drugs and Drug Addiction) and Europol. Despite the fact that drug use patterns have varied in the 25 European Union member states, especially in terms of scale, new problems have emerged in some areas and there is no evidence to suggest a significant decrease in drug use.[254]

Based on the European Strategy on Drugs, the NAA continuously engages for making correct decisions by implementing various programs, evaluation to reduce drug demand and supply, through cooperation with other institutions and international cooperation.

When it should make decisions, Anti-Drug Agency performs and coordinates on the national level the activities of collection, analysis and dissemination of data and information about drugs and addiction, while maintaining confidentiality in accordance with law, establishes indicators and criteria for assessing the drug phenomenon, centralizes, analyzes and integrates all data provided by authorities, by involved institutions and organizations, manages and operates its human, economic and technical resources, prepares the documents for organization, planning and development of its activity, manages the Agency's public image at home and abroad, ensures the collection of internal and external financial resources to material support of the strategic objectives of prevention.[255]

Briefly, the NAA thinks this issue as one of the highest importance that requires solution without any hesitation, this being its main objective, reason for which set up an Action Plan[256] for a period between the years 2005 - 2008 wherewith it has proposed and completed:

- the decrease of demand through drug prevention in school, family, community prevention through medical, psychological and social care, risk reduction;
- supply reduction;
- international cooperation;
- information and evaluation;
- institutional coordination.

As a conclusion, the NAA make good decisions in this respect, thinking these action plans as a step to solving the crisis which is facing.

The next step includes a series of elements that are necessary for the analysis of drug crisis in Romania.

4th Step

- *Crisis preparation, prevention and evaluation*

NAA has the permanent mission to prevent and combat illicit trafficking and drug consumption in Romania. Through the decisions taken to combat this phenomenon, it shows that this crisis can be prevented in the future, as witnessed by various actions, evaluations and statistics carried out within the Agency, which demonstrates that there are tendencies to stop this drug trafficking and abuse. In 2006 there is a noticeable decrease of capture quantity of drugs trafficked in the Romanian market, such as heroin, cocaine, synthetic drugs. But the same thing can not be said about cannabis herb seizures that have been growing about three times compared to 2005.[257] But nowadays there are stronger signals that the popularity of this drug is likely to be decreasing because Drug Agency manages to handle the crisis well.

- *Leadership*

NAA is an exceptional leader regarding the intervention against drugs, since it involves and interferes where the crime related on drug use is

[253] According to *Strategia UE pe Droguri (2005 – 2012)*, http://www.ana.gov.ro/rom/str_ue0.htm
[254] *Idem*
[255] According to *Organizarea şi Funcţionarea Agenţiei Naţionale Antidrog*, http://www.ana.gov.ro/rom/organizare.htm
[256] http://www.ana.gov.ro/rom/PlanAct%20SNA%2029%20aprilie%202005%20BT.doc
[257] *Raport naţional privind situaţia drogurilor. Noi evoluţii, tendinţe şi informaţii detaliate cu privire la temele de interes european*, Reitox, România, 2007, p. 77

high or where this might grow. In this regard, the Anti-Drug Agency released a research report of studying Drug use in recreational areas, held in Bucharest in partnership with a group of web portals and online social networks involved in promoting recreational events (www.nights.ro, www.afterhours.ro, www.clubbingradio.ro, www.metropotam.ro, www.beatfactor.ro, www.pubbing.ro, www.anyplace.ro) and funded through Financing Agreement signed in 2008 between the EMCDDA and NAA.[258]

- *Decision making units*

As a problem affecting the health and human security, it is necessary for the proper management of this crisis to be involved other stakeholders such as ministries - Ministry of Administration and Interior - where the decision maker is part of this Ministry, the Ministry of Health, Ministry of Education, Research and Innovation, other institutions and institutionalized decision-making groups at an international level - EMCDDA, World Health Organization, International Narcotics Control Department, United Nations Office on Drugs and Crime, UNAIDS, European Commission, Interpol, Europol.[259]

- *The problem of perception and problem definition*

NAA perceives drugs problem as an emergency which affects the fundamental values of the Romanian society, which must be solved without delay, this being its main task. If on the initial phase of this phenomenon, the NAA had not precisely defined its attributions to prevent and fight, now, due to increased consumption and illicit drug trafficking, and thus to the experience gathered as evidence of active involvement in the prevention, there are not discrepancies in the perception of this problem.

- *Values conflicts*

As I stated in the body of this work, very important is cooperation and collaboration with other institutions to achieve the fundamental values by preventing the drug problem, for which NAA has no problem in accepting this cooperation, and more it is trying to direct and co-opt as many institutions and even citizens to take action against this harmful phenomenon to society so I consider that there is no conflict of values in this regard.

- *Co-operation and political - bureaucratic conflict*

In this regard, I think that a conflict might arise from a little liberal view of today's legislation. Soft drugs are sold legally today, even if they are not very hard, they also affect human health. Although it was proposed and adopted in the Senate a bill[260] to amend Law 143/2000 on combating illicit drug trafficking and consumption, regarding these soft drugs, they still appear on the Romanian market.

- *Crisis communication and credibility*

Although various national programs appear to prevent and combat the drug phenomenon through various reports, articles, reports, events developed through seminars or conducted through the media, there are many who hold importance lightly to the negative aspects, which are set, precisely for them to stay away of the serious consequences of drug use. NAA exposes such prevention programs, but receives no replies from anybody, which makes the drug phenomenon to be permanent.

- *Transnationalization, internationalization*

The drugs problem is a comprehensive cover, which affects the whole world is a problem that transcends state borders, which makes it necessary to involve several institutions, international organizations to stop or prevent illicit drug consumption and trafficking. The involvement of these organizations leads to international cooperation, whose general objective is that Romania is internationally recognized as a reliable partner in the global effort to reduce drug demand and supply, both in relations with the European Union Member States and specialized European structures and in the wider international forums and relationships with drug-producing states, with those which are on the transnational routes of drugs and those with relevant experience in fighting this scourge[261], and as specific objectives, Romania should develop relationships with partners from Member States and from specialized structures of the European Union to strengthen relations with other states and international structures involved in the fight against drugs and also to participate in international programs to reduce drug supply and demand.[262]

- *Time effects and lessons learned*

For certain that after a good collaboration and national and international cooperation, drug

[258] http://www.igpr.ro/agentia_nationala_antidrog.htm
[259] Chifu I., Ramberg B., *Managementul crizelor în societățile de tranziție. Experiența românească*, Rao Publishing House, Bucharest, 2008, p. 103
[260] http://www.cltccr.org/docs/09L395FS.pdf
[261] *Strategia Națională Antidrog (2005 – 2012) – proiect*, http://www.ana.gov.ro/rom/strategia4.htm
[262] *Idem*

problem, if it is not stopped, at least is going to be reduced, thus simplifying the negative effects caused by the illicit drug use and trafficking in Romanian society. Romania, through its institutions, tries to control this problem by reducing drug consumption by medical, psychological and social care for people who are facing this problem.[263] As a lesson learned, the NAA, in cooperation with other institutions, must take every time the necessary steps to eliminate any negative effect that would increase the level of insecurity in the Romanian society and to limit consumers' access to drugs.

The crisis title - The drug problem in Romania.

Bibliography:

- Andrei Botescu, *Consumul de droguri în spațiile recreaționale.* Raport de cercetare Agenția Națională Antidrog
- Eric Stern, *Crisis Decisionmaking: A cognitive-Institutional Approach,* Dept. of Political Science, University of Stockholm, 1999
- Edwards Griffith, *Drogurile – o tentație ucigașă*, Paralela 45 Publishing House, Piteşti, 2006
- Iulian Chifu, Britta Ramberg, *Managementul crizelor în societățile de tranziție. Experiența românească*, Rao Publishing House, Bucharest, 2008
- *Raport național privind situația drogurilor. Noi evoluții, tendințe şi informații detaliate cu privire la temele de interes european*, Reitox, România, 2007
- Dr. Gabriel Cicu, *Factori de risc şi de protecție în consumul şi abuzul de droguri*, www.ana.gov.ro
- *Organizarea şi Funcționarea Agenției Naționale Antidrog*, www.ana.gov.ro
- *Strategia Națională Antidrog (2005 – 2012) – proiect*, www.ana.gov.ro
- *Strategia UE pe Droguri (2005 – 2012)*, www.ana.gov.ro
- www.cltccr.org
- www.gov.ro
- www.igpr.ro

[263] Chifu I., Ramberg B., *Managementul crizelor în societățile de tranziție. Experiența românească*, Rao Publishing House, Bucharest, 2008, p. 113

V. SCHENGHEN ISSUES

A CRITICAL OVERVIEW ON THE EUROPEAN SECURITY STRATEGY IN THE CONTEXT OF RECONFIGURATION OF EUROPEAN UNION EXTERNAL BORDERS

Assistant Lecturer Ph.D. Sergiu Adrian VASILE
Assist. Lecturer Amalia NIȚU
"Alexandru Ioan Cuza" Police Academy

Globalization has brought new opportunities. The substantial growth in the developing world, led by China, has brought millions out of poverty. But globalization has also led to more complex and interconnected threats. The important areas of our society - such as computer systems and energy supply - are more vulnerable. Global warming and environmental degradation change the appearance of the planet. Moreover, globalization is accelerating shifts of power and highlights the differences in values. One of the most troublesome issues is the pressing need of the EU to begin develop an identity in the area of defense, to help improve its status of international entity. The European Union took part in a growing number of relevant operations to ensure international peace and security: peacekeeping missions, training police forces, reform the military forces or border surveillance[243]. The recent financial crisis has destabilized the economies of all countries, either developed or in the developing process.

Key words: strategy, security, borders, Schengen partnership, European Union

[264] Seven years after the adoptionof the European Security Strategy, the EU assumes responsibilities more serious than ever. Its extension has spread democracy and prosperity on the continent, the neighborhood policy creating a strong framework for the relations with partners in South and East, with a completely new dimension made of from the Union for the Mediterranean and the Eastern Partnership. Since 2003, the EU has produced a change in dealing with crises and conflicts in places like Afghanistan or Georgia.

However, twenty years after the Cold War, Europe is facing threats and challenges more and more complex. Conflicts in the Middle East and other regions of the world remain unsolved, while others broke out in our neighborhood. State failures affect European security through crime, illegal immigration and, more recently, piracy. Terrorism and organized crime have developed bringing new threats, including in our societies. Iran's nuclear program has advanced significantly, representing a threat to the stability in the region and to the entire nonproliferation system[265].

1. ANALYSIS OF THE MAIN ASPECTS OF THE EUROPEAN SECURITY STRATEGY

European security is considered a precondition for prosperity and freedom. Therefore, the European Union approaches in a first comprehensive security strategy both civil and military security measures[266]. In this first European security strategy, the first official document of this kind published and entitled A Secure Europe in a Better World, the security environment is characterized as one of the open borders where internal and external security issues are inextricably linked, and a prerequisite for development is security because conflicts not only destroy infrastructure, including the social one, but also encourages criminality, deter investment and make normal economic activity impossible[267].

History of the European Union begins from the declaration of Robert Schumann in 1950 (creating the European Coal Community) to the first wave of accession of the 70s and 80s, from the setting up of the single market in 1993 to the launching of euro and the negotiations for accession of the countries from Central and Eastern Europe.

[264] Out of the 23 missions EU has been involved, 13 are ongoing. *Overview of the missions and operations of the European Union*, December 2009.

[265] Report on enforcing the European Security Strategy, Bruxelles, 11 December, 2008 S407/08, p. 1

[266] EU Security Strategy was adopted by the Council in December 2003, and represents an effort to enforce a strategic concept able to asses risks and common threats to European security, as well as means to eliminate these risks, www.europa.eu.int

[267] The document stipulates that there is still a number of countries destroyed by conflicts, insecurity and poverty, and the competition for natural resource will increase because of global warming, EU Security Strategy

The Schumann Plan (ECCS[268]), and Euratom (EAEC[269]), Common Market (EEC[270]), the three basic treaties (Rome, Maastricht, Amsterdam), which would be joined by the other Western European countries, have been over recent years the stages of the same federal process based on the principle under which the reconstruction, development and especially the strengthening of European countries could not be conceived separately.

Common foreign and security policy is therefore the institutional framework that allows the EU to speak on issues of foreign policy, strengthening the legitimacy of this organization at international level. In short, this is the mechanism that guides the development of strategies and motivation of this process, already operational, providing mechanisms for negotiation in matters of foreign and security policy[271].

Implementing the common foreign and security policy in Europe does not affect the right of Member States to enforce their foreign and security policy, but gives them an additional means of action. Despite the functionalist theories expressed so far, governments have seemed to be willing to delegate powers to supranational institutions[272]. The principal responsibility in formulating this strategy is the European Council, which defines general principles and decides on common strategies. One of the most desired tasks was to define the identity of the Union in the international arena by developing a common foreign and security policy that could lead to a future common defense.

The Schengen acquis was integrated into the legal framework of the European Union through the Protocols annexed to the Treaty of Amsterdam[273] in 1999. On 20 May 1999 the Council adopted a decision to determine, in accordance with relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the Schengen acquis. From May 1st 2000, the Schengen acquis as integrated into the legal framework of the European Union by the Protocol annexed to the Treaty on European Union and the Treaty establishing the European Community (hereinafter the Schengen Protocol) is binding the Czech Republic, Estonia, Cyprus, Republic of Latvia, Lithuania, the Republic of Hungary, Malta, Poland, Slovenia and the Slovak Republic. From 1st January 2007, these provisions also apply to Bulgaria and Romania.

Some provisions of the Schengen acquis shall apply with the accession of new countries to the EU. In these Member States, other provisions apply only based on a Council decision in this regard. Finally, the Council adopted a decision abolishing border controls, after having checked, in accordance with the Schengen evaluation procedures in the field, that the Member State fulfills the conditions to implement the acquis, after consulting the European Parliament. In 2004, the Swiss Confederation signed an agreement with the European Union and the European Community to jointly implement, enforce and develop the Schengen acquis[274], which should be in conjunction with the Council Decision 2004/860/EC.

The process that led to the adoption of the Stockholm Program has been fueled by numerous contributions, including the European Pact on Immigration and Asylum[275], Reports of the Advisory Group on the future of European home affairs and justice[276] as well as contributions received by the European Commission in September and November 2008 within the process of public consultation on the future of freedom, security, justice - consultation on priorities for the next five years[277].

In June 2009 the Commission published its Communication - *An area of freedom, security and justice serving the citizen -Wider freedom in a safer environment*[278] designed to provide views and recommendations on the Stockholm Program. The Committee also developed an initiative[279], which highlights the opportunity to grant citizenship to third country nationals with long-term resident status.

[268] European Community of Coal and Steal
[269] European Atomic Energy Community
[270] European Economic Community
[271] Interview with Jonathan Scheele: Romania and EU, Magazine of Security Studies, no. 2, 2004, p. 5
[272] World 2005: political and military encyclopedia, Bucharest 2005, p. 225
[273] Published in the Official EU Journal C340, 10 November 1997
[274] Published in the Official EU Journal C340, 17 December 2004
[275] European Pact on Immigration and Asylum, Bruxelles, 13440/08, 24 September, 2008
[276] *Liberty, Security, Privacy: European Home Affairs in an Open World* , June 2008.
[277] http://ec.europa.eu/justice_home/news/consulting_public/news_consulting_0001_en.htm
[278] Communication (2009) 262 *An area of freedom, security and justice serving the citizen -Wider freedom in a safer environment*
[279] CESE report from 14.05.2003 regarding EU citizenship, raporteur Pariza Castanos, EU Official Journal, C208, 03.09.2003

The Committee also issued on its own initiative[280], which proposes policies and legislation on immigration and borders in order to respect human rights properly and to place freedom and security issues at the heart of their concerns. In this context the priority is good communication in achieving a Europe of rights, since rights and fundamental freedoms are an essential value of the European Union[281].

The main strategic objectives in securing the European Union are: evaluation and effective dealing with the existing threats, strengthening regional security cooperation based on effective cooperation actions, maintenance of international order by promoting effective multilateralism.

3. MAIN EUROPEAN UNION STRATEGIC PARTNERSHIPS

3.1. Maintaining the transatlantic relationship with the U.S. within NATO

EU relations with the United States are complex unrivaled. America was born from the ideas of European Enlightenment characterized by concepts as reason, human rights, freedom, democracy[282].

Especially after the Cold War the transatlantic focus was on the different responses to international crisis situations, nuclear proliferation, fight against terrorism and environment protection, while commercial disputes became worse[283]. The US, pragmatic and results oriented, skeptical about the very complicated decision-making mechanism of European integration were accused of not understanding the essence of a multilateral approach[284].

These divergent trends since 1990 have been captured by a metaphorical image, highly suggestive of the inhabitants of two planets by the political scientist Robert Kagan. In his view, the Europeans with their obvious preference for soft power, for cooperation in a multilateral environment, for peaceful resolution of crisis situations, that seem hopelessly pacifists, inhabitants of Venus, while the Americans are more committed to resorting to military action, hard power, as inhabitants of Mars[285].

Especially after the European Union began to develop its own security identity, the differences became to be visible in the relationship between the EU and NATO.

The promising steps taken in the early 2000s did not lead to a significant expansion of areas of joint action, which led the former NATO Secretary General Jaap de Hoop Scheffer declare that the cooperation between the two organizations remains limited[286] despite openings made by a concerted approach to complex crises such as those in Macedonia (2003), Bosnia and Herzegovina (2004), Afghanistan (2007), Kosovo (2008), Darfur (African Union Mission) or to combat piracy in the North West Indian Ocean (2008).

NATO intends to develop a new strategic concept at the Lisbon Summit in November 2010. After the Bush administration when the transatlantic relations have reached a historic low[287], the current U.S. president has consistently expressed interest in renewing the partnership with Europe, a partnership in which America listens and learns from friends and allies, in which friends and our allies agree to take a share of the burden[288]. It is therefore the moment to review the terms of the transatlantic partnership, especially the issues of security within NATO. Regarding the European Union, it sought to better define the security identity with the help of a document adopted in Lisbon in 2007, namely the reform treaty.

From an institutional perspective, the Treaty strengthens the position of the Council in all decision-making process, which means that the activity in this area will continue to be marked by a continuous balancing of benefits arising from increased negotiation power and the costs of a compromise between very divergent interests[289].

---

[280] CESE report from 03.09.2003 on respecting the fundamental rights by the European legislation related to immigration, raporteur Pariza Castanos, EU Official Journal, C208

[281] CESE report from 25.02.2009, raporteur Pariza Castanos, EU Official Journal, C208, 11.09.2009

[282] Werner Weidenfeld, *Die Neue Ăra der Transatlantischen Beziehungen*, Internationale Politik 6 (2001), p.1-9.

[283] David Hastings Dunn, Assessing the Debate, Assessing the Damage: Transatlantic Relations after Bush *British Journal of Politics and International Relations* 11 (2009): 9-11 şi Alex Danchev, How Strong are Shared Values in the Transatlantic Relations? British Journal of Politics and International Relations 7 (2005), p. 429-436.

[284] Georgiana Ciceo, *Politica externă a administrației Obama: restructurare sau doar schimbare de direcție?* in: Marius Jucan (ed.) *America, azi. Studii de americanistică* (Cluj-Napoca: Tribuna, 2010), p. 161-189

[285] R. Kagan, *Of Paradise and Power: America and Europe in the New World Order* (NY Vintage Books, 2004), p. 3-11.

[286] Jaap de Hoop Scheffer, *NATO and the EU: Time for a New Chapter*, Keynote speech by NATO Secretary General, Berlin, 29 January 2007, http://www.nato.int/docu/speech/2007/s070129b.html.

[287] Hastings Dunn, *Assessing the Debate, Assessing the Damage*, p. 17-22.

[288] *Remarks by President Obama at Strasbourg Town Hall*, Strasbourg, 03 April 2009, http://www.whitehouse.gov/the_press_office/.

[289] See Jeffrey A. Frieden, *One Europe, One Vote*?, European Union Politics, 5/2 (2004), p. 274.

Before discussing the innovations in the Treaty of Lisbon on military capabilities and resources, it should be noted that the EU does not affected by their absence, but by the inability to unify them in a coherent manner[290]. Therefore, since 2004 it was created the European Defence Agency with special responsibilities in this area.

However, as long as the Treaty does not make necessary clarifications on the most sensitive problems (insufficient funds allocated, limited interoperability or fragmentation of the European defense market) and the Intergovernmental Agency keeps its intergovernmental character, which makes it impossible to generate interdependencies or stimulate collaboration, remains difficult to discuss the European Union's capacity to improve its international status by solving these problems. These considerations are reinforced by the observation that the Treaty of Lisbon does not make any references to the creation of non-military capabilities.

NATO has succeeded in becoming the most successful collective security organization. Decisive in this respect were security guarantees that were offered by the U.S., but this American domination within the organization affects its ability to assume the role of honest broker in certain crisis situations. NATO's main problem is that if by the end of the Cold War the common enemy was the Soviet Union, after this period the common enemy became more diffuse which requires change in the mandate for international security issues.

Until the NATO summit in Lisbon will discuss this new NATO strategic concept, we can say that only by entering into force of EU Reform Treaty adopted in Lisbon in 2007 the relationship between the two organizations has been slightly changed[291].

3.2. STRENGTHENING THE STRATEGIC PARTNERSHIP WITH THE RUSSIAN FEDERATION

European Union is the main trading partner of the Russian Federation, which holds the first place on the list of suppliers of natural gas to the European Union and second in terms of oil supplies. Currently the bilateral cooperation between Russia and the European Union is based on an extended partnership and cooperation agreement from June 1994.

On the list of Russia-UE partnership there is a common security strategy. Although in the first instance the initiative of President Medvedev was slightly overpassed, the European partners seemed somehow open to discuss on the subject. It will be completed with a number of issues common to both parties, such as climate change, drug trafficking and human trafficking, the proliferation of organized crime, combating terrorism, nuclear non-proliferation, the Iranian issue, the Middle East peace process. And if the Middle East peace process seem to have harmonized their views, on the Iranian issue the parties are still on different positions despite.

Of course, given the dynamic of the events (for example the changes in relations between Russia and Poland, Ukraine, respectively), we can safely predict that perceptions of Russia and the EU will change, certainly, on both sides. And a strategic partnership seems to be the only form of cooperation beneficial both for Russia and the European Union.

Gradually building a strategic alliance between Russia and the EU should be a general strategic milestone for Russia and one of the highest importance for the EU. In addition, one of the priorities for Russia now is to overcome the constant image of a scarecrow, especially for its European neighbors. The tragedy of Smolensk[292] showed Poland (and Europe) another side of Russia. If it was just an emotional reaction nor not remains to be seen.

Beyond this, the EU has an interest to strengthen strategic partnership with Russia started in 1999. Although Russia is one of the biggest security problems at the EU border, the strategic partnership should be strengthened as a way to counterbalance the United States, China and Japan with whom EU must also establish strategic partnerships. Since June 2008 at the Summit in Khanty-Mansyisk, European Union and the Russian Federation have launched negotiations on a new EU-Russia agreement that should update and replace the existent partnerships. Negotiations began in July 2008 and until May 2010, there have been nine rounds of negotiations.

These agreements must be strengthened by regular contacts at short intervals, to create greater interdependence, which help to strengthen the European Union support for Russia in a first phase, in order to increase credibility.

[290] Philip Gordon, *Europe's uncommon foreign policy*, International Security, 22/1 (1997/8), p. 75.

[291] Nicolae Păun, Georgiana Ciceo, *Relațiile transatlantice după intrarea în vigoare a Tratatului de la Lisabona*, Sfera Politicii no. 4 (146), April 2010, p. 3-9

[292] On April 10, 2010 Tupolev 154 aircraft carrying President Lech Kaczynski and his wife, along with many other dignitaries, heads of security bodies, but also family members of the families of the victims of massacre from 1940, heading to Katyn to attend a commemoration ceremony, crashed on the outskirts of Smolensk region before landing on the military airport.

3.3. INVOLVEMENT AND DEVELOPMENT OF STRATEGIC RELATIONS WITH SOUTH ASIA AND SOUTHEAST

With a population of over 1.331 billion people China occupies the first place in the world[293], which gives it a strategic position. As regarding the strategic partnership with China, it must be strengthened not only from economic reasons but also for security reasons. China is a potential factor of instability in Asia in the long term[294], and this is the stimulus to which the European Union must work to create a greater interdependence and to intervene to ensure stability.

In addition, as it is known, in Asia the balance of power is fragile, and multiple options in the area of foreign policy of the European Union should at any time be considered. This is why we have to establish a strategic partnership with Japan. Together with these three countries - Russia, China and Japan - and the U.S., the EU can make a considerable contribution in solving the Korean Peninsula problem, within KEDO[295], or outside, or the Taiwan issue. Another area which is fragile is Kashmir area. The situation became more tense in the area, in recent years, so the EU should seek a second political option to stabilize the areain South and Southeast Asia in India.

3.4. ADOPTING A STRATEGIC POSITION IN THE LATIN AMERICA

One focus of the European Union which is not present in the European Security Strategy is the Latin America. Given the close links which are maintained with Mercosur[296] from economic perspective, the European foreign policy should seek a close relationship with Brazil, the most prosperous state in the region with the greatest influence in Mercosur and the best chance to become a factor regional stability.

Finally, the EU should not forget that it is the largest consumer of energy and fuels, and, as such one should consider close relations with the Gulf States. Moreover it is a strategic objective to find solutions to end the Israeli-Palestinian conflict. Turkey was considered as the country with the greatest stability potential in the region, but prospects are formulated on medium and long term. Also, the EU should seek strengthening the strategic partnership with Canada, which is especially beneficial on the medium and long term perspective.

4. RECONFIGURATION OF THE DYNAMICS OF THE STRATEGIC AREAS

Today's world is characterized by internationalization of communication and exchange. We can no longer talk only about a local problem because the whole situation belongs to a broader, even global system. This is called by Mueller as the globalization of life on Earth[297].

In the Western Balkans, the stabilisation and association agreements enter into force gradually and significant progress is seen in the field of visa policy, through the agreements on visa facilitation and readmission agreements and through a broader dialogue on visa liberalization already established in some countries. Further efforts are needed, including the use of financial instruments to combat organized crime and corruption, to guarantee fundamental rights and freedoms and administrative capacities for border management, compliance with the law.

EU and Turkey have agreed to intensify cooperation to address the common challenge of managing migration flows and to address illegal immigration in particular. This cooperation should focus on shared responsibility, solidarity, the cooperation with all Member States and common understanding, bearing in mind that Turkey is bordered by the Union's external borders. Completion of negotiations on a readmission agreement with Turkey is a priority. Until then, the existing bilateral agreements should be implemented properly.

The European Council notes that the joint strategy EU – Africa 2007 and the Action Plan and define the scope of cooperation in combating terrorism, transnational crime and drug trafficking. Both the EU-Africa Partnership on mobility, migration and employment (MME) and the global approach to migration and the follow-up conferences in Rabat, Paris and Tripoli, would be deepened and intensified by dialogue on migration with African partners, focusing on countries along the routes of irregular migration to Europe to assist these countries in their efforts to develop policies on migration and to

[293] According to PRB'S World Population Data Sheet, 2009, 1875 Connecticut Ave., NW, Washington, DC 20009 USA, www.prb.org.

[294] China Strategy Paper 2007-2013, http://www.eeas.europa.eu/china/csp/07_13_en.pdf

[295] *Korean Peninsula Energy Development Organization*

[296] Mercado Común del Sur – set up in 1991 by Brazil, Argentina, Uruguay and Paraguay, pursuing the Asuncion Treaty and the additional protocol from Ouro Preto

[297] Mueller (G.O.W), Globalizare a vieții pe Pământ, a crimei şi a prevenirii crimei: Un eseu despre cum să procedăm cu criminalii majori care amenință existența continuă a omenirii in ESSER (A.) and LAGODNY (P.), Principii şi preceduri pentru o nouă lege criminală transnațională, Friesburg in Breisgau, 1997, p. 351-358.

resolve the issue of illegal immigration by sea and at the borders.

Efforts should be made to strengthen cooperation, including rapid readmission agreements with Algeria, Morocco and Egypt, and in accordance with European Council conclusions from October 2009 with Libya.

Recently, West Africa has become a major center of drug trafficking from South America to Europe, which will require special attention and assistance to stem drug trafficking and other forms of transnational crime and terrorism (inside the Sahel)[298].

Bibliography:

- **CESE report** from 03.09.2003 on respecting the fundamental rights by the European legislation related to immigration, raporteur Pariza Castanos, EU Official Journal, C208
- **CESE report** from 14.05.2003 regarding EU citizenship, raporteur Pariza Castanos, EU Official Journal, C208, 03.09.2003
- **CESE report** from 25.02.2009, raporteur Pariza Castanos, EU Official Journal, C208, 11.09.2009
- **China Strategy Paper 2007-2013**, http://www.eeas.europa.eu/china/csp/07_13_en.pdf
- **Communication (2009)** 262 *An area of freedom, security and justice serving the citizen -Wider freedom in a safer environment*
- **David Hastings Dunn**, Assessing the Debate, Assessing the Damage: Transatlantic Relations after Bush *British Journal of Politics and International Relations* 11 (2009): 9-11 şi **Alex Danchev**, How Strong are Shared Values in the Transatlantic Relations? British Journal of Politics and International Relations 7 (2005)
- **EU Security Strategy** was adopted by the Council in December 2003, and represents an effort to enforce a strategic concept able to asses risks and common threats to European security, as well as means to eliminate these risks, www.europa.eu.int
- **European Pact on Immigration and Asylum**, Bruxelles, 13440/08, 24 September, 2008
- **Georgiana Ciceo**, *Politica externă a administrației Obama: restructurare sau doar schimbare de direcție?* in: Marius Jucan (ed.) *America, azi. Studii de americanistică* (Cluj-Napoca: Tribuna, 2010)
- **Hastings Dunn**, *Assessing the Debate, Assessing the Damage*
- Interview with Jonathan Scheele: Romania and EU, Magazine of Security Studies, no. 2, 2004
- **Jaap de Hoop Scheffer**, *NATO and the EU: Time for a New Chapter*, Keynote speech by NATO Secretary General, Berlin, 29 January 2007, http://www.nato.int/docu/speech/2007/s070129b.html.
- **Liberty, Security, Privacy: European Home Affairs in an Open World** , June 2008.
- **Mueller (G.O.W)**, Globalizare a vieții pe Pământ, a crimei şi a prevenirii crimei: Un eseu despre cum să procedăm cu criminalii majori care amenință existența continuă a omenirii in ESSER (A.) and LAGODNY (P.), Principii şi preceduri pentru o nouă lege criminală transnațională, Friesburg in Breisgau, 1997
- **Nicolae Păun**, **Georgiana Ciceo,** *Relațiile transatlantice după intrarea în vigoare a Tratatului de la Lisabona*, Sfera Politicii no. 4 (146), April 2010
- **Overview of the missions and operations of the European Union**, December 2009.
- **Philip Gordon**, *Europe's uncommon foreign policy*, International Security, 22/1 (1997/8)
- **PRB'S World Population Data Sheet**, 2009, 1875 Connecticut Ave., NW, Washington, DC 20009 USA, www.prb.org.
- **R. Kagan**, *Of Paradise and Power: America and Europe in the New World Order* (NY Vintage Books, 2004)
- *Remarks by President Obama at Strasbourg Town Hall*, Strasbourg, 03 April 2009
- **Report on enforcing the European Security Strategy**, Bruxelles, 11 December, 2008 S407/08
- **See Jeffrey A. Frieden**, *One Europe, One Vote*?, European Union Politics, 5/2 (2004)
- **Stockholm Program**, CO EUR-PREP2, JAI 81, POLGEN8, 5731/10, Bruxelles, 3 March, 2010
- **Werner Weidenfeld**, *Die Neue Ära der Transatlantischen Beziehungen*, Internationale Politik 6 (2001)
- **World 2005**: political and military encyclopedia, Bucharest 2005

[298] Stockholm Program, CO EUR-PREP2, JAI 81, POLGEN8, 5731/10, Bruxelles, 3 March, 2010

POLICIES AND STRATEGIES REGARDING EU INTERNATIONAL COOPERATION FROM THE PERSPECTIVE OF THE LISBON TREATY

Ioana Andreea EPURE
Institute of Forensics - Romanian Police General Inspectorate
Assist. Lecturer Amalia NIȚU
"Alexandru Ioan Cuza" Police Academy

The new treaty, which entered into force on 1 December 2009, took over the provisions of the Treaty establishing a Constitution for Europe[299], managed to keep most of the institutional innovations proposed by the former treaty, even if it is only an act of amending the fundamental Treaties of the European Union. Among experts, there are some who argue that the new Treaty has its shortcomings[300]: first, it does not change the hybrid character of the EU; second, intergovernmental practices still dominate the EU system; and third, the democratic deficit as a system feature is not significantly reduced. However, it is a legal highly important instrument which tends to deeply reform certain areas of interest[301]. On foreign policy, it is stated by experts that the Lisbon Treaty creates a post-modern[302] policy, representing the beginning of a new era in this area[303] characterized by coherence[304].

Key words: *Lisbon Treaty, CFSP, ESDP, European External Action Service, EU High Representative*

1. THE LISBON TREATY AND THE NEW APPROACH FOR EUROPEAN BEST PRACTICES WITHIN INTERNATIONAL RELATIONS

Title V of the ***Treaty Establishing the European Union*** stipulates: *General provisions on the Union's external action and specific provisions on common foreign and security policy.*

EU international actions shall be guided by the principles that inspired its setting up, development and enlargement and which would be promoted: democracy, rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equity and solidarity and the principles of the United Nations Chart and international law[305]. The Union shall seek to develop relations and build partnerships with third countries and international organizations, at regional or global level, which share the principles set out in the first paragraph. It shall promote multilateral solutions to common problems, especially within the *United Nations Organization.*

The Union shall define and pursue common policies and actions and work for ensuring a high level of cooperation in all fields of international relations to: *(a) safeguard its values, fundamental interests, security, independence and integrity, (b) consolidate and support democracy, the rule of law, human rights and international law, (c) preserve peace, prevent conflicts and strengthen international security in accordance with the purposes and principles of the United Nations Chart and the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders, (d) foster sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty, (e) encourage the integration of all countries in the world economy, by gradually eliminating the barriers to international trade, (f) help develop international measures to preserve and improve the environment and sustainable management of global natural resources, (g) grant of assistance to populations, countries and regions confronted with natural disasters (h) promote an international system based on stronger multilateral cooperation and better global governance.*

---

[299] Sophie Dagand, *The impact of the Lisbon Treaty on CFSP and ESDP*, European Security Review, no. 37 March, 2008, www.isis-europe.org

[300] Piotr Tosiek, *The European Union after the Treaty of Lisbon – Still an Intergovernmental System*

[301] Edward Best, *The Lisbon Treaty – a Qualified Advance for EU Decision-Making and Governance,* Eipascope no. 1/2008, p. 7-12, www.eipa.eu

[302] Guérot, *After Lisbon: Is Europe becoming a global power?,* www.ip-global.org

[303] Jonas Paul, *EU Foreign Policy After Lisbon. Will the New High Representative and the External Action Service Make a Difference?*, in Center for Applied Policy Research Policy Analisis no. 2/2008, p. 33, www.cap-lmu.de

[304] Kateryna Koehler, *European Foreign Policy after Lisbon: Strengthening the EU as an International Actor,* Caucasian Review of International Affairs, vol. 4 (1) – winter 2010, p. 57-72.

[305] see art. 21, Title V from the Treaty Establishing the EU, Official Journal of EU, 2010/C 83/01 from 30.03.2010

However, despite the asymmetries that exist between organizations in terms of composition, strategic mission or image[306], it does not mean that an organization excludes the other, it is only a more clear differentiation of their mandate[307].

The Union ensures consistency between different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the High Representative for Foreign Affairs and Security Policy, ensure that consistency and shall cooperate in this area. Based on these principles and objectives, the European Council shall identify the Union's strategic interests and objectives. European Council decisions on the Union's strategic interests and objectives are related to the common foreign and security policy and other areas of EU external action. These decisions may concern EU relations with a country or region or may approach a certain subject.

2. SPECIAL PROVISIONS ON THE COMMON FOREIGN AND SECURITY POLICY

The 2nd Chapter of the Treaty has special provisions on common foreign and security policy, under which it is stated that the above principles refer to the EU actions at international level[308]. The European Union is expected to demonstrate that it can build an environment of legitimacy to catalyze the development of coherent policies, supported by an appropriate institutional framework and effective instruments[309].

The Union's competence in matters of common foreign and security policy covers all areas of foreign policy and all issues related to the Union's security, including the progressive framing of a common defense policy which might lead to a common defense. This criterion is of particular significance in the context of the decision-making process in foreign policy and security at EU level[310].

Common foreign and security policy is subjected to rules and procedures. This is defined and implemented by the European Council and the Council, acting unanimously, except where the Treaties provide otherwise. Adoption of legislative acts is excluded. Common foreign and security policy is implemented by the High Representative for Foreign Affairs and Security Policy and by Member States according to the Treaties.

The specific roles of the European Parliament and Commission in this area are defined by treaties. The EU Court of Justice has jurisdiction on these provisions, except the power to monitor compliance with art. 40 of the Treaty and to review the legality of certain decisions referred to in art. 275 (2) of the *Treaty on European Union*.

According to the principles and objectives of its external action, the Union carries out, defines and implements a common foreign and security policy, based on the development of mutual political solidarity among Member States on issues of general interest and the achievement of an increasing convergence of action by Member States.

Member States shall actively and unreservedly support the foreign and security policy of the Union, in a spirit of loyalty and mutual solidarity and respect for the Union's action in this area. Also, the Member States work together to enhance and develop their mutual political solidarity. They shall refrain from any action contrary to the Union's interests or likely to impair its effectiveness as a cohesive force in international relations. The Council and the High Representative are those that ensure compliance with these principles.

Ways to exercise the common foreign and security policy are[311]: a) defining the general guidelines, b) adopting decisions that define: actions to be undertaken by the Union; positions to be taken by the Union, how to implement decisions; c) strengthening systematic cooperation between Member States.

European Council is to identify the Union's strategic interests, determine the objectives and define general guidelines for the common foreign

[306] Simon Duke, *The Future of EU–NATO Relations: a Case of Mutual Irrelevance Through Competition?*, Journal of European Integration 30/1 (2008), p. 29-33.

[307] Hanna Ojanen, *The EU and NATO: Two Competing Models for a Common Defence*, Journal of Common Market Studies, 44/1 (2006): 57-76. See for comparison Esther Brimer, *Seeing blue: American visions of the European Union*, Chaillot Paper no. 105, (Paris: EUISS, 2007), Gustav Lindstrom, *EU-US burdensharing: who does what?*, Chaillot Paper no. 82, (Paris: EUISS, 2005), Stanley R. Sloan, *The United States and the European Defence*, Chaillot Paper no. 29, (Paris: EUISS, 2000), Jolyon Howorth, *European Defence and the Changing Politics of the European Union: Hanging Together or Hanging Separately?*, Journal of Common Market Studies, 39/4 (2001), 765-789.

[308] Art. 23, Title V from the *Treaty on EU* , Official Journal of EU, 2010/C 83/01 from 30.03.2010

[309] Anne Deighton, *European Security and Defence Policy*, Journal of Common Market Studies, 40/4 (2002), p. 728

[310] Simon Nuttal, *Coherence and constituency* in: Christopher Hill andchael Smith, *International Relations and the European Union* (New York: Oxford University Press, 2005), p. 92.

[311] Art. 25, Title V from the *Treaty on EU and Treaty on the Functioning of the EU* , Official Journal of EU, 2010/C 83/01 from 30.03.2010

and security policy, including matters on defense or adopting the necessary decisions[312].

If international developments so require, the President of the European Council shall convene an extraordinary meeting of the European Council to define strategic lines of the Union in relation to this development. The Council also develops a common foreign and security policy and takes decisions necessary for defining and implementing it on the basis of general guidelines and strategic lines defined by the European Council. The Council and the High Representative for Foreign Affairs and Security Policy shall ensure the unity, coherence and effectiveness of EU action, while the common foreign and security policy is implemented by the High Representative and the Member States, using national and Union resources.

The High Representative for Foreign Affairs and Security Policy, who chairs the Foreign Affairs Council, shall contribute through his proposals to developing the common foreign and security policy and ensure the implementation of the decisions adopted by the European Council.

The European Union is represented in matters related to common foreign and security policy by the High Representative. This carries out, on behalf of the Union, political dialogue with third parties and expresses the Union's position in international organizations and international conferences.

The Council takes decisions defining the Union's position in a particular matter of geographical or thematic nature. The Member States shall ensure that their national policies conform to the Union positions. Any Member State, EU High Representative for Foreign Affairs and Security Policy or High Representative may inform the Council on any matter of foreign policy and security policy and may submit initiatives or proposals to the Council. In cases requiring a rapid decision, the High Representative, ex officio or at the request of a Member State, within forty-eight hours or in an emergency situation may request a extraordinary meeting of the Council.

Decisions under this Chapter shall be adopted by the European Council and the Council acting unanimously, except where this Chapter provides otherwise. Adoption of legislative acts is excluded. Therefore, it appears rather as an institutional formula that will avoid any political blockages[313].

Each Council member who abstains from voting can justify this by a formal declaration under this paragraph. In this case, it is not required to apply the decision, but accept that the decision involves the Union. In the spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede the Union action based on that decision, and the other Member States shall respect its position. If Council members who make such a statement represent at least one third of Member States comprising at least one third of the population, the decision is not adopted.

Notwithstanding these provisions, the Council acts by qualified majority: if it adopts a decision defining a Union action or position, under a European Council decision on the Union's strategic interests and objectives; if it adopts a decision on a Union action or position at the proposal of the High Representative for Foreign Affairs and Security Policy presented pursuing a specific request from the European Council, made on its own initiative or at the initiative of the High Representative; if it adopts any decision implementing a decision defining a Union action or position; when appoints a special representative.

If a member of the Council declares that, for reasons of vital national policy, intends to oppose a decision taken by qualified majority, the voting is stopped. The High Representative, in close consultation with the Member State concerned, seeks a solution acceptable to it. If no result comes up, the Council, acting by qualified majority, may ask the European Council to rule on the matter, to adopt unanimously a decision.

3. PARTICULARITIES OF THE SECURITY AND DEFENCE POLICY OF THE EUROPEAN UNION

In Section 2 of the above mentioned chapter are to be found provisions on the common security and defense policy. The security and defense policy is part of the common foreign and security policy[314]. It provides the Union with operational capacity based on civilian and military means. The Union may use them on missions outside the Union for peacekeeping, conflict prevention and strengthening

[312] Art. 26, Title V from the *Treaty on EU and Treaty on the Functioning of the EU* , Official Journal of EU, 2010/C 83/01 from 30.03.2010

[313] Antonio Missiroli, *The Impact of the Lisbon Treaty on ESDP*, European Parliament: Directorate General External Policies of the Union, Brussels, 2008, p. 15.

[314] Art. 42, Title V from the *Treaty on EU and Treaty on the Functioning of the EU* , Official Journal of EU, 2010/C 83/01 from 30.03.2010

international security in accordance with the principles of the United Nations.

The security defense policy includes the progressive framing of a common Union defense policy. This will lead to a common defense, if the European Council, acting unanimously, decides so. In this case it recommends Member States to adopt a decision in accordance with their respective constitutional requirements.

The Union policy does not prejudice the specific character of the security and defense policy of certain Member States, complies with the obligations of the North Atlantic Treaty for certain Member States which see their common defense realized in the North Atlantic Treaty Organization (NATO) and is compatible with the common security and defense policy established within that framework. For implementing the common security and defense policy, Member States shall make civilian and military capabilities available to the Union to contribute to the objectives defined by the Council. Member States, which together establish multinational forces may also make them available to the security and defense policy.

Member States shall undertake measures to improve their military capabilities. The agency in the field of defense capabilities development, research, acquisition and weapons - EDA – identifies the operational requirements, promotes measures to satisfy those requirements, contributes to identifying and, where appropriate, implementing any measure needed to strengthen the technology in the defense area.

The Member States with the highest military capabilities which have made commitments which go on to achieve the most demanding missions shall establish permanent structured cooperation within the Union. If a Member State is victim of armed aggression on its territory, the other Member States are obliged to provide support and assistance by all means available[315].

However, the Treaty of Lisbon introduces a number of innovations designed to streamline the EU institutional infrastructure (a permanent presidency of the Council, a High Representative for Foreign and Security Policy, an External Action Service), but whose impact remains difficult to assess just by simply reading the text of the Treaty, as it remains ambiguous on the definition of new relations of power[316]. All these decisions taken once the Treaty of Lisbon entered into force, leads us to say that if generally speaking, the EU has not been able to clearly define its mission, at least it has tried inside to solve some of the problems faced in time, even though with still uncertain results.

4. THE IMPORTANCE OF THE EUROPEAN EXTERNAL ACTION SERVICE - (EEAS)

From the perspective of the relations between security and society, the European Council argues that technology can only be part of the answer to the security threats as it must be used in combination with organizational processes and human intervention. Solutions must take into account different experiences and approaches in Europe[317].

Currently, at European level, the security research received special attention from the EU institutions, demonstrating effort to ensure an effective response to major challenges of this century like terrorism.

For Romania, EU membership and thus the possibility of direct access to structural funds is, at least in theory, the premise for a real consolidation of national research in general. Thus, the perspective created by the revised Lisbon objectives and program of the European Security Research Program imposes a fast to develop in this area, to demonstrate the role scientific research and technological development must play in achieving them.

In this context, in Romania, research on security and security intelligence should have an input from structures which in many countries are grouped into multidisciplinary or specialized national systems.

The report on the basic parameters of the European External Action Service was endorsed at the European Council on 29-30 October 2009 and was presented to the High Representative, the Service becoming operational in 2010. The purpose of the report was not to clarify all aspects of functioning and structure of the European External Action Service, but to develop the framework to assist the High Representative in formulating its proposals related to the Service.

In fulfilling his mandate, the High Representative is supported by a European External Action Service.

[315] Art. 51 from the UN Chart signed on June 26 1945 in San Francisco

[316] Wolfgang Wessels şi Franziska Bopp, *The Institutional Architecture of CFSP after the Lisbon Treaty – Constitutional breakthrough or challenges ahead?* Challenge Liberty and Security, Research Paper 10(2008), p. 29.

[317] General report on the activities of the EU, adopted by the Commission on January 15, 2010, SEC (2010), Directorate General for Communication 1049, Bruxelles, Belgium

This service shall work in cooperation with the diplomatic services of Member States and shall comprise officials from relevant departments of the Secretariat of the Council and Commission and staff seconded from national diplomatic services.

The organization and functioning of the European External Action Service shall be established by Council Decision.

If the international situation requires operational action by the Union, the Council shall adopt the necessary decisions. They set objectives, scope, means to be made available to the Union, the conditions for their implementation and, where applicable, their duration. In case of a change in circumstances with substantial effect on a situation which is the subject of such a decision, the Council shall review the principles and objectives of that decision and take the decisions which commit the Member States in the positions they adopt in carrying out their actions.

If it is imperative in relation to the situation, Member States may take the emergency measures required, taking into account the general objectives of that decision. The Member State taking such measures shall immediately inform the Council about it. In case of difficulties concerning the implementation of a decision, any Member State informs the Council which shall discuss them and seek appropriate solutions.

5. THE HIGH REPRESENTATIVE OF THE UNION FOR FOREIGN AFFAIRS AND SECURITY POLICY

Under the Lisbon Treaty, the posts of High Representative for the CFSP and European Commissioner for External Relations[318] were merged under the new title. This position is one of the most important institutional innovations brought about by the new Treaty on CFSP / ESDP.

The High official is elected by the European Council by qualified majority, and is responsible for coordinating the CFSP / ESDP in the European Union, having thus a key position in the European Union, chairing GAERC[319], representing the position of the European Union at external level , and is also one of the Vice presidents of the Commission. The work will be supported by a body made of officials from diplomatic departments within the Secretariat of the Council, Commission and diplomats of the Member States.

The European Council President is another key position created by the Treaty of Lisbon. He will be elected by the European Council by qualified majority for a period of 2 ½ years (maximum two mandates). Also, by qualified majority, the president can be removed from office. He will chair the European Council ensuring continuity, cohesion and consensus of the guidelines.

6. EUROPEAN NEIGHBOURHOOD POLICY AND PERMANENT STRUCTURED COOPERATION[320]

The European Neighbourhood Policy represents a new approach to relations between the EU and its neighbours, an approach that goes beyond the traditional one based on cooperation. This policy provides a framework to strengthen the neighborhood and to enhance cooperation with neighboring countries in the enlarged European Union, to create an area of prosperity and good neighborliness, a group of friends at the borders of the Union.

One of the objectives of the European Neighbourhood Policy is sharing the benefits of EU enlargement with its neighbouring countries. Another objective is the one set by the European Security Strategy of 2003, ie increasing security in the vicinity of the enlarged Union.

The need for the European Neighbourhood Policy (ENP) was acutely felt in 2003 with the problem of creating new barriers in Europe after EU enlargement. In March 2003 the European Commission sets out the principles of the EU and stresses the importance given by the Union's relations with its neighbours. According to these principles, the aid provided so far to neighboring states, especially through the TACIS and MEDA programs will be supplemented in future by creating a new financial instrument, the European Neighbourhood and Partnership Instrument which will support the implementation of the neighbourhood Policy.

European Neighbourhood Policy does not provide the Member States concerned (Members of Eastern Europe and the Mediterranean area, and from June 2004 the South-Caucasian states) perspective of EU membership, but allows a privileged relationship with neighbours and a better focus of efforts in vital areas for the countries envisaged by the European standards.

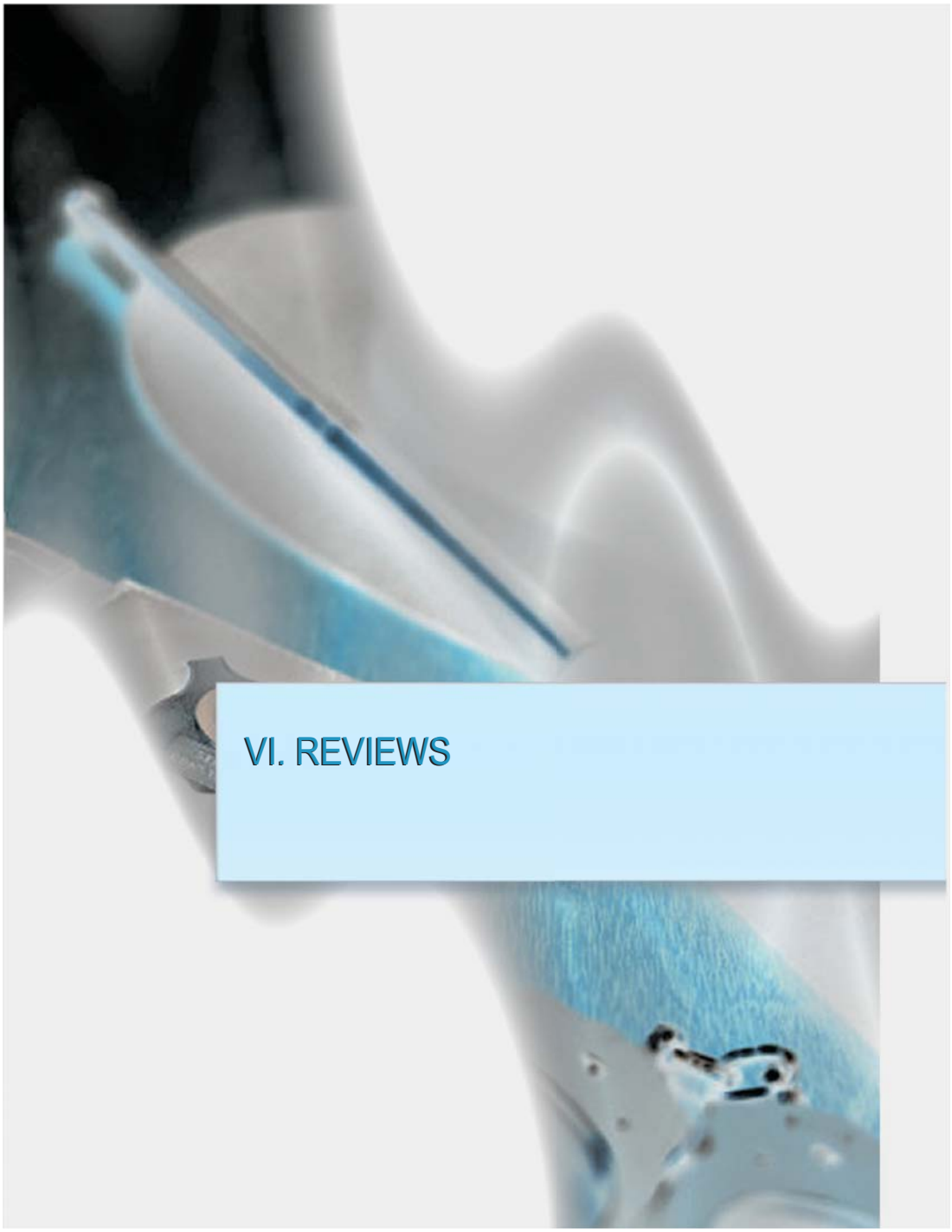
The permanent structured cooperation refers to a type of enhanced cooperation in joint projects between Member States with advanced military capabilities and close cooperation relations. The states that want to take part in such cooperation will

[318] Bruno Angelet, Ioannis Vrailas, p. 21.
[319] CAGRE – *General Affairs and External Relations Council*
[320] PSC - *Permanent Structured Cooperation*

be required to notify the Council and the High Representative of their intention. States included in the European Neighbourhood Policy are: in Eastern Europe: Moldova, Ukraine, Belarus. The European Union and Russia have established a strategic partnership to further develop the already existing one, by creating four common spaces, according to decisions taken at the summit in St. Petersburg, Russia in May 2003. The South Caucasus: Georgia, Armenia and Azerbaijan. In the Mediterranean: Morocco, Algeria, Tunisia, Lebanon, Libya, Egypt, Israel, Jordan, Syria and the Palestinian Authority.

Bibliography:

- **Anne Deighton**, *European Security and Defence Policy*, Journal of Common Market Studies, 40/4 (2002)
- **Antonio Missiroli**, *The Impact of the Lisbon Treaty on ESDP*, European Parliament: Directorate General External Policies of the Union, Brussels, 2008
- **Edward Best**, ***The Lisbon Treaty – a Qualified Advance for EU Decision-Making and Governance,*** Eipascope no. 1/2008, www.eipa.eu
- **Esther Brimer**, *Seeing blue: American visions of the European Union*, Chaillot Paper no. 105, (Paris: EUISS, 2007),
- **General report on the activities of the EU**, adopted by the Commission on January 15, 2010, SEC (2010), Directorate General for Communication 1049, Bruxelles, Belgium
- **Guérot**, ***After Lisbon: Is Europe becoming a global power?,*** www.ip-global.org
- **Gustav Lindstrom**, *EU-US burdensharing: who does what?*, Chaillot Paper no. 82, (Paris: EUISS, 2005)
- **Hanna Ojanen**, *The EU and NATO: Two Competing Models for a Common Defence*, Journal of Common Market Studies, 44/1 (2006)
- **Jolyon Howorth**, *European Defence and the Changing Politics of the European Union: Hanging Together or Hanging Separately?*, Journal of Common Market Studies, 39/4 (2001)
- **Jonas Paul**, ***EU Foreign Policy After Lisbon. Will the New High Representative and the External Action Service Make a Difference?***, in Center for Applied Policy Research Policy Analisis no. 2/2008, www.cap-lmu.de
- **Kateryna Koehler**, ***European Foreign Policy after Lisbon: Strengthening the EU as an International Actor***, Caucasian Review of International Affairs, vol. 4 (1) – winter 2010
- **Piotr Tosiek**, ***The European Union after the Treaty of Lisbon – Still an Intergovernmental System***
- **Simon Duke**, *The Future of EU–NATO Relations: a Case of Mutual Irrelevance Through Competition?*, Journal of European Integration 30/1 (2008)
- **Simon Nuttal**, *Coherence and constituency* in: **Christopher Hill** and **Michael Smith**, *International Relations and the European Union* (New York: Oxford University Press, 2005)
- **Sophie Dagand**, ***The impact of the Lisbon Treaty on CFSP and ESDP,*** European Security Review, no. 37 March, 2008, www.isis-europe.org
- **Stanley R. Sloan**, *The United States and the European Defence*, Chaillot Paper no. 29, (Paris: EUISS, 2000)
- **Title V** from the *Treaty on EU and Treaty on the Functioning of the EU* , Official Journal of EU, 2010/C 83/01 from 30.03.2010
- **UN Chart** signed on June 26 1945 in San Francisco
- **Wolfgang Wessels** şi **Franziska Bopp**, *The Institutional Architecture of CFSP after the Lisbon Treaty – Constitutional breakthrough or challenges ahead?* Challenge Liberty and Security, Research Paper 10(2008)

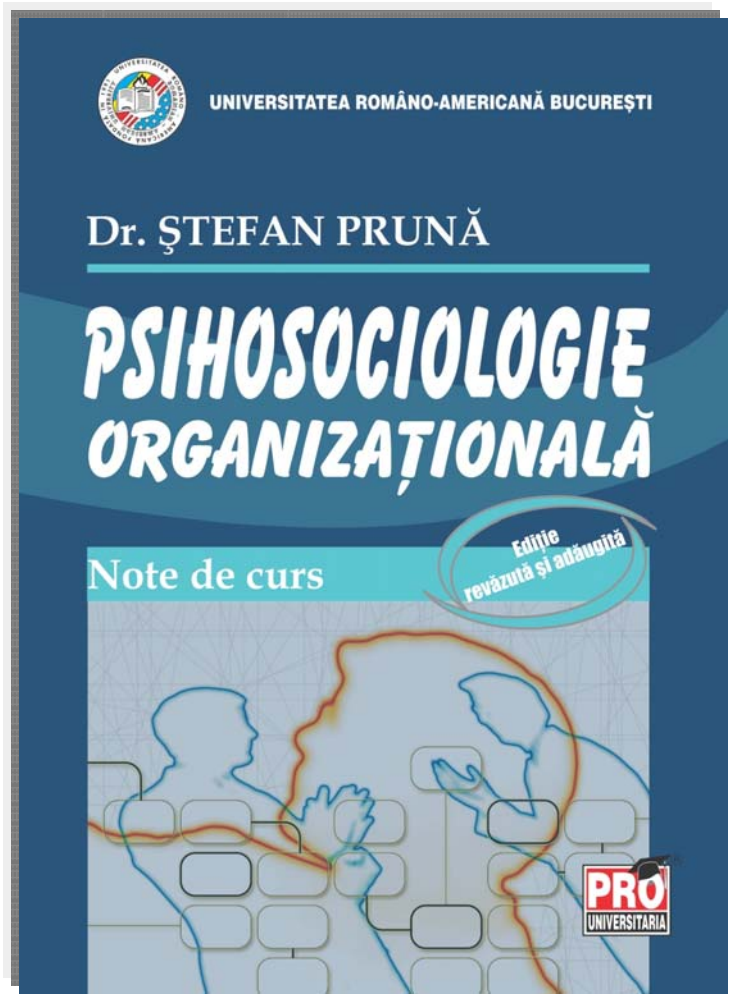


VI. REVIEWS

In our opinion, the globalization of the world market in the context of which the phenomenon of cross-border crime is analyzed, brings with it many benefits but also costs that sometimes can be avoided, sometimes not. As the increase of freedom and intensity of movement of goods and trade volume, the phenomenon of cross-border crime is increasing, there are forms of advanced increasingly forms in underground sector, and widens the scope of illicit operations, in order to achieve significant revenues, beyond any control of state authorities. Need to stop transnational organized crime operations is a priority which requires international cooperation of bodies and specialized institutions in the field, regional organizations and all governments.

Finally, we strongly recommend this work to both specialists and lay persons, as it is among the fundamental research of cross-border crime, providing solutions and courses of action in order to reduce and perhaps eventually eradicate this scourge, although we have to point out, reluctantly, that the phenomenon is directly related to and stemming from human nature.

Phd. Professor IOAN T. BARI
ACADEMY OF ECONOMIC STUDIES
BUCHAREST
Bucharest, 30.05.2011



Organizational psychology, the second edition, revised and completed, written by prof. Ph.D ST, analyses the relational human nature of the organization, the dynamics and the human resources and the way they can be transformed into profit and effectiveness. It surely is a multidisciplinary analysis where sociology, psychology, organizational theory and management converge in order to explain: the way human behavior changes within the organization, how they relate to each other, how they interact with the management or how personal interests interact with the organizational ones.

Organization as an area of investigation has particularities from a psychological point of view. They are analysed by the author in relation to effectiveness and management.

The human resources is an important element in the organizational equation and this hypothesis is demonstrated in this book.

Prof. Ph.D. Costică VOICU

ATENTION

AUTHORS OF SCIENTIFIC WORKS

It is important to know that:

Any use of works protected by copyright (articles, studies, conferences, courses, lectures, treatises, etc.) shall be, except as established by law, authorized by their authors.

Any use of protected works, including the legal basis of licenses, must provide an adequate income for the authors, according to the level of their use.

There are ways of using works beyond the control of the authors and these are managed, mandatory, by collective societies.

Scientific works are those commonly reproducted in an unauthorized way for commercial or private purposes, and their authors should be, where appropriate, paid damages.

In the name of the authors users are collecting money, but the authors do not receive these amounts excapt very rarely.

The interests of the authors of scientific works can and must be defended effectively in their favor.

These are some of the reasons why at the initiative of several univarsity professors (the Legal Research Institute of the Romanian Academy, the University of Bucharest, Cluj-Napoca, Constanta, Craiova, Iasi, Targoviste, Targu Mures and Timisoara, and lawyers, authors of scientific works and copyright holders) whose main concern is the protection of their works and authors (Intellectual Property), pursuant to art. 40 of the Constitution and art. 168 and the Law. No. 8 / 1996 on copyright and related rights of authors and publishers The ROMANIAN SOCIETY OF SCIENTIFIC WORKS AUTHORS AND EDITORS-Pergam has been founded.

Pergam is a Romanian legal entity of private law, autonomous, nongovernmental, apolitical and non-profit and operates under the Romania laws (Law no.8/1996 on copyright and related rights, as supplemented and amended by the Government Ordinance no. 26/2000 on associations and foundations, as amended by Government Ordinance no. 37/2003) and the statute.

By Decision no. 98/2009 of the General Director of ORDA, published in the Official Journal, Part I, no. 579 of August 20, 2009, Pergam was approved and works as a collective society of authors and publishers of scientific works.

Most authors of scientific works that have joined us are from the legal, economic, health, geography, mathematics, art, communication field (academics, professors, prosecutors, judges, lawyers, notaries, industrial property legal advisers, specialists from the ORDA, OSIM, television, etc.).

Pergam invites all authors of scientific works and their successors to address this collective body to manage their rights and interests accordingly.

For details please see website www.pergam.ro

Board of Pergam