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COMPETITION LAW IN THE SCANDINAVIAN LEGAL ORDER: A COMPARATIVE AND ENFORCEMENT-FOCUSED ANALYSIS OF NORWAY, FINLAND, AND SWEDEN

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Abstract: *This article provides a comparative analysis of competition law in the Scandinavian countries, with particular emphasis on Norway, Finland, and Sweden. It examines how these jurisdictions apply a coherent regulatory logic to cartel enforcement and merger control, grounded in principles of substance over form, enforcement restraint, and the protection of the public interest. By integrating legal doctrine with economic analysis, the article demonstrates that Scandinavian competition regimes balance strict deterrence of hard-core cartels with forward looking merger control aimed at preventing structural harm to competition. In the European Union, Articles 101 and 102 of the Treaty on the Functioning of the European Union address anticompetitive agreements and the abuse of dominant positions, forming the backbone of EU competition rules, against which the Scandinavian systems are assessed. The analysis shows that effective competition regulation in Scandinavia relies on aligning enforcement practices with broader societal objectives, including consumer welfare and market integrity.*

Keywords: *Competition Law; Cartel; Merger Control; Leniency; European Union law.*

1 Introduction

Competition law serves as a cornerstone for ensuring efficient, fair, and innovation-driven markets. In the European Union, Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) address anti-competitive agreements and the abuse of dominant positions, forming the backbone of EU competition rules. This framework is complemented by national enforcement mechanisms, particularly in the Nordic region, where Denmark, Sweden, Finland, and Norway demonstrate a distinctive regulatory culture characterized by judicial restraint, institutional independence, and high levels of technical expertise.

The Nordic competition law enforcement culture prioritizes cases with the greatest potential harm to consumer welfare, focusing on serious market distortions such as hard-core horizontal cartels and clear abuses of dominance, rather than marginal or formal infringements. Leniency programs, investigative tools, and sanctions—including administrative fines and, in Norway, criminal liability—serve to maintain deterrence while promoting efficiency and proportionality. Economic analysis, particularly market definition, dominance assessment, and

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effects-based evaluation, underpins enforcement decisions and ensures adaptability to dynamic and digital markets.

Judicial restraint in Scandinavia reflects institutional confidence in specialized authorities rather than under-enforcement. Courts intervene only when there are manifest errors, systemic risks, or clear anti-competitive effects, avoiding exhaustive substantive reviews of complex commercial assessments. This approach aligns with a broader Nordic vision emphasizing regulatory coherence, efficiency, and long-term consumer welfare, as outlined in strategic reports such as *A Vision for Competition*.

The Scandinavian approach also illustrates converging regulatory logics across legal domains. Courts consistently apply functional interpretation, public interest orientation, and judicial restraint, reflecting pragmatic regulation tailored to small, highly integrated economies. By adopting a comparative, cross-sectoral methodology, this study examines not only the alignment of Nordic enforcement with EU competition law but also the institutional, economic, and policy factors shaping regulatory choices. This perspective underscores the Scandinavian commitment to evidence-based, proportionate, and economically informed competition law enforcement, which serves as a model for balancing administrative efficiency, judicial oversight, and market integrity.

2. Methodology and Theoretical Framework

This study employs a comparative legal methodology, integrating doctrinal analysis with functional and policy-oriented interpretation. The primary legal instrument analyzed is Council Regulation (EC) No 1/2003, which governs the implementation of Articles 81 and 82 EC (now Articles 101 and 102 TFEU). The analysis is based on a close reading of the Regulation's recitals, operative provisions, and legal context, interpreted in light of the Treaty framework and relevant Court of Justice of the European Union (CJEU) case law. Particular attention is given to provisions on decentralized enforcement, the direct applicability of Article 81(3), the allocation of powers between the European Commission, national competition authorities, and national courts, and the rules concerning burden of proof and judicial oversight.

Chapter 2, Section 1 of the Swedish Competition Act, in conjunction with Article 101 of the TFEU, prohibits agreements or concerted practices between undertakings that may significantly prevent, restrict, or distort competition within the internal market. This prohibition covers a wide range of anti-competitive cooperation, including horizontal agreements such as price-fixing and market-sharing, as well as vertical agreements such as exclusivity arrangements or information exchange. The rules apply regardless of whether the cooperation is formal or informal, and both horizontal and vertical arrangements fall within the scope of the prohibition.

Chapter 2, Section 7 of the Swedish Competition Act, together with Article 102 of the TFEU, prohibits undertakings holding a dominant position in a relevant market from abusing that position. Market dominance is assessed based on factors such as market share, with a share above 40% often considered indicative of dominance, though other market conditions and structural factors are also evaluated. Abusive practices may include limiting market access for new competitors, predatory pricing, or imposing unfair trading conditions, all of which are prohibited under both national and EU competition law.

The comparative dimension examines how Norway, Finland, and Sweden implement EU competition law in practice. Norway's Competition Act of 2004, aligned with the EEA Agreement, empowers the Norwegian Competition Authority (NCA) with investigative, administrative, and sanctioning powers. Finland and Sweden, as EU Member States, implement EU competition law directly alongside national acts, enforced by the Finnish Competition and Consumer Authority (FCCA) and the Swedish Competition Authority (SCA). By integrating doctrinal analysis of Regulation 1/2003 with a comparative assessment of Nordic enforcement, the study demonstrates how legal rules, institutional design, and policy objectives interact to ensure effective competition law implementation.

The study also incorporates a doctrinal analysis of Regulation (EC) No 139/2004, which governs the control of concentrations between undertakings in the European Union. The regulation establishes a legal framework to assess the competitive impact of mergers, acquisitions, and joint ventures that function as autonomous economic entities, with particular focus on preventing the creation or strengthening of dominant positions that could significantly impede effective competition (European Union, 2023). It introduces a one-stop-shop system, granting the European Commission the authority to approve, modify, or prohibit concentrations with an EU dimension, while ensuring that cases affecting a single Member State can be referred to the national authorities in accordance with the subsidiarity principle. Pre-notification procedures allow firms to request referral of cases to Member States' competent authorities, and the regulation provides mechanisms to enforce compliance, including fines, periodic penalty payments, and consultation with an advisory committee. This doctrinal approach enables the study to evaluate how Nordic countries apply EU merger control rules alongside national legislation, ensuring both procedural uniformity and effective competition enforcement.

3. Cartels in Scandinavian Competition Law

3.1 Public Enforcement of Cartels in the Scandinavian Countries: Detection, Deterrence, and Sanctions

Cartels are regarded as the most serious infringements of competition law in Scandinavia, reflecting a broad consensus that hard-core collusion poses a direct and substantial threat to consumer welfare, market efficiency, and trust in the competitive process. Price-fixing, market-sharing, and bid-rigging agreements are presumed to be harmful by their very nature and are therefore classified as restrictions by object. This strict approach underscores the deterrence-oriented philosophy that characterizes cartel enforcement in Norway, Finland, and Sweden. Price-fixing, market-sharing, and bid-rigging are treated as restrictions by object, reflecting their presumed harmful effects on competition and consumer welfare. The primary enforcement objective is deterrence, achieved through a combination of detection mechanisms, effective prosecution, and credible sanctions.

3.2 Concept and Legal Characterisation of Cartels under Article 101 TFEU

Cartels constitute the most serious infringements of EU competition law and are prohibited under Article 101 TFEU as agreements or concerted practices between undertakings that have as their object or effect the prevention, restriction, or distortion of competition.

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Classic cartel conduct includes price fixing, market sharing, output limitation, and bid rigging. Such practices are considered restrictions of competition by object, meaning that their inherent anticompetitive nature obviates the need for a detailed effects analysis. This strict legal qualification reflects the significant harm cartels inflict on consumer welfare, market efficiency, and the competitive process as a whole.

3.3 Sanctions and Criminal Liability

Although cartels are traditionally treated as object restrictions, EU enforcement practice increasingly incorporates structured evidentiary reasoning to demonstrate their capability to distort competition. Within the broader EU enforcement architecture, the European Competition Network (ECN) has emphasized that evidentiary burdens must remain proportionate to the likelihood and seriousness of competitive harm. This principle, articulated in the context of exclusionary abuses, is equally relevant to cartel enforcement, where qualitative and quantitative evidence—such as internal documents, market structure indicators, and pricing patterns—may be used to substantiate collusion. The ECN supports the continued use of legal presumptions for conduct that, by its very nature, is capable of producing significant anticompetitive effects, ensuring effective and deterrent enforcement without imposing excessive proof requirements.

4. Mergers in Scandinavian Competition Law

4.1 Merger Control Frameworks and Thresholds

Merger control in Norway, Finland, and Sweden aims to prevent concentrations that significantly impede effective competition, particularly where structural changes could facilitate market power, coordinated effects, or foreclosure. Although the legal tests and notification thresholds vary across jurisdictions, the substantive assessment is closely aligned with EU merger control principles. Authorities assess both unilateral and coordinated effects, paying particular attention to market concentration, barriers to entry, buyer power, and countervailing efficiencies. Norway's merger control regime, embedded in its Competition Act, closely follows the EU substantive test, requiring notification of transactions exceeding turnover thresholds and allowing prohibition or conditional approval where competition risks arise. Finland and Sweden apply the EU Merger Regulation in parallel with national rules for purely domestic concentrations.

4.2 Expansion of Merger Categories Eligible for Simplified Review

Recent reforms have significantly broadened the range of mergers that may benefit from simplified review, reflecting a more economically nuanced approach to merger control. Compared to the 2013 Simplification Package, the revised framework introduces additional categories of concentrations deemed unlikely to raise competition concerns under all plausible market definitions. In particular, transactions involving limited horizontal or vertical links now qualify for simplified treatment where upstream or downstream market shares remain below clearly defined thresholds and where indicators of market concentration, such as the HHI delta, remain modest. This expansion reduces unnecessary regulatory burden for non-problematic

mergers while allowing the competition authority to focus resources on cases more likely to distort competitive market structures.

4.3 Discretionary Flexibility in the Assessment of Horizontal and Vertical Mergers

The revised Notice on Simplified Procedure strengthens the discretionary powers of the European Commission by introducing explicit flexibility clauses. These provisions enable the Commission to apply simplified treatment to mergers that marginally exceed standard market share thresholds but nonetheless pose limited competitive risks. By covering specific ranges of horizontal overlaps, vertical relationships, and joint ventures, the framework moves away from a rigid, formalistic application of thresholds and toward a more effects-based assessment. At the same time, the Commission retains full discretion to exclude cases from simplified treatment where market dynamics, structural links, or contextual factors warrant closer scrutiny.

4.4 Procedural Streamlining through Super-Simplified Treatment and Short Form CO

A key innovation of the reform is the creation of “super-simplified” categories of mergers, for which notifying parties may dispense with pre-notification contacts and proceed directly to formal notification. This procedural shortcut is complemented by the introduction of a new Short Form CO, designed primarily as a “tick-the-box” instrument with structured tables and multiple-choice responses. Together, these measures substantially reduce administrative complexity, shorten review timelines, and lower transaction costs for businesses. From an institutional perspective, they also enhance the efficiency of merger control by allowing case handlers to process straightforward cases more rapidly and consistently.

5. Leniency Programmes in Scandinavian Competition Law

5.1 Legal Foundations and Policy Objectives of Leniency in Scandinavia

In the Scandinavian jurisdictional context, leniency programmes form an integral part of competition enforcement regimes aimed at detecting and deterring cartels and other forms of unlawful cooperation. In Sweden, the leniency framework is codified in Chapter 3, Sections 12 to 15b of the Swedish Competition Act, reflecting the broader EU tradition of incentivizing undertakings to self-report infringements in exchange for immunity or reduction of fines. Under this regime, full leniency—immunity from administrative fines—is available only to the first undertaking that provides information enabling effective intervention by the Swedish Competition Authority, and may not be granted where the information merely responds to a specific request by the authority rather than being voluntarily provided on the applicant’s initiative. Leniency is unavailable to undertakings that coerced others into participation in the infringement, underscoring the programme’s normative emphasis on voluntary cooperation and proactive disclosure.

In Norway, the leniency regime is likewise embedded within the domestic Competition Act, with the Norwegian Competition Authority (Konkurransetilsynet) empowered to grant full or partial leniency where an undertaking is the first to inform the authority of unlawful

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cooperation and assists in subsequent investigations. Leniency may result in either complete exemption from administrative fines or a proportionate reduction depending on the sequence of applicants and the value of information provided, with graduated reductions available for second and subsequent qualifying applicants.

5.2 Eligibility Criteria and Cooperation Requirements

A central feature of Scandinavian leniency programmes is the rigorous set of eligibility criteria imposed on applicants. In Sweden, an undertaking seeking leniency must not only initiate disclosure on its own initiative but also provide information that materially enables the Swedish Competition Authority to "intervene against the infringement" or, at a minimum, clearly demonstrate that an infringement has occurred. The bar for information added value is doctrinally high, as information already in the possession of the authority or provided in direct response to its inquiries does not qualify for immunity.

In Norway, eligibility similarly hinges on being the first to report and providing "sufficient" information on the nature, duration, and participants of the cartel, though domestic practice adds procedural flexibility by allowing partial leniency for later applicants, with defined percentage reductions based on order and completeness of disclosure. Applicants are not required to use a standardised form, but submissions must include detailed factual descriptions and evidence relevant to the cartel offence.

Across both jurisdictions, leniency applicants must terminate their cartel participation immediately upon or before filing, refrain from destroying or concealing evidence, and cooperate fully with investigatory authorities throughout the process. These conditions align with broader EU and international leniency standards, emphasizing sincere cooperation and evidence preservation as prerequisites for mitigating sanctions.

5.3 Interaction with Criminal Sanctions and Enforcement Outcomes

Unlike some jurisdictions that couple corporate leniency with individual criminal sanctions, Scandinavian leniency programmes operate primarily within administrative enforcement frameworks. In Sweden, the debate over leniency's interaction with criminalisation has been subject to academic and policy scrutiny, exemplified by a 2015 Swedish Competition Authority seminar contrasting leniency with individual criminal prosecution, and noting that harmonisation of these instruments remains undeveloped at EU level. The seminar underscored leniency as a detection tool and recognised the complementary, though complex, relationship between administrative leniency and criminal sanctions for cartel offences.

In Norway, while leniency may exempt an undertaking from administrative fines, individuals involved in cartel conduct may still face separate legal exposure under criminal law, including potential imprisonment for serious competition offences. This dual-purpose enforcement landscape emphasises deterrence at both corporate and individual levels, yet also raises doctrinal questions about the scope and limits of leniency protections where criminal liability attaches to key personnel.

5.4 Practical Challenges and Enforcement Effectiveness in the Nordic Context

Despite robust legal frameworks, empirical evidence suggests that leniency programmes in Scandinavian countries have been comparatively underutilised as cartel detection tools. Recent analysis of cartel enforcement in the Nordic region identifies limitations in the vibrancy and effectiveness of leniency applications relative to the European Commission's programme, with low numbers of self-reports and limited complementary screening or ex officio investigations. The paucity of leniency-driven cases raises concerns that cartel detection may be less effective in practice, particularly for undetected bid-rigging or market-sharing arrangements that evade routine enforcement measures.

The practical challenge of raising awareness among business executives of leniency programmes has been specifically noted in Norway, where surveys indicate a low level of familiarity with leniency mechanisms among corporate leaders. This gap in awareness potentially undermines the deterrence and detection functions of leniency, suggesting the need for enhanced outreach, corporate compliance incentives, and institutional capacity to encourage early reporting of anti-competitive conduct.

6. Leniency Denied: The Arla Foods Case on Unlawful Cooperation in Sweden

6.1 Assessing Competitive Dynamics in the UK Dairy Market

Arla is a dairy cooperative owned by farmers from Sweden, Denmark, and Germany, engaged in the production and distribution of a wide range of dairy products. While the company's headquarters are located in Denmark, it operates internationally. Milk Link, based in Bristol, UK, is a British farmers' cooperative with eight processing facilities across the country. The two parties have entered into an agreement, subject to merger control approval, under which Arla will acquire full control over Milk Link's operations and assets. In return, Milk Link will become a corporate member of Arla, enjoying membership rights comparable to those of Arla's Scandinavian members. The business activities of the two cooperatives are complementary in the UK market: Arla primarily produces fresh milk, cream, and butter, whereas Milk Link focuses mainly on cheese production. Both companies, however, participate in the production of long-life and flavored milk, reflecting overlapping but largely complementary operations. Judicial restraint in this context is not indicative of passivity, but of a principled allocation of institutional responsibility. Courts position themselves as guardians of systemic integrity rather than as appellate bodies reviewing arbitral reasoning in detail.

6.2 Legal Characterisation of the Conduct: Restriction of Competition by Object

The conduct at issue was assessed under the Swedish Competition Act in parallel with Article 101(1) TFEU, reflecting the harmonised application of EU competition law at national level. The Swedish Competition Authority qualified the behaviour as unlawful cooperation amounting to a restriction of competition by object. This qualification was grounded in established EU jurisprudence, according to which certain forms of coordination—particularly exchanges of strategic information capable of reducing uncertainty—are inherently harmful to the competitive process.

The authority rejected arguments suggesting that the cooperation pursued efficiency-enhancing or stabilising objectives within the dairy sector. Instead, it found that the nature of the contacts was such that they were liable to replace independent decision-making with

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practical coordination. No requirement arose to demonstrate concrete anticompetitive effects, as the object of the conduct itself was sufficient to establish an infringement. This approach underscores the continued relevance of formal object-based analysis in cartel and quasi-cartel cases, particularly in concentrated commodity markets.

6.3 Leniency Framework and the Denial of Immunity or Reduction of Fines

A central doctrinal dimension of the case concerns the refusal to grant leniency. Arla applied for leniency under the Swedish programme, which mirrors the EU Leniency Notice in structure and purpose. However, the authority concluded that the application failed to satisfy the cumulative conditions required for immunity or a reduction of fines.

First, Arla was not the first undertaking to submit information enabling the authority to detect or establish the infringement. Second, the material provided did not constitute significant added value, as it largely confirmed facts already known to the authority through other sources. Third, questions were raised regarding the timeliness and completeness of cooperation, including whether Arla had genuinely terminated its involvement in the infringement at the earliest possible stage.

The refusal highlights a strict, credibility-based application of leniency rules. The authority made clear that leniency is not a discretionary reward for partial disclosure, but a conditional instrument designed to destabilize cartels by incentivizing prompt and decisive self-reporting. Undertakings with substantial market power and legal sophistication, such as Arla, are therefore held to a particularly high standard of diligence and transparency.

6.4 Enforcement Significance and Implications for Cooperative Undertakings

The Arla Foods decision carries important implications for competition enforcement and corporate compliance, particularly in sectors dominated by cooperatives and producer organizations. It confirms that cooperative status does not justify or excuse horizontal coordination with competitors, nor does it relax the standards applicable to information exchange and concerted practices.

From an enforcement perspective, the case reinforces the deterrent function of leniency denial. By refusing leniency, the authority signalled that strategic or delayed cooperation will not suffice to mitigate liability. This stance strengthens the overall effectiveness of cartel enforcement by preserving the integrity of leniency programmes and discouraging opportunistic applications.

For corporate actors, the case underscores the necessity of robust internal compliance mechanisms, clear protocols governing external contacts, and an early assessment of leniency options when potential infringements arise. In doctrinal terms, the decision contributes to a growing body of Nordic and EU case law emphasizing strict object-based analysis and disciplined leniency enforcement in concentrated markets.

Conclusions

This article has analysed recent developments in EU and Scandinavian competition law, focusing on merger control simplification, cartel enforcement, and the operation of leniency programmes in Nordic jurisdictions. The findings indicate a clear policy shift toward greater procedural efficiency and effects-based assessment, while maintaining strict enforcement

against hardcore infringements such as cartels. Simplified merger procedures illustrate a deliberate reallocation of enforcement resources toward cases with genuine competitive risk, whereas leniency programmes remain central to cartel detection despite mixed practical results in Scandinavia. The recent Arla Foods case in Sweden exemplifies this approach, where leniency was denied despite the company's cooperation, highlighting the seriousness of unlawful cartel activity (Konkurrensetilsynet, 2025). More broadly, the Nordic experience demonstrates rigorous cartel enforcement procedures in line with scholarly analyses of regional practices (Barlund, Harrington, & Sørsgård, 2022).

The findings are most directly applicable to EU Member States and closely aligned jurisdictions, such as Norway, but the broader insights regarding the conditions for effective leniency programmes are of wider relevance. From a practical perspective, competition authorities may benefit from further enhancing legal certainty, corporate awareness, and guidance on the interaction between leniency and individual liability. Such measures could strengthen incentives for self-reporting and improve detection rates.

Further research is warranted, particularly empirical and comparative studies assessing the actual deterrent impact of leniency regimes across jurisdictions. Overall, the article concludes that while the legal framework for competition enforcement in the EU and Scandinavia is well developed, its effectiveness ultimately depends on consistent application, institutional credibility, and continued policy refinement, as demonstrated in recent Nordic cartel enforcement cases (Barlund, Harrington, & Sørsgård, 2022; Konkurrensetilsynet, 2025).

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LEGALIZING MEDICAL CANNABIS AND AVOIDING ILLICIT MARKETS IN NIGERIA: A TRIPARTITE CASE STUDY ANALYSIS TOWARDS ACHIEVING AN EFFECTIVE MARKET MODEL

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Abstract: *As Nigeria contemplates the legalization of medical cannabis to unlock its therapeutic and economic potential, it is imperative to learn from the experiences of pioneering nations. This paper conducts a comparative analysis of three distinct regulatory models—Canada’s comprehensive federal legalization, the Netherlands’ pragmatic tolerance through its coffee shop system, and the United States’ fragmented state-by-state approach—to dissect the persistent drivers and adaptive practices of illicit cannabis providers. Despite the establishment of legal medical and, in some cases, recreational markets, illicit operators have demonstrated remarkable resilience. The paper argues that their persistence is not a failure of legalization per se, but a direct consequence of specific policy designs that create competitive advantages for the illegal market. Through a detailed examination of the regulatory gaps and consumer preferences, the paper illuminates why illicit markets endure. It recommends a distinct pathway for the legalization of cannabis in Nigeria arising the different models of the three countries examined, to avoid the pitfalls inherent in their individual models. For Nigeria, the lessons are clear: a successful medical cannabis program must be deliberately designed to outcompete the illicit market from the outset. This requires a careful balancing act—implementing smart tax policies to ensure price competitiveness, creating inclusive and accessible regulatory frameworks that do not exclude small-scale farmers or patients, ensuring comprehensive product and geographic coverage, and learning from the enforcement pitfalls of the case studies.*

Keywords: *Cannabis, medical cannabis, legalization, illicit markets, drug policy, Nigeria, Canada, Netherlands, United States.*

Introduction

Cannabis, known locally in Nigeria as ‘igbo’ or ‘wee’, is the most widely consumed illicit drug in the country. As a member of the comity of nations, Nigeria maintains a strict prohibitionist policy towards cannabis to align with its international obligations (Igenyi & Aneke, 2024: 86). However, since the beginning of the 21st century, the global landscape has shifted significantly towards legal therapeutic uses of cannabis to manage diverse medical conditions (Bewley-Taylor, 2014: 44). To date nearly fifty countries have legalized cannabis for medical and recreational purposes. (WHO 2018). The increasing trend of legalization has

put Nigeria at a crossroad to either maintain the status quo or cautiously embrace a regulated medical cannabis market that could offer patients relief, generate economic growth, and undermine criminal enterprises.

Recent attempts have been made to amend the National Drug Law Enforcement Agency (NDLEA) Act to empower the NDLEA to grant and revoke licences for cannabis cultivation for medicinal and scientific purposes, and export of cannabis oil to countries where it is legal for therapeutic uses, signaling a major policy shift by Nigeria (Kwen, 2023; Abeku, 2025). However, the journey from prohibition to effective regulation is fraught with challenges, and the experiences of early-adopting nations provide an invaluable blueprint for an effective model. A critical, and often underestimated, challenge is the persistence of illicit markets even after legalization. The naive assumption that legal availability automatically eradicates illegal supply has been proven false in jurisdictions that have legalized cannabis. Thus, from the bustling cities of Canada to the iconic coffee shops of Amsterdam and the varied landscapes of American states, illicit cannabis providers have not merely survived, they have adapted and thrived alongside legal frameworks for permissible uses (Cheekes, 2022: 22). The success of any future Nigerian medical cannabis program will be measured not only by the number of patients it serves but also by its ability to shrink the illicit market that has long fueled organized crime and compromised public safety (Bish, et al. 2022; Edet, 2024: 191; Shaw & Reitano, 2013: 25).

This paper posits that the resilience of illicit markets is a direct reflection of policy and legal design flaws in jurisdictions that legalized cannabis. Thus, by conducting a tripartite comparative study of Canada, the Netherlands, and the United States, this paper will dissect the multifaceted drivers—economic, regulatory, and social—that sustain illicit providers. It will explore how these illegal operators have refined their practices to compete, and ultimately, recommend concrete, actionable lessons for Nigerian policy and lawmakers. The central issue intended to be addressed is how Nigeria can design a medical cannabis framework that learns from the missteps of others to effectively transition consumers from the illicit to the licit market, thereby achieving its public health and security goals.

1. Illicit Markets in Cannabis: Theoretical Underpinning

To understand the stubborn resilience of illicit providers in jurisdictions with legalized cannabis, it is essential to view their persistence through several theoretical lenses. These frameworks help explain why the simple act of legalization is insufficient to dismantle entrenched illegal economies.

1.1 Economic theory

According to Gary Becker's economic theory of crime, individuals engage in illegal activities when the expected benefits outweigh the potential costs (Becker, 1968: 178). This suggests that illicit market persists in jurisdictions with legalized cannabis because it remains economically viable to trade on the black market due to relative freedom from taxation, regulatory compliance costs, and licensing fees (Smart & Pacula, 2019: 671). These advantages allow illicit providers to offer significantly lower prices, creating a powerful draw for cost-sensitive consumers. Thus, illicit markets operates as a classic example of black market responding to price signals and market inefficiencies created by the legal framework itself (Kilmer, 2019: 573).

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1.2 Consumer behaviour theory

Consumer behaviour theory moves beyond pure economics to explain why individuals may choose an illegal source over a legal one. The decision is not binary but a complex calculation involving price, convenience, product quality, privacy, and trust (Donnan, et al. 2024). A patient in rural Nigeria, for instance, might prioritize convenience and cost over the perceived safety of a regulated product if legal dispensaries are distant and expensive. Established relationships with local suppliers, built on years of trust, can also create a powerful inertia that legal markets struggle to overcome (Donnan, et al 2022).

1.3 Regulatory capture theory

The theory of regulatory capture and unintended consequences warns that well-intentioned regulations can sometimes backfire (Caulkins & Kilborn, 2019: 1). Overly restrictive, complex, or expensive regulatory frameworks can create insurmountable barriers to entry for legitimate businesses (Global Commission of Drug Policy, 2018). This inadvertently reserves the market for two groups: large corporations that can afford compliance and the pre-existing illicit operators who simply ignore the rules (Stiglitz, 2009: 16). When regulations limit the number of licenses, restrict product types, or impose cumbersome bureaucratic hurdles, they create protected market niches where illicit providers can continue to operate with minimal competition.

2. Legal Landscape on Cannabis in Nigeria

Nigeria's legal landscape on cannabis has its roots in colonial policy under the Dangerous Drugs Act (DDA) of 1935, which was enacted to align the colony with international drug control treaties (Ekwenze, 2013). The DDA established the core regulatory template for cannabis, defining "Indian Hemp" broadly as any part of the *cannabis* plant and its resins (s. 2). Crucially, while it criminalized unauthorized activities such as production, possession, sale and distribution of the drug, it also empowered the President to make regulations for controlled production and distribution, and permitted licensed export with proper certification (DDA s. 3; Olumide & Udofa, 2019).

This hardened stance was retained after independence under the Indian Hemp Act (IHA) of 1966, which prescribed the punishment of either death or imprisonment for not less than twenty-one years for the cultivation of cannabis (IHA s.2(1)). The Act prescribed other severe sentences for possession (minimum four years imprisonment, s.5(1)), sale, and even the use of premises for consumption of cannabis (minimum ten years, s.7(1)). However, the IHA in section 3(1) confirmed and preserved the DDA clause for "the importation or sale of any medical preparation of Indian hemp in circumstances such that no offence against the Dangerous Drugs Act is committed thereby". This would include where the President has issued a licence for such importation, sale or distribution. Subsequent amendments of the IHA in 1975 and 1984, and the establishment of the National Drug Law Enforcement Agency (NDLEA) in 1989, further entrenched a war-on-drugs ideology in Nigeria (Uduo & Ibiba, 2024: 13).

The NDLEA Act makes the National Drug Law Enforcement Agency (NDLEA) the primary enforcement body for drug related offences in Nigeria (s. 3(1)(b); Udamu, 2013). The

Agency operates with wide-ranging powers to investigate, arrest, and prosecute drug offenders (s. 8). It mandates life imprisonment for the cultivation and trafficking of cannabis (s. 11 & 20), and places the burden of proving lawful authority squarely on the accused—a reversal of the typical burden of proof that underscores the law’s severity (s.20(1); Idris, 2023: 19).

However, notwithstanding the hardened criminal approach to cannabis in Nigeria, a thorough review of both the Dangerous Drugs Act (ss. 3, 7 & 9) and the Indian Hemp Act (ss.3, 5 & 9) alongside the National Agency for Food and Drug Administration and Control (NAFDAC) Act of 1993 reveals a splinter of statutory hope that hints at potential liberalization and even legalization of cannabis either for medicinal or recreational purposes. The National Agency for Food and Drug Administration and Control (NAFDAC) empowers NAFDAC to “grant authorisation for the import and export of narcotic drugs and psychotropic substances as well as other controlled substances” (s.5). It however, mandates the Agency to ensure that such narcotic drugs and psychotropic substances are limited to “medical and scientific purposes”. This establishes the legal basis for a medicinal cannabis framework, which stands on a ‘tripod’ of law that collectively contemplate *regulated* medical use (Olumide & Udofa, 2019; Emeka, et al. 2025).

3. Case Study Analysis of Legalized Cannabis Jurisdictions and Illicit Markets

3.1 Canadian Model

Canada presents a compelling case of a nation that embarked on a bold, nationwide legalization of both medical and recreational cannabis, yet continues to grapple with a significant illicit market (Armstrong, 2021). The Canadian Cannabis Act of 2018 established a federally regulated market (s.6). However, the high costs of regulatory compliance, extensive taxation (including federal excise and provincial markups), and initial supply chain inefficiencies resulted in legal cannabis prices being 30-50% higher than illicit alternatives (Andresen, 2024: 1). For medical patients, many of whom face financial hardship and lack insurance coverage for cannabis, this price differential is a decisive factor. Furthermore, the initial rollout was plagued by limited product variety and quality control issues, frustrating consumers and driving them back to reliable illicit sources (Gibbs, et al 2021: 13; Goodman, et al 2020).

After the enactment of the Act, the illicit market for the product evolved drastically to match the competition. Illicit providers simply enhanced the quality of their product to mimic the packaging and branding of legal goods and adopted e-commerce and delivery services, which offered greater convenience than legal dispensaries constrained by provincial regulations on sales and operating hours (Hathaway, et al 2021:307). They leveraged their established, direct-to-consumer networks and offered bulk discounts and loyalty programs—strategies often restricted in the legal market. This resulted in a thriving illicit market system that dwarf the legal market in the initial phase after the reforms but declined to an equilibrium (Statistics Canada, 2023).

3.2 The Dutch Model

The Dutch model of cannabis legalization is world-famous for its “coffee shops”, where the retail sale of small quantities of cannabis is tolerated (Korf, (2019: 3). However, this system contains a fundamental flaw that has institutionalized the illicit market.

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The Netherlands operates a policy of *gedoogbeleid* (tolerance) (Anemaet, 2025: 211). While the *front door* of the coffee shop is legal, the *back door*—the supply of cannabis to these shops—remains entirely illegal (Knottnerus, 2023). This creates a schizophrenic market: regulated, taxed retail outlets are supplied by unregulated, criminal wholesalers. This “back-door problem” means the state effectively tolerates and even depends on illicit production to sustain its legal retail framework (Boermans, 2010: 29).

This model has fostered sophisticated and large-scale illicit cultivation networks that supply the coffee shops. Because these suppliers operate outside the law, there are no quality controls, safety standards, or legal oversight of their operations. The system also does little to disrupt the illicit street market, as consumers who wish to avoid the higher prices of coffee shops or seek different products can still easily find illegal sellers (Shepherd, 2022: 21).

3.3 The United States Model

The United States offers a decentralized, fragmented approach, with individual federal states implementing their own medical and recreational laws in the face of continued federal prohibition (Health Affairs, 2021). This creates a unique set of challenges and opportunities for illicit providers.

The state-by-state legalization creates massive price and availability disparities. Illicit providers engage in cross-border smuggling from states with lower prices or more permissive laws to those with stricter regimes or higher taxes (Hao & Cowan 2020: 642). Federal prohibition creates additional hurdles for legal businesses, such as lack of access to banking services, which increases their operating costs and makes it harder to compete with cash-only illicit operations (Redford, et al. 2024: 85).

The conflicting legal landscape in the United States provides illicit operators the ideal environment to engage in economic arbitrage and exploit the inefficiencies created by lack of a unified national market. Thus, illicit providers of cannabis benefit from the confusion and resource limitations of law enforcement, who must navigate a complex web of conflicting state and federal laws (Hansen, et al. 2020). Research has consistently shown that states with restrictive medical programs (limited qualifying conditions, few dispensaries) see far less displacement of the illicit market than states with accessible, adult-use legalization (Shepherd, 2022).

4. Comparative Analysis: Synthesizing the Drivers of Illicit Persistence and Lessons for Nigeria

By placing the experiences of Canada, the Netherlands, and the U.S. side-by-side, a clear and consistent pattern emerges, which highlights the universal drivers of illicit market resilience, and establishes a blueprint for avoidance of such deleterious effects in jurisdictions intending to legalize cannabis.

Table 1. *Drivers of Illicit Market Resilience*

Driver	Canada	Netherlands	USA	Core Lesson for Nigeria

Price Differential	High taxes & compliance costs make legal cannabis 30-50% more expensive (Mahamad, et al. 2020).	Coffee shop prices are higher due to risks in the illegal supply chain.	Cross-state price arbitrage and federal banking issues keep illicit prices low (Hao & Cowan 2020).	Keep initial taxes and regulatory costs low to achieve price parity.
Regulatory Gaps	Initial supply shortages and limited product variety.	The serious "back-door" supply problem (Knottnerus, 2023).	State-level fragmentation and restrictive medical programs in some states (Health Affairs, 2021).	Ensure a consistent, quality-controlled supply and a unified national policy.
Consumer Access & Convenience	Limited dispensaries in some regions; illicit delivery often more convenient.	Coffee shops are accessible, but illicit street dealers remain.	"Dispensary deserts" in many areas; illicit delivery services fill the gap (Shi, 2016).	Ensure geographic distribution of legal access points and consider safe delivery options.
Supplier Transition	High barriers to legal entry pushed some growers to stay illicit.	No legal pathway for suppliers, entrenching illicit networks.	Social equity programs in some states attempt to address this, with mixed success.	Create accessible, tiered licensing to bring existing growers into the legal fold.

5. The Nigerian Context: Applying the Lessons

Nigeria's situation is unique, characterized by a large, existing illicit cultivation industry, significant rural poverty, and a healthcare system with limited reach (Chigbo, 2025; Udama, 2013: 357). The lessons from the comparative analysis must be utilized to address these realities.

- The government should implement a low, specific excise tax (e.g., per gram) rather than a high ad valorem tax. The primary goal of the initial phase must be affordability for patients and competitiveness against the illicit market. Revenues can be scaled up as the legal market becomes established.
- To avoid creating a corporate cannabis monopoly, Nigeria should develop a multi-tiered licensing system. This would include micro-cultivation licenses for smallholder farmers, particularly in regions like Ondo State where cannabis is traditionally grown. This approach can lift rural communities out of the illicit economy and foster broad-based economic inclusion.
- The list of qualifying medical conditions should be developed in consultation with Nigerian medical professionals and should be sufficiently comprehensive. The model should allow for dispensaries attached to licensed pharmacies and hospitals, and explore telemedicine consultations for patient authorization to overcome geographic barriers.
- A nationwide campaign is needed to educate the public on the difference between medical and recreational use, the legal framework, and the risks of the unregulated illicit market. This will help build trust in the legal system.

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- e) The NDLEA's role must evolve from a purely prohibitionist stance to that of a regulator and market guardian. Enforcement resources should be strategically redirected from targeting individual patients and small-scale farmers towards dismantling large, violent criminal organizations that refuse to enter the legal system and continue to engage in other illicit activities. The focus should be on protecting the legal market from illicit infiltration.

f)

Conclusions

The global experiment with cannabis legalization offers Nigeria a priceless gift: the ability to learn from the triumphs and travails of others. The persistence of illicit markets in Canada, the Netherlands, and the United States is not an argument against legalization; it is a powerful testament to the importance of getting the details of legalization right.

The evidence is clear and unanimous across all three case studies: illicit providers thrive where legal frameworks are expensive, exclusionary, inaccessible, and inefficient. They are nimble competitors who adapt to consumer demand and regulatory gaps with entrepreneurial zeal. For Nigeria, the path forward is to design a medical cannabis program that is, from its inception, more attractive than the illicit alternative. This means prioritizing affordability through smart taxation, inclusion through accessible licensing, convenience through thoughtful market access, and clarity through a consistent national policy.

By adopting a deliberate, evidence-based, and patient-focused approach, Nigeria can avoid the pitfalls that have sustained illicit markets elsewhere. It can harness the potential of medical cannabis to provide relief to its citizens, create legitimate economic opportunities, and strike a decisive blow against the criminal networks that have long profited from prohibition. The goal is not merely to create a legal market, but to ensure it is the *only* market that matters.

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INTERNATIONAL JUDICIAL COOPERATION IN THE CONTEXT OF THE ADOPTION IN 2024 BY THE UNITED NATIONS OF THE CONVENTION ON CYBERCRIME

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Abstract: *The practical application of the United Nations Convention against Cybercrime requires complementarity in the reactions of states or state unions to new opportunities for perpetrators of cybercrimes that are extremely dangerous for societies and the global economy. The application of the Convention strengthens the mechanisms for preventing and combating crimes in the digital space, but judicial cooperation must be based on a series of efficient procedures, in the context in which geographical territoriality is substituted by the fluidity of the virtual space of the Internet, sometimes without clear jurisdiction.*

Keywords: *International judicial cooperation, Cybercrime, Cybersecurity procedures; cyber protection; UN convention of 2024; Advanced persistent threat – APT.*

1. Introduction to the research topic

Digital developments in parallel with artificial intelligence tools have determined the need for a scientific technology of the phenomenon but also a pragmatic approach to coercive measures to limit the effects of crime in cyberspace. The effects of cybercrime are felt in society every day. The tools used by criminals through cybercrime are modernized and optimized so that victims generate as many effects with the highest values as possible. Cybersecurity is one step behind cybercrime although it is coordinated by the special structure of the state authority. In reality, conflicts between countries, even friendly ones, are also extended through the cybercrime procedure. We usually define the perpetrators as "state actors". The product of cybercrime is recycled. In this context, state administrations must find a common path of international cooperation on judicial procedures to combat the phenomenon of cybercrime.

Preventing and combating cyber activity and the criminal responsibilities of all states! Cybercrime manifests itself in a parallel space with society, called virtual space.

“ No country is an island: embracing international law enforcement cooperation to reduce the impact of cybercrime [John Billow , 2024], Head of the National Cyber Security Center (NCSC-SE) in Sweden and former official at the Interpol Cybercrime Directorate, with direct experience in international cyber cooperation and operations]”. The expert stated that “being an inherently transnational challenge, cybercrime requires an international response. John Billow stressed the need for effective collaboration between governments and with the private sector to enforce international law on cybercrime”.

The virtual space of the Internet has no determined constitutional boundaries and jurisdictions. Within this digital space of the Internet there are legal, clear, visible domains. In

the same space there are domains that do not offer transparency on operations, invisible to users without specialization in cyberspace. This space is defined as the "dark internet". "Dark internet"ⁱ or "dark web" designates that part of the Internet that operates on special networks (darknet), over the public Internet, but accessible only with specific software/configurations (e.g. Tor, I2P) and which is not indexed by regular search engines. In this space there are illegal activities (black markets for drugs, weapons, stolen data, child pornography, hacking services, etc.), but there are also legitimate uses, related to protecting anonymity in repressive regimes or for journalists and activists. The "dark" web is used as an "agora" for cybercrime: forums for coordinating attacks, selling malware, stolen data, custom hacking servicesⁱⁱ. Criminals operate from a location that is often unknown on the internet space of different countries or unions of countries, but also in international organizational areas, companies, etc. In this context, cybercrime is not always a tactical field of individuals working independently.

Cybercrime also manifests itself through organized groups of professionals in the digital space, in the economic field, in the field of technologies "with support" most often from "state vectors".

In our research, we also took into account the international context created by the Russia-Ukraine conflict. During the conflict period, crime is extremely important. Researchers from Ukraineⁱⁱⁱ in terms of: *"Today, cybercrime and cyberterrorism are identified as one of the threats to the national security of Ukraine in the field of information . committed in cyberspace by computer systems or through the use of computer networks and other means of access to cyberspace, within computer systems or networks, as well as against computer systems, computer networks and computer information, being widely developed. Terms such as "cybercrime", "information crime", "crime in the field of computer information", "crimes in the field of information technology" have a direct connection with the cybersecurity of the state and information security [Baranenko, Roman. (2021)] .*

The importance of the "Dark" web has increased with the active trading of cryptocurrencies. Cryptocurrencies are hosted on virtual servers in "clouds" computing¹ through operations that go beyond standard judicial procedures of control exercised by the state.

Countries with treasuries (or reserves) in crypto :

El Salvador was the first country to adopt Bitcoin as legal tender (2021) and integrated it into its national financial strategy, treating it as a sovereign reserve asset. In 2025, it had over 7,500 BTC in its state portfolio, managed for the long term.

The United States has the largest government stockpile of Bitcoin, mainly from seizures in cybercrime cases; some is now managed under a "Strategic Bitcoin" framework. Reserve². Recent estimates range from around 28,000 BTC (in US Marshals custody) to several hundred thousand BTC at the federal supply level.

Other countries with notable Bitcoin holdings *China* – reserves estimated at around 190,000 BTC, mainly from the PlusToken scheme seizure; treated as state assets, even though there is no transparent "crypto treasury" policy.

Ukraine, the United Kingdom, Bhutan, the United Arab Emirates, Venezuela, Finland – appear on the charts with government holdings of Bitcoin, through confiscations, state mining, or one-off measures.

¹Not all holdings = "treasury" policy. In many cases, cryptocurrencies are held by the state as a result of confiscations rather than as a result of a treasury investment decision (e.g. US, China, UK). El Salvador remains the clearest example of a state using Bitcoin as an explicit sovereign reserve asset in its financial strategy.

Examples of sub-national “treasuries” (USA): Some US states (e.g. New Hampshire, Texas, Arizona, Oregon) have passed laws that allow or require the establishment of reserves in Bitcoin or other digital assets, managed by state treasuries. New Hampshire, for example, authorizes the treasurer to invest up to 5% of public funds in very large-cap digital assets (basically Bitcoin).

2. Cybercrime is a global threat

There is a lot of research on cybercrime, especially from information technology specialists in the virtual space of the Internet. The product of cybercrime affects the entire society because the scope of action is not limited by state border control. Cybercrime affects the state and society vertically: critical state infrastructures become difficult to manage and control; sensitive information of political power is stolen by state actors (friends or enemies); military command structures become vulnerable; the structure regarding the administration of personal data or data regarding the health status of the population is subject to the risk of theft, so Cybercrime is also manifested in the manipulation of the population in the electoral mechanism.^{iv} [Georgiana PETRE-FRISCHHERZ, *Technology in Election Campaigns*, 2025]. This issue raises serious issues regarding the sovereignty of states and the inability not to protect against external attacks from states interested in the constitutional order of Romania. In this vein, we also find the concern of the diplomat ^vfrom the United States of America who appreciates: *"The global landscape has an evolution that accelerates international events and requires the pace of increasingly nuanced diplomatic actions."* The United States Department of State has said ²it is appropriate to “ coordinate with diverse state and non-state actors, with their own interests, given relationships. The digital age presents an extraordinary opportunity to share information and connect across historical divides. and promote antidemocratic agendas. To counter these trends, U.S. diplomacy must be multifaceted and encompass a wide range of issues, such as human rights, economic initiatives, and security assistance. U.S. diplomacy must be cross-functional , nuanced, and rapid, delivering results for its people in the pace of global events. ”

Researchers believe that:

✓ *Ransomware is a threat to peace and security: understanding and avoiding the worst-case political scenarios* [Mischa Hansel and Jantje Silomon , 2024]. The authors analyze three scenarios in which ransomware could escalate political tensions and identify the structural factors driving these risks and highlight the urgent need for global institutional solutions to address the widespread consequences of ransomware. The frequency and severity of ransomware attacks raise questions about their potential classification as cyberterrorism ^{vi}. [Lora Pitman and Wendy Crosier , 2024] examines large-scale incidents such as the Colonial

² *Enterprise Data Strategy – Empowering Informed Data Diplomacy*, September 2021 , Department of State, United States of America, <https://www.state.gov/wp-content/uploads/2021/09/Reference-EDS-Accessible.pdf>

Pipeline attack ³and wiperware attacks. ⁴against Ukraine in 2022, to explore how ransomware affects national and global security. The authors proposed a new framework for determining when ransomware constitutes cyberterrorism, addressing the lack of consensus among researchers and policymakers. The authors emphasize the importance of a clear definition to guide policy responses and highlight the implications of their findings for national strategies and UN-level negotiations on cybercrime.

✓ We find ^{vii}that a new discipline, *Cyber Criminology*, has developed to study the causality of crimes that occur in cyberspace and the impact on physical space. Understanding cyberspace is a necessity in analyzing the empirical and theoretical aspects of cybercrimes, cybercriminal behavior, cybervictims, cyberlaw, and cyberinvestigations. [Issac, Reji. (2011). Application of cybernetics in cybercriminology. 10.13140/RG.2.1.4263.6565.]

✓ The greatest challenge is not the distant future dominated by advanced technologies, but the revolutionary changes that are already impacting everyday life ^{viii}[Hunter, Albert, Rutland et al. 2024].

The reaction of the international community to the phenomenon of crime in cyberspace and the development of the Convention under the authority of the United Nations. The international community found that the phenomenon cannot be controlled. The evolution and size of potential damage were monitored in terms of: economic, political, industrial and military. The interference between society and the digital space is increasing.

Whoever dominates cyberspace will dominate the real world. In the real world, society is dependent on cyberspace through voluntary connection to social media networks and commercial platforms – economic ones, *etc. in electronic form on serious crimes*” which we define in the presentation of the material as **“the Convention”**. The Convention criminalizes a limited number of crimes facilitated by digital technologies at the same time as the core cybercrimes. The Convention applies, in situations of *“Prevention, investigation and prosecution of stability crimes under the Convention, including the freezing, seizure, confiscation and return of the proceeds of such crimes”*. It also falls under the scope of the Convention *“ Collection, obtaining, preservation and sharing of evidence in electronic form for the purposes of criminal investigations or proceedings ”* [article 3]. States Parties to the Convention shall ensure that stability crimes in accordance with these conventions and protocols are also considered as crimes under their domestic law when committed through the use of information and communication technology systems. In accordance with the Convention, no provision shall be interpreted **“ as establishing criminal offences”**.

³On May 7, 2021, Colonial Pipeline shut down its operations after a ransomware attack on its IT systems by the criminal group DarkSide. The shutdown disrupted fuel supplies along the East Coast, causing panic buying, long lines at gas stations, and localized price increases, as well as impacting the availability of jet fuel. Colonial paid the attackers approximately \$4.4 million in cryptocurrency; U.S. authorities later recovered approximately \$2.3 million of this amount. The incident prompted major discussions and policy action on increasing cybersecurity for critical infrastructure in the United States. [https://www.energy.gov/ceser/colonial-pipeline-cyber-incident]

⁴wiper attacks began in January 2022, before the full-scale invasion on February 24, targeting Ukrainian government institutions and critical infrastructure. cyber.[https://www.aha.org/cybersecurity-government-intelligence-reports/2022-02-26-tlp-white-joint-cyber-advisory-destructive]

Researchers also have different opinions towards the legislator and appreciate ^{ix}: " *Cyber investigations can be invasive, and digital rights groups argue that the scope has expanded and the lack of sufficient guarantees puts human rights at risk.*"

Although the area of manifestation of cybercrime is international, the Convention, through Article 5, prohibits states from exercising, in the territory of another state, jurisdiction and performing functions that are reserved exclusively to the authorities of that other state by its internal law. It states that the principles of sovereign equality and territorial integrity of states and the principles of non-interference in the internal affairs of other states are respected.

An important part of the "Convention" is that its provisions cannot be interpreted as permitting the suppression of human rights or fundamental freedoms, including the rights related to expression, conscience, opinion, religion or belief, peaceful freedom and association. The "Convention" is drafted in accordance with and in a manner compatible with applicable international law in the field of fundamental human rights.

Our research proposes to find points of reference for debates, ideas and starting points in a solution found to the challenges of cybercrime. For the European Union, the "Council" has developed *Council Decision (EU) 2025/2307*^x with the aim of strengthen international cooperation in combating certain crimes committed by means of information and communication technology systems and for the exchange of electronic evidence in relation to serious crimes. The speed with which the Convention was adopted demonstrates that the European Union has had a significant voice from the very beginning of the implementation of this new global framework for combating cybercrime. The conclusion of the Convention by the Union does not affect the competences of the Member States to ratify, accept or approve the Convention, in accordance with their internal procedures. The Member States retain competence in so far as the Convention does not affect common rules or alter their scope ^{xi}.

3. Regulations and judicial procedures regarding cybersecurity in Romania

The Convention does not conflict with the domestic law of the states nor with the legislation on combating cybercrime. Romania has developed a specific legislation on cybercrime as the legal relationships between perpetrators/criminals and society have become increasingly evident, and the phenomenon of crime has become ineffective due to the lack of clear legal provisions in criminal legislation. Investigative authorities have resorted to classifications and assimilations of the acts to be incriminated. Romania has developed **a complex regulatory framework for regulating and combating cybercrime**.

The legislative framework is composed of multiple legislative layers covering both the criminalization of illicit acts committed in cyberspace, as well as prevention measures, cybersecurity and international cooperation. Our analysis is carried out separately on *Primary Legislation (A)* and *Secondary Legislation (B)*, Cyber Security Legislation (C), as follows:

A. Primary Legislation – Criminal Code Offenses Regarding Cybercrime

The Penal Code (Law no. 286/2009), amended by Law no. 187/2012 (entered into force on 1 February 2014), **took over the previous computer crimes regulated** in Law 161/2003 and Law 365/2002, concentrating them in Title VII, Chapter VI in Articles 360-366 ^{xii,xiii}

A.1. Crimes against the security and integrity of computer systems and data

1. Illegal access to an information system (art. 360 CP)

- Simple form (paragraph 1): unauthorized access to an information system – punishment: 3 months-3 years imprisonment or fine
- Aggravated form (paragraph 2): access for the purpose of obtaining computer data – punishment: 6 months-5 years imprisonment
- Qualified forms (paragraph 3): when it targets government or military systems or causes significant damage – the punishment is increased by one third

2. Illegal interception of computer data transmission (art. 361 CP)

- Unlawful interception of a non-public computer data transmission
- Punishment: 1-5 years in prison

3. Alteration of the integrity of computer data (art. 362 CP)

- Modifying, deleting, damaging computer data or restricting access to it, without right
- Punishment: 1-5 years in prison
- This offence transposes art. 4 of the Budapest Convention and art. 5 of EU Directive 2013/40

4. Disruption of the functioning of information systems (art. 363 CP)

- Serious, unauthorized disruption of the functioning of the computer system by entering, transmitting, modifying, deleting or damaging data.
- Punishment: 2-7 years in prison
- Covers DDoS and ransomware attacks

5. Unauthorized transfer of computer data (art. 364 CP)

- Unauthorized transfer of data from a computer system or storage medium
- Punishment: 1-5 years in prison

6. Illegal operations with computer devices or programs (art. 365 CP)

- Paragraph (1): Production, import, distribution, sale of devices, computer programs, passwords, access codes intended for the commission of crimes under art. 360-364 – punishment: 6 months-3 years imprisonment or fine
- Para. (2): Unlawful possession of these instruments – punishment: 3 months-2 years imprisonment or fine

7. Attempt (art. 366 CP)

- Attempt to commit the crimes under art. 360-365 is punishable

A.2 Economic-financial crimes in the cyber environment

1. Computer fraud (art. 249 CP)

- Entering, transmitting, modifying, deleting computer data, restricting access to or preventing the operation of a computer system, for the purpose of obtaining beneficial material, if damage has been caused.
- Punishment: 2-7 years in prison
- Includes phishing, bank card fraud

2. Carrying out financial transactions fraudulently (art. 250 CP)

- Paragraph (1): Carrying out a cash withdrawal, electronic money loading/unloading, funds transfer operation by using the payment instrument or identification data without consent – punishment: 2-7 years
- Paragraph (2): Execution by unauthorized use or fictitious data – same punishment
- Paragraph (3): Unauthorized transmission of identification data – penalty: 1-5 years

Jurisprudence of the HIGH COURT OF CASSATION AND JUSTICE regarding the use of bank cards:

- Installing skimmers /cameras at ATMs = crime under art. 365 of the Criminal Code (illegal operations with devices)
- Using the authentic card without the holder's consent = art. 250 para. (1) CP
- Using a counterfeit card = art. 250 + art. 313 CP (according to the real one)
- Using contactless without permission = art. 360 + art. 250 CP (agreed)

3. Illegal operations with non-cash payment instruments (art. 250¹ CP)

- Criminalizes the counterfeiting, possession, trafficking of electronic payment instruments

4. Acceptance of fraudulent financial transactions (art. 251 CP)

- Punishment: 1-5 years in prison

5. Computer forgery (art. 325 CP)

- Unauthorized insertion, modification, deletion of computer data or restriction of access, resulting in data in question
- Punishment: 1-5 years in prison
- Includes falsification of electronic documents, manipulation of databases

A.3 Crimes against the person in the cyber environment

Child pornography (art. 374 CP)

- Producing, possessing, distributing, applying, presenting pornographic materials with minors through computer systems
- Qualified forms: when the victim is exploited, when the member of the organization, when injury/death resulted
- Automatic entry into the competence of DIICOT, regardless of the existence of an organized criminal group

B. Special Legislation on the Prevention and Combating of Cybercrime

B.1. Law no. 161/2003^{xiv} regarding some measures to ensure transparency in the exercise of public dignities, public functions and in the business environment, the prevention and sanctioning of corruption is defined in Book I - *General regulations for the prevention and combating of corruption*. Title III surprises – *Preventing and combating cybercrime* (articles 34-66) regulates the framework for prevention, definitions and cooperation.

1. Fundamental definitions. In art. 35 of the law are defined: **Information system** : device or set of interconnected devices that ensure automatic data processing; **Information data** : representation of facts, information or concepts in a form processable by an information system; **Service provider** : natural/legal persons that provide communication through information systems or store/process data; **Data related to information traffic** : data about origin, destination, route, time, date, size, volume, duration of communication; **Security measures** : procedures, devices, specialized programs for restricting/prohibiting access; **Unlawful action** : lack of legal/contractual authorization, exceeding limits, lack of permission .

2. Preventive measures. The law establishes in (art. 36-41) preventive activities of public communes, public joint activities, service providers, NGOs, information campaigns (Art. 36-38). Regarding preventive measures regarding computer crime of databases, responsibility is given to the Ministry of Justice, the Ministry of Internal Administration, the Ministry of Education and Research, the Romanian Intelligence Service and the Foreign Intelligence Service (Art. 39). In article Art. 40 are defined prevention measures through *special personnel training programs*, and Art. 41 specifies the obligation of owners/administrators of systems with restricted access to warn users about the consequences of unauthorized access (warning accessible to any user) .

3. Contraventions (art. 52-53) for Failure to comply with the warning obligation (art. 41) = contravention, fine: 5,000-50,000 lei) .

4. International cooperation in (art. 60-66) refers to The establishment of **the Cybercrime Combating Service** in the Prosecutor's Office attached to the High Court of Cassation and Justice as **a permanent contact point** available 24/7 with: Specialized assistance, legislative

data; Immediate data preservation at the request of foreign authorities; Execution of letters rogatory. Art. 63-64 define the procedure for immediate preservation of computer data at international request (min. 60 days)

Important note : Articles 42-51 (specific offenses) were repealed on February 1, 2014 by Law No. 187/2012 and transferred to the Criminal Code.

B.2 Law No. 365/2002 on electronic commerce . It regulates electronic commerce and previously provided (art. 24-28) for crimes related to electronic payment instruments. These articles have been partially repealed and integrated into the Criminal Code.

C. Special Legislation for Cyber Security

C.1 Law no. 58/2023 on the Cybersecurity and Defense of Romania , Entered into force on March 14, 2023, the framework law for cyber security and defense at the national level ^{xv}. By Government Decision no. 1321/2021, the *Cybersecurity Strategy of Romania* ^{xvi} was approved , for the period 2022-2027, as well as the *Action Plan for the implementation of the Cybersecurity Strategy of Romania* , for the period 2022-2027.

1. Institutional framework (art. 6-19). National Cyber Security System (SNSC) – general cooperation framework coordinated at the strategic level by **the CSAT** and at the operational level by the **Cyber Security Operational Council** ⁵(COSC) .

Responsibilities : harmonization of responses to cyber threats, recommendations on alert levels, international cooperation, action plans

Competent authorities (art. 10-18):

- **National Cyber Security Directorate** ^{xvii}(DNSC) : authority for **the national civil cyberspace** (art. 10 letter a)
- **MCID** : development of normative acts, public policies in the field of cybersecurity, digital transformation (art. 10 letter b)
- **National Authority for Administration and Regulation in Communications** ^{xviii}(ANCOM) : coordination of cybersecurity of networks and information systems of electronic communications providers (art. 10 letter c)
- **Ministry of Internal Affairs** ^{xix}(MAI) : knowledge, prevention, identification, countering threats, vulnerabilities, cyber risks (art. 12)
- **Romanian Intelligence Service** ^{xx}(SRI) : **cyber intelligence** and prevention/counteraction of **APT** (Advanced Persistent Threat) against national security (art. 14); residual attribution for APT in all cases not covered by other authorities
- **Ministry of National Defense** ^{xxi}(MApN) : **cyber defense** , defensive/offensive cyberspace operations, military cyber intelligence/counter-intelligence (art. 11, 30)
- **Foreign Intelligence Service** ^{xxii}(SIE), **Special Telecommunications Service** ^{xxiii}(STS), **Guard and Protection Service** ^{xxiv}(SPP), **Office of the National Register**

⁵The Cyber Security Operational Council (COSC) (art. 8-9) is a consultative body without legal personality, under the coordination of the Supreme Council for National Defense (CSAT). The members of the Supreme Council for National Defense are: the Minister of National Defense, the Minister of National Affairs, the Minister of Foreign Affairs, the Minister of Justice, the Minister of Economy, the Minister of Public Finance, the Director of the Romanian Intelligence Service, the Director of the Foreign Intelligence Service, the Chief of the Defense Staff and the Presidential Advisor for Security. The Secretary of the Supreme Council for National Defense is appointed by the President of Romania and has the rank of State Advisor within the Presidential Administration.

of State Secret Information ^{xxv}(ORNISS) : cybersecurity of own infrastructures (art. 15-18) .

2. Incident management (art. 20-23). National Platform for Reporting Cybersecurity Incidents ^{xxvi}(PNRISC) – developed and managed by DNSC.

Notification obligations (art. 21):

- Natural/legal persons from art. 3 para. (1) let. b) and c) (electronic communications providers, public service providers): **obligation to notify incidents to PNRISC immediately, but no later than 48 hours** after discovery
- If the information is incomplete: **completion within max. 5 calendar days**
- Authorities with networks art. 3 para. (1) letter a) (defense, public order, national security): notification in compliance with the classified information regime (Criminal Code (Law 286/2009) – art. 249-252, 325, 360-366, 374)

Responsibilities (art. 23): Collection of incident notifications; Evaluation of data and information; Coordination of incident management; Support for remediation of effects; Retention of incident data for **5 years** , without collection of content data .

3. Cyber resilience (art. 24-26)

Proactive measures: Establishing incident response teams (CSIRT). (Computer Security Incident Response Team) is a group of professionals specialized in managing, analyzing and resolving cybersecurity incidents (data breaches, ransomware attacks, etc.). CSIRT is essential for any organization that wants to protect its digital assets. The Cybersecurity Incident Response Team has specialized human resources and a security operations center. In fact, it is a reserve of resources and capabilities that has anticipatory knowledge capabilities on potential threats. Capabilities are also developed through cooperation with the private sector to implement security and/or automatic detection solutions. Other responsibilities are intelligent threat analysis, staff training, awareness campaigns and last but not least, cyber hygiene .

Reactive measures :

- Response and contingency plans
- Use the resource pool
- Restoring functionality
- Broadcast alert
- Deterrence through public attribution of attack perpetrators ^[1]

The obligations of providers of technical cybersecurity services (art. 25) are to transmit data/information to the authorities within a maximum of **48 hours** (incident) or **5 days** (threats, risks, vulnerabilities).

This is forbidden . requests personal data or content data ^[1]

4. National Cyber Alert System (SNAC) (art. 27-29)

- **Cyber alert levels** : stability through DNSC methodology, endorsed by COSC
- **Establishment/modification of level** : DNSC director decision, with COSC advisory opinion
- **Obligation** : persons from art. 3 to develop **their own action plans** for each type of alert and to apply them when declaring alert states.

5. Cyber defense – military component (art. 30-31)

The Ministry of National Defense according to (art. 30): Defends and protects its own information systems/networks; Plans and conducts cyberspace operations through the National Military Command Center; Executes peacetime defensive operations through **the Cyber Defense Command**; Develops military capabilities for executing cyberspace operations; Conducts cyber intelligence and cyber counter-intelligence; Develops **offensive response capabilities**, individually or in coalition/alliance, usable in the event of cyberattacks contrary to international law; Participates in cyberspace deterrence activities. **The Ministry of National Defense** is the North Atlantic Alliance (NATO) single point of contact for military cyberspace operations.

6. Supply chain security (art. 41-44)

- **Obligation to manage risks** in the supply chain (fake/counterfeit solutions, fraudulent manipulation, fake components, dangerous services, cyber espionage)
- Designation of cybersecurity responsibility for the chain
- Policies, technical standards, risk assessment, training.

7. Minor offences (art. 48-49)

Art. 48 paragraph (1) – The following acts constitute **contraventions** (if they are not crimes):

- a) Failure to comply with the obligation to notify within the incident deadline (art. 21 paragraph 1)
- b) Failure to comply with the obligation to fully communicate incidents (art. 21 para. 2, art. 22)
- c) Failure to provide data/information by cybersecurity service providers (art. 25 para. 1)

Sanctions (art. 48 para. 2-6):

- **Individuals** : fine 5,000-50,000 lei
- **Legal entities** : fine **up to 200,000 lei** (for the first offense); for repetition: up to **1% of turnover** (operators >50 employees) or **3% of turnover** (operators >250 employees and >50 million EUR)
- **Finding** : National Cyber Security Directorate (DNSC) and other powers (art. 49)
- **Recipe** : 2 years
- **Appeal** : Bucharest Court of Appeal, within 15 days^{xxvii}

8. Related legislative amendments (art. 50-51)

Art. 50 – Amends **Law no. 51/1991 on national security**, introducing: **Lit. n)** - "cyber threats or cyber attacks on information and communications infrastructures of national interest" as **a threat to national security** and **Lit. o) - p)** - resilience to hybrid risks, propaganda/disinformation campaigns in cyberspace [Criminal Code (Law 286/2009) – art. 249-252, 325, 360-366, 374].

Art. 51 – Amends **GEO no. 1/1999** on the state of siege and the state of emergency and includes “cyber defense” in the definition of the state of siege. It also includes “*cyber security for national security reasons*” among the causes of the state of emergency/siege.

There was an obligation to obtain an opinion from the Cyber Security Operational Council (**COSC**), of the Organization and Functioning Regulation course, CSAT Decision No. 17/2013 was approved **when the exceptional measure has cyber security/defense causes**.

C.2 Law No. 362/2018 – Transposition of the NIS Directive (EU Directive 2016/1148) establishes the legal and institutional framework for ensuring a **high common level of security** ^{xxviii}**of networks and information systems** ^{xxix}.

1. Scope

- **Essential service operators** : entities from critical sectors (energy, transport, health, finance-banking, drinking water, digital infrastructure)
- **Digital service providers** : online marketplaces, search engines, cloud computing services

2. Competent authority

- **CERT-RO** (established by Government Decision 494/2011), taken over by **DNSC** by *Emergency Ordinance 104/2021 on the establishment of the National Cyber Security Directorate*^{xxx}
- National competent authority, national contact point, CSIRT team ⁶.

3. Operator and supplier obligations (art. 10-11)

- Cybersecurity **risk management**
- appropriate and proportionate **technical and organizational measures**
- **Incident notification** to CERT-RO/DNSC
- Compliance with technical standards developed by DNSC

4. Minimum security requirements (art. 10 para. 5)

- Rights access management
- User awareness and training
- Activity logging and traceability
- Security testing and evaluation
- Encryption
- Identification and authentication management
- Incident Response
- System maintenance
- Physical protection
- Security plans
- Risk analysis and assessment
- Vulnerability management

C.3 Government Emergency Ordinance No. 104/2021 on the establishment of the National Cyber Security Directorate (DNSC) , which entered into force on September 24, 2021, establishes **DNSC** as a specialized body of the central public administration, subordinate to the Government, under the coordination of the Prime Minister.

1. The DNSC statute is with **legal** entity , fully financed from the state budget.

2. Main responsibility (art. 3): Ensuring cybersecurity **of national civil cyberspace**; Competent national authority for civil cyberspace; Management of cybersecurity risks and incidents ^{xxxi}.

3. Functions and powers (art. 5):

⁶Computer Security Incident Response Team/Cybersecurity Incident Response Team

Strategy and planning : development of strategies, regulations, norms, requirements, guides;

Operations and response : coordination of detection, protection, attack response activities;

National *Cyber Security Incident Response Team* ; incident investigation;

National platform for reporting cybersecurity incidents.

Government Cybersecurity Incident Response Team :

Incident response services for public administration.

Certificates : national certification authority in the field of cybersecurity.

- **Registries : National Registry of Cybersecurity Assets, Products and Services (RNAPSSC)**
- **Crisis management : National Cyber Security Crisis Management Center (CNGCSC)**

C.4. Law no. 163/2021 on information and communications infrastructure of national interest and the conditions for the implementation of 5G networks

Adopted in June 2021, it establishes measures to mitigate security risks, threats and vulnerabilities in the implementation/operation of IT&C infrastructures of national interest.

1. Purpose

- Authorization of manufacturers, distributors, integrators of 5G technologies
- Security risk assessment for critical infrastructure equipment
- Implement **5G Security Toolkit** (EU recommended)^{xxxii}

2. Authorization procedure

- MCID submission request
- **CSAT** agenda
- Mandatory CSAT approval for the use of technologies in infrastructures of national interest and 5G networks
- Affidavit: manufacturer/distributor/integrator meets conditions (not subject to foreign government influence, complies with security standards, has no history of security violations)^{xxxiii}

3. Authorization withdrawal

- Already authorized technologies can be used **7 years** (general) or **5 years** (network core) after authorization withdrawal

4. Sanctions

- **Offenses** : use of unauthorized technologies in 5G networks
- Immediate ban on use^{xxxiv}

Cybersecurity strategies and action plans

1. The Cybersecurity Strategy 2022-2027 established by Government Decision no. **11/2021** is updated according to national/international developments and² contains a number of five **strategic objectives of strategic importance, as follows:** Action Plan; Secure, resilient networks and systems ; Deterrence and attribution of cyber attacks; Public-private cooperation and Education and awareness^{xxxv}

C.6. Directive (EU) 2022/2555 on the security of network and information systems (NIS2)

NIS2 Directive – Non-transposition. was adopted at European level in December 2022, with

the transposition deadline being October 17, 2024 ^{xxxvi}. Status Romania (December 2025). Transposition has not been carried out. **NIS2 elements** (anticipated to be integrated into future legislation):

- **Scope expansion** : 18 critical sectors (compared to 7 in NIS1)
- **Entity categories** :
 - **Essential** (high criticality sectors): energy, transport, health, public administration, digital infrastructure
 - **Important** (critical sector): postal/courier services, waste management, research
- **More detailed security requirements** : risk management, business continuity, supply chain security, encryption, access controls
 - **Uniform reporting framework** : Early warning - 24 hours; Detailed initial report - 72 hours; Final report with full analysis one month.
- **Stricter sanctions** : up to 4% of turnover or EUR 20 million (compared to 2% in current Romania)
- **Senior management responsibility** : for failure to comply with risk management measures

D Personal Data Protection and Confidentiality of Communications

D.1. General Data Protection Regulation (GDPR/RGPD) ^{xxxvii}. Regulation (EU) 2016/679 – directly applicable from May 25, 2018 in all EU member states, without the need for transposition.

1. Fundamental principles (art. 5 GDPR): Lawfulness, fairness, transparency; Purpose limitation; Minimization of data used; Accuracy; Storage limitations; Integrity and confidentiality; Responsibility (accountability) .

2. The rights of data subjects are: Right to information; Right of access; Right to rectification; Right to erasure ("right to be forgotten"); Right to restriction of processing; Right to data portability; Right to object and the right not to be subject to automated decision-making ^[38]

3. The obligations of personal data controllers are:

- **Designation of a Data Protection Officer (DPO)** when mandatory (public authorities, large-scale monitoring, processing of large volumes of special data)
- **Register of processing activities**
- **Data Protection Impact Assessment (DPIA)** for high-risk processing
- **Notification of security breaches** to ANSPDCP within **72 hours**
- **Appropriate technical and organizational measures** (security by design, security by default)

4. Law stability sanctions are on two levels: Level 1 : up to EUR 10 million or 2% of turnover (global, annual); **Level 2** : up to EUR 20 million or 4% applied to turnover (global, annual) – for serious violations (processing grounds, data subject rights) .

The National Supervisory Authority for Personal Data Processing (**ANSPDCP**) ^{xxxviii} **is designated as the supervisory authority.**

Law No. 190/2018 on the application of the GDPR Regulation ensures the uniform application of the GDPR in Romania ^{xxxix}. Main elements : Designation of data responsibility (art. 10); Specific rules for processing for journalistic, academic, artistic, literary purposes: Cooperation with *the National Supervisory Authority for the Processing of Personal Data* .

D.2. The legislation on the protection of privacy in the electronic communications sector establishes specific conditions guaranteeing the right to protection for the protection of privacy in the electronic communications sector (**Law no. 506/2004** ^{xl)})

1. Prohibition of interception (art. 1 para. 2). Listening, recording, storage, any form of interception/surveillance of communications and traffic data is **PROHIBITED** , with legal exceptions

2. SPAM – Unsolicited commercial communications (art. 12)

- **PROHIBITED** : carrying out commercial communication through automatic calling systems, fax, e-mail, other methods of use, electronic communications services **without the express and prior consent** of the recipient
- **Exception** : if the email address was obtained directly from the customer during the sale of the product/service, for similar products/services, and the customer did not object
- **Message format** : Subject must begin with " **ADVERTISING** " in capital letters
- **Mandatory content** : full name/name, CUI/CNP, domicile/headquarters
- **Right of opposition** : the recipient must be able to request termination in a simple way, free of charge, with effect within a maximum of **48 hours** .

3. SPAM Sanctions (according to Law 506/2004) for Contravention the sanction is a fine of 5,000-100,000 lei, and for companies with turnover > 5 million lei: fine up to 2% of turnover .

E. Specialized prosecutorial structures for cybercrime of the Public Ministry

E.1 The competence of the Prosecutor's Office in Computer Crime within the structure of the Public Ministry is carried out through offices/prosecutors specialized in computer crimes and the Directorate for the Investigation of Organized Crime and Terrorism Offenses (DIICOT) The Directorate for the Investigation of Organized Crime and Terrorism ^{xli}(DIICOT) carries out criminal prosecution for serious crimes, under the conditions of stability of Emergency Ordinance no. 78/2016 . DIICOT's competence in cybercrime matters (art. 11):

1. Computer crimes that require the existence of an organized criminal group (art. 11 paragraph 1 point 1): **Computer fraud** (art. 249 CP); **Performing fraudulent financial operations** (art. 250 CP); **Illegal operations with non-cash payment instruments** (art. 250¹ CP); **Accepting fraudulent operations** (art. 251 CP); **Computer forgery** (art. 325 CP); **Illegal access to an information system** (art. 360 CP); **Attempting** the crimes listed and highlighted above .

2. Particularly serious computer crimes (>2 million RON) + organized crime group (art. 11 paragraph 1 point 2): Computer fraud, fraudulent financial operations, computer forgery (if the damage is >2,000,000 RON) .

3. Computer crimes that AUTOMATICALLY fall within the competence of DIICOT (art. 11 paragraph 1 point 2): **Illegal interception** (art. 361 CP); **Alteration of data integrity** (art. 362 CP); **Disruption of the functioning of systems** (art. 363 CP); **Unauthorized data transfer** (art. 364 CP); **Illegal operations with devices/programs** (art. 365 CP); **Child pornography** (art. 374 CP); **Attempt** to commit crimes 361-365

4. The competent court is the Court of First Instance for cases under DIICOT jurisdiction .

Note : NOT all cybercrimes automatically fall under the jurisdiction of DIICOT . For example, illegal access (art. 360) and computer fraud (art. 249) require an organized criminal group to fall under the jurisdiction of DIICOT; in the absence of these conditions, jurisdiction falls to the prosecutor's offices attached to the courts/tribunals.

F. Banking financial crime in a cyber context

F.1. Money Laundering in a Cyber Context ^{xlii}

1. Money laundering offence (art. 49) of Law 129/2019: a) the exchange or transfer of goods, knowing that they come from the commission of offences, for the purpose of concealing or disguising the illicit origin of these goods or for the purpose of a person who takes care to try to commit offences. punishment; b) the concealment or disguising of the true nature, provenance, situation, disposition, circulation or ownership of goods or rights over them, knowing that the goods come from the commission of offences; c) c) the acquisition, possession or use of goods by persons other than the active subject of the offences from which the goods come, knowing that they come from the commission of offences. The attempt is punishable.

2. The financial intelligence unit of Romania is the National Office for the Prevention and Combating of Money Laundering (ONPCSB) (art. 1 para. 2)

➤ The competent authority that coordinates the assessment of the risks of money laundering and terrorist financing at national level, an assessment that is carried out within a cooperation mechanism with the authorities and institutions referred to in paragraph (1), as well as with self-regulatory bodies, ensuring the protection of personal data and professional secrecy under the terms of the law ^{xliii}. The Office is the competent authority that coordinates the national response to the assessed risks, including the working procedure and operational activity within the cooperation mechanism, and informs the European Commission, the European Banking Authority and the Member States in this regard. It receives notifications from obliged persons (banks, exchange offices, lawyers, notaries, accountants, bookmakers, real estate operators)

➤ When it finds indications of money laundering or terrorist financing, it informs **the Prosecutor's Office attached to the HIGH COURT OF CASSATION AND JUSTICE**

3. Reporting obligations (art. 5-7): **Immediate notification** to ONPCSB when there are suspicions that the operation is aimed at money laundering or terrorist financing; **Reporting of cash transactions** : within 10 working days for transactions $\geq$ **10,000 EUR** equivalent (lei or value) .

4. Relevance to cybercrime

- **Cryptocurrencies** and money laundering: high risks due to relative anonymity, insufficient regulation
- **The 2023 National Risk Assessment Report** identifies as a risk : "Purchasing cryptocurrencies with money obtained from criminal activities."
- **Cyber fraud (phishing, ransomware)** → money laundering through cryptocurrencies, international transfers, electronic payments^{xliv}

5. Connection with cybercrime

Money laundering falls within the competence of DIICOT only if the money/property comes from the commission of crimes within the competence of DIICOT (therefore including

serious computer crimes within the competence of DIICOT) [Art. 11 para. (1) point 3 GEO 78/2016].

F.2. Relevant case law

A. Using bank cards

Decisions to unify the jurisprudence^{xlv} of the High Court of Cassation and Justice :

Decision on mounting the device at ATMs and using cards:

1. **Installing skimmers , video cameras, fake keyboards at ATMs** according to art. 365 CP - illegal operations with computer devices)
2. **Using a genuine bank card without the holder's consent** for cash withdrawals = art. 250 para. (1) of the Criminal Code (performing fraudulent financial transactions)
3. **Using a counterfeit bank card** for withdrawals = art. 250 para. (1) of the Criminal Code + art. 313 of the Criminal Code (forgery of payment instruments) – actual concurrent offenses

Decision No. 53/2022 (HIGH COURT OF CASSATION AND JUSTICE)^{xlvi}: Unauthorized use of a bank card in contactless mode at the POS terminal for product selection = art. 360 CP (illegal access to computer system) + art. 250 CP (fraudulent financial operations) – agreement

B. Other relevant decisions

Decision no. 37/2021 (HIGH COURT OF CASSATION AND JUSTICE)^{xlvii}: Publishing fictitious products online that cause damage, without intervention in the computer system = **does NOT constitute a computer crime** , but fraud (art. 244 CP)

Decision no. 68/2021 (HIGH COURT OF CASSATION AND JUSTICE)^{xlviii}: Analysis of the material element of the crimes of illegal access to an information system (art. 360 CP): the access operation must achieve intrusion/penetration into the system

Decision No. 15/2013 (HIGH COURT OF CASSATION AND JUSTICE)^{xlix}: Discussion on the notions of "access" within the meaning of art. 360 of the Criminal Code; the need to clearly define access to avoid the extensive application of criminalization

G. Synopsis Table – Cybercrime Legislation Romania

Categories	Regulatory act	Regulatory object	condition	Main sanctions
Criminal charges	Criminal Code art. 249-252, 325, 360-366, 374	Cybercrime, fraud, child pornography	Force	3 months - 7 years in prison
Ratification of conventions	Law 64/2004	Budapest Convention (2001)	Force	International obligations
avert	Law 161/2003, Title III	Definitions, prevention measures, cooperation	Partially in force (art. 42-51 repealed)	Fine 5,000-50,000 lei (misdemeanor)
Cybersecurity	Law 58/2023	SNSC, COSC, competence, PNRISC, SNAC	Vigor (2023)	Fine 5,000-50,000 lei; up to 3% CA
NIS Directive	Law 362/2018	Essential service operators, digital service providers	Vigor (2018)	Cf. Law 58/2023

*INTERNATIONAL JUDICIAL COOPERATION IN THE CONTEXT OF THE ADOPTION IN
2024 BY THE UNITED NATIONS OF THE CONVENTION ON CYBERCRIME*

DNSC	Government Emergency Ordinance 104/2021	Establishment of DNSC, takeover of CERT-RO	Vigor (2021)	-
5G infrastructure	Law 163/2021	5G technology authorization, supply chain risk	Vigor (2021)	Offences, prohibitions on use
GDPR	EU Regulation 679/2016	Personal data protection	Direct applicability (2018)	Up to EUR 20 million or 4% of turnover
National GDPR	Law 190/2018	Apply GDPR Romania	Vigor (2018)	See GDPR
SPAM	Law 506/2004, art. 12	Unsolicited commercial communications	Vigor (2004)	Fine 5,000-100,000 lei; up to 2% of turnover
DIOCT	Government Emergency Ordinance 78/2016	Competence in organized crime, including cybercrime	Vigor (2016)	-
Money laundering	Law 656/2002	Preventing money laundering, including crypto	Republic 2012	Penalties CP
NIS2	EU Directive 2022/2555	Network and systems security (18 sectors)	NOT TRANPOSED (deadline: Oct. 2024)	Anticipated: 4% of turnover or EUR 20 million

4. Areas of applicability of the law for computer crimes

Criminal acts depend on the nature of the crime. There is no international consensus on cybercrime. *The "Convention"* does not explicitly define the crime of "cybercrime". Cybercrime is used as a generic term for a wide range of activities carried out online and aimed at committing crimes.

In practice, it is found that there are **cybercrimes** in which we find traditional criminal activity that takes place "online" and does not require the use of a computer. Examples include: identity theft; fraud and incitement to violence; trafficking in prohibited substances; drug trafficking; coordination of terrorist activities, etc.

Also from practice we find that there are **cyber-dependent crimes** committed only through the use of information and communication technology devices. Examples include: spreading malware, encrypting databases and demanding substantial sums of money to unlock the owner's access to their own database.

Social engineering cybercrime . Social engineering cybercrime is a new phenomenon in society. In information security ⁱ, social engineering means manipulating people to reveal sensitive data (passwords, codes, bank details) or provide access to systems and resources. Social engineering ^{li}is a form of psychological manipulation by which a person or group is determined to disclose confidential information or take actions that affect their safety, usually in the context of computer security and online fraud. It is based on exploiting the victim's trust, inattention or emotions (fear, urgency, curiosity, greed) to make them "cooperate". It is a first step for a complex fraud scheme and manifests itself ^{lii}through phishing messages:

emails/SMS/messages on social networks that imitate the bank, courier company, ANAF, etc. and ask for personal data or click on a malicious link.

The tactical field of social engineering is defined by the science of sociology applied in the digital environment with the express purpose of creating criminal situations and is carried out through a mix in which the criminal acts in the online space on the victim (from other state jurisdictions) and determines them to do certain actions that this finality victim is not aware of. Every person who provides the social media program, or the electronic mail address can become the victim of a cybercrime. The "Convention" considers that **international cooperation is necessary in a unified manner** and each state must adapt its domestic legislation and procedures to criminalize the following acts:

- damage, deletion, alteration or suppression of electronic data, when committed intentionally and without right;
- seriously hindering the functioning of an information and communications technology system by entering, transmitting, damaging, deleting, modifying or suppressing electronic data;
- misuse devices including programs designed or adapted primarily for the purpose of committing any of the computer crimes through Illegal access to the computer system, illegal interception, interference with electronic data or with an information technology system.
- The acquisition, production, sale, placing for use, import, distribution, making available or in any other way these devices constitute a crime only if they are used in criminal proceedings.
- The transmission of passwords, access data, electronic signatures or similar data through which the entire system or part of it can be accessed is classified as a crime;

States Parties shall consider and adopt such legislative and other measures as may be necessary to establish as criminal offences under domestic law the following acts committed intentionally and without right:

- (a) Producing, offering, selling, distributing, transmitting, broadcasting, displaying, publishing or otherwise making available materials depicting child sexual abuse or sexual exploitation through an information and communications technology system;
- (b) Solicit, procure or access materials depicting child sexual abuse or sexual exploitation of children through an information and communications technology system;
- (c) Possession or control of child sexual abuse or sexual exploitation material stored on an information and communications technology system or other storage medium;
- (d) Financing of stability offences in accordance with subparagraphs (a)-(c) of this paragraph, which States Parties may establish as a separate offence.

For the purposes of the Convention, the term "*material depicting sexual abuse or sexual exploitation of children*" includes visual material and may include written or audio content that depicts, describes any individual under the age of 18: (a) Engaging in real or simulated sexual activity; (b) In the presence of a person performing any sexual activity; (c) Sexual parts are displayed for primarily sexual purposes; or (d) Subjected to torture or cruel, inhuman or degrading treatment or punishment, and such material is of a sexual nature.

Conclusions and Recommendations

Conclusions and Recommendations on International Cooperation and National Resilience Against Cybercrime

The complex analysis of international cooperation mechanisms in the context of the adoption of the 2024 UN Convention, corroborated with the assessment of the legislative framework in Romania, leads to a series of fundamental conclusions.

The transition of judicial procedures from an approach based on strict territorial sovereignty to a collaborative, international digital governance, necessary to counter criminal phenomena in the "Dark Web" and the actions of hostile state actors, is evident.

The Jurisdictional Paradigm Shift: From Territoriality to Virtual Fluidity

The research confirms that the classic principle of geographical territoriality has become insufficient in combating cybercrime.

✓ **Decoupling Crime from Location:** Adoption of the United Nations Convention (2024) formal recognition that criminal jurisdiction must follow the flow of data, not physical borders. Complementarity between state authorities is mandatory, not optional, given that digital evidence is volatile and a state's critical infrastructure can be attacked from servers located "offshore" or unstable.

✓ **Global Standardization vs. National Specificity:** Although the Convention respects sovereignty (Art. 5), its effectiveness depends on the ability of states to harmonize definitions of crimes (such as illegal access or interception of data) to facilitate letters rogatory and the rapid preservation of electronic evidence.

Maturity and Stratification of the Legislative Framework in Romania

The analysis of national legislation demonstrates that Romania has overcome the reactive adaptation phase, having a layered and robust legislative system, although there are implementation vulnerabilities.

Strengthening Criminalization (Criminal Code): The integration of cybercrimes into Title VII of the Criminal Code and the constant updating of penalties (e.g. Art. 360-365) show a maturation of criminal policy. Romania has clear instruments to sanction all crimes against system security, as well as computer fraud (Art. 249 CP), covering the spectrum from "hacktivism" to organized financial crime.

The State's Institutional Architecture for Cybersecurity: The establishment of the National Cybersecurity Directorate (DNSC) and the functioning of the Cybersecurity Operational Council (COSC) under the aegis of the CSAT places cybersecurity directly at the center of national security. Law 58/2023 provides the necessary levers for a rapid response, transforming cybersecurity from a technical issue into one of national defense.

Critical Vulnerabilities and Emerging Challenges

In the legislative context, the research material identifies critical points that require immediate attention:

➤ **Lack of NIS2 Transposition into National Law:** The delay in transposing the NIS2 Directive (status December 2025) creates a systemic vulnerability. The extension of essential sectors (from energy to waste management) and a more drastic sanctioning regime are vital to

respond to the private and public sector. The absence of this framework leaves operators of essential services exposed to heterogeneous security standards.

➤ **The Challenge of the "Dark Web" and Cryptocurrencies :** The material highlights a worrying trend in the area of crypto reserves (e.g. the models of El Salvador, USA, China). Cybercrime is no longer just the prerogative of independent hackers, but is becoming a source of financing for regimes or paramilitary organizations. The capacity of the Romanian state to identify, seize and capitalize on crypto assets (extended confiscation) must keep pace with the innovation of criminals who use currency mixers and decentralized services.

The Balance Between Security and Fundamental Rights

A major conclusion of the research concerns the ongoing tension between investigation efficiency and privacy protection. **Surveillance vs. GDPR:** The international cooperation and data retention mechanisms of the UN Convention and national legislation (Law 161/2003, Law 506/2004) must be applied with extreme rigor in order not to violate the GDPR Regulation. The risk that cyber investigations become excessively invasive is real, and **procedural guarantees must remain an active filter, not just theoretical**.

Based on the research, the following directions of action are required:

1. **Urgent NIS2 Transposition:** Immediate alignment of European NIS2 standards to avoid infringement procedures and, more importantly, to secure the digital supply chain.
2. **Specialization of Magistrates:** Continuing the training of prosecutors and judges not only in criminal law, but also in understanding technical phenomena from the area of cybersecurity and cybercrime (blockchain, AI, DDoS attacks), considering the complexity of the cases described (Art. 250 CP vs Art. 365 CP).
3. **Cyber Diplomacy:** Romania must play an active role in the operationalization of the UN Convention, using its expertise (the Cyber hub in Bucharest) to facilitate cooperation between the EU and those outside the community space.

In conclusion , cybersecurity is no longer an option, but a condition for the existence of the modern state. The United Nations Convention on Cybercrime, from 2024, provides the global framework, but real resilience depends on Romania's ability to adapt and rigorously apply domestic legislation but also on anticipation of technological mutations of organized cybercrime.

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LEGAL REGULATIONS REGARDING THE PHENOMENON OF THE ACTIVITY OF FOREIGN SOLDIERS, ACCORDING TO THE LEGISLATION OF THE REPUBLIC OF MOLDOVA

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Abstract: *Legal regulations on the activity of foreign soldiers in the Republic of Moldova represent a complex area, which is located at the intersection of national law, international law and national security norms. The phenomenon of the involvement of foreign soldiers on the territory of a sovereign state raises legal, political and social issues, and the legislative framework of the Republic of Moldova clearly regulates both their rights and obligations. This framework includes constitutional provisions on the sovereignty and territorial integrity of the state, specific legislation on national defense and security, as well as regulations on international military cooperation. At the same time, the Republic of Moldova is a party to various international treaties and agreements that influence the way in which foreign soldiers carry out their activities, including the principles of respect for human rights and limitation of the use of force. The regulations cover multiple aspects: authorizing the presence of foreign soldiers, the areas in which they can carry out activities, the limits of their powers, legal responsibilities in case of violation of the law and mechanisms for controlling their activities. The obligations of the host state towards public safety, legal order and protection of citizens' rights are also clarified, balancing the need for international cooperation with respect for national sovereignty. Thus, the study of legal regulations regarding the phenomenon of the activity of foreign soldiers in the Republic of Moldova provides a complete picture of how national legislation harmonizes security requirements, international cooperation and respect for the fundamental rights of the individual, creating a clear and predictable legal framework for the presence and activity of foreign military personnel on the territory of the country.*

Keywords: *legal norm, illegal activity, foreign soldier, state territory, national security, combat, international cooperation.*

Introduction

The principle of the priority of international legal norms assumes that the legislation of a state is made up of two interdependent legal systems: domestic law and international law. Both constitute a unitary whole of the national legislative framework, but in situations where there is a conflict between the norms of the two systems, priority is given to the norms of international law.

This priority reflects the recognition of the role and obligations of states towards the international community, ensuring the conformity of domestic legislation with international

treaties and agreements to which the state is a party. In practice, this principle guarantees that international regulations prevail in the event of a contradiction with domestic legislation, thus contributing to maintaining the stability of international relations and compliance with universal norms of law. Therefore, the harmonization of domestic law with international law becomes an essential condition for the coherent functioning of the legal system of any state.

The principle of the priority of international legal norms represents a fundamental pillar of the contemporary legal system, according to which the legislation of a state is structured on two interdependent levels: domestic law and international law. These two components constitute a unified whole, and in situations where there are contradictions between their norms, priority is given to the norms of international law.

The application of this principle reflects the state's commitments to the international community, ensuring compliance with international treaties and conventions to which it is a party. The priority of international law guarantees the coherence of national legislation with global norms, supporting the stability of international relations and the protection of universal rights and obligations. Thus, the harmonization of domestic and international law becomes essential for the efficient and predictable functioning of the state's legal system.

Basic content

The priority of international legal norms implies that the legislation of each state consists of two legal systems: the system of domestic law and the system of international law. Both systems constitute a single whole – the legislation of the country, and in case of a conflict of legal norms, priority is given to the norms of international law. However, during the Soviet period, jurists from the former USSR traditionally did not recognize the norms of international law as sources of criminal law.

Contemporary legal doctrine provides that international treaties to which the Republic of Moldova is a party represent a source of criminal law in the field of preventing and combating crime, namely:

- 1) International treaties through which the Republic of Moldova has assumed the responsibility to criminalize and sanction certain dangerous acts that lead to the violation of common values and interests of society (such treaties are considered an indirect source of criminal law, because they assume the obligation of states to criminalize such acts through domestic criminal law);
- 2) International treaties on international legal assistance in criminal matters and international treaties on human rights, which are considered direct sources of criminal law because they become mandatory. Such a perception of the relationship between the two systems of law – international and domestic – has found its reflection in the constitutional legislation of most developed states (Lukaşuk, 1998: 11-28).

In accordance with the provisions of Article 20 of Law No. 595 of 1999 on international treaties of the Republic of Moldova, „the provisions of international treaties which, according to their wording, are susceptible to application in legal relations without the adoption of special normative acts, have an enforceable character and are directly applicable in the legal system and the judicial system of the Republic of Moldova, and for the

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implementation of the other provisions of the treaties, the corresponding normative acts are adopted” (Law No. 595 of 24.09.1999).

The norms of international law establish the need to implement the provisions of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries in the criminal legislation of the signatory state, including in the national legislation of the Republic of Moldova.

The Constitution of the Republic of Moldova, adopted on July 29, 1994, in Article 7 provides that this is the Supreme Law of the country and „no law or other legal act that contradicts the provisions of the Constitution has legal force”(Constitution of the Republic of Moldova No. 01 of 29.07.1994).

At the same time, Article 8 of the Constitution of the Republic of Moldova stipulates that „the Republic of Moldova undertakes to respect the UN Charter and the treaties to which it is a party, to base its relations with other states on the unanimously recognized principles and norms of international law”, and „the entry into force of an international treaty containing provisions contrary to the Constitution shall be preceded by a revision of the Constitution”. At the same time, the unanimously recognized principles and norms of international law and the international treaties to which the Republic of Moldova is a party constitute a component of its own legal system, and „if there are inconsistencies between the pacts and treaties regarding fundamental human rights to which the Republic of Moldova is a party and its internal laws, international regulations have priority” (Constitution of the Republic of Moldova No. 01 of 29.07.1994).

Therefore, the norms of international law provide for the criminalization of the activity of foreign soldiers in the national legislation of all states that have ratified the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

In order to criminalize mercenary activity, the local legislator established in the Criminal Code of the Republic of Moldova that „mercenary activity” constitutes an act that attacks social values protected by criminal law, in this regard respecting the obligation assumed at the international level to criminalize the act in domestic legislation and at the same time, taking into account the provisions of Article 1 of the Code which expressly stipulates that „The Criminal Code of the Republic of Moldova is the only Criminal Law of the Republic of Moldova” (Criminal Code of the Republic of Moldova No. 985 of 18.04.2002), in order for the person to be held criminally liable, it was absolutely necessary to introduce the act of „mercenary activity” into the Criminal Law of the Republic of Moldova.

The 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries integrates the definition of the 1949 Geneva Conventions into its content and increases the scope of application, thus defining a mercenary as a person specifically recruited at home or abroad to take part in a concentrated act of violence aimed at: overthrowing a government or undermining the constitutional order of a state; undermining the territorial integrity of a state; taking part in such an act essentially for the purpose of obtaining a significant personal advantage and being induced to act by the promise

or payment of material remuneration; not being a national or resident of the state against which such an act is directed; not being sent by a state on an official mission; not being a member of the armed forces of the state on whose territory this act takes place.

From the above, we can see that the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by Resolution No. 44/34 of the UN General Assembly on 4 December 1989, has broadened the legal meaning of the notion of a foreign belligerent. This is also any person who, in any other situation: is specifically recruited locally or internationally to participate in acts of violence aimed at overthrowing a government or the constitutional order of a state, or undermining the territorial integrity of a state; is motivated to take part in such an act in particular by the desire for substantial personal gain and is stimulated by the promise or payment of material remuneration; is neither a citizen nor a resident of the state where the action is taking place; has not been sent by any state on an official mission; is not part of the armed forces of the state on whose territory the action is taking place (International Convention No. 44/34 of 04.12.1989).

First, not only the fact of recruitment of foreign soldiers abroad, but also at the local level, was taken into account. Secondly, in the presence of all other signs, as a foreign soldier, not only a person who participates in an interstate armed conflict, but also in an internal armed conflict, is recognized.

From the above-mentioned notions, we can deduce the following features of foreign soldiers, these features are also mentioned in the International Convention on Combating the Recruitment, Use, Financing and Training of Mercenaries (International Convention No. 44/34 of 04.12.1989), so as a foreign soldier is qualified a person: who is specially recruited in the country or abroad to fight in an armed conflict; who in fact, effectively and directly takes part in hostilities; who takes part in hostilities mainly with a view to obtaining personal advantage and who is effectively promised, by a party to the conflict or on its behalf, a remuneration higher than that promised or paid to combatants with an analogous rank and function in the armed forces of this party; who is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict; who is not a member of the armed forces of a party to the conflict; who has not been sent by a State other than a party to the conflict on an official mission as a member of the armed forces of that State.

For the purposes of the Convention, direct participation in hostilities means direct participation in combat operations or any action intended to support one of the parties to an armed conflict to the detriment of another and which is likely to directly harm military operations, to harm the enemy's capabilities or to directly harm military operations, to harm the enemy's capabilities or to cause damage to protected persons and objects.

At the same time, in the Convention's view, essential for defining a person as a foreign soldier is participation or intention to participate in an armed conflict or in an act of concerted or organized violence carried out with the aim of removing a government or otherwise undermining the constitutional order or the territorial integrity of a State.

The request for examination and analysis of criminal legislation in the field of criminalizing the crime of a foreign soldier demonstrates its importance all the more pronounced, as in recent times there has been a significant increase in the number of Moldovan foreign soldiers who have fought or are fighting in other states. According to the statements of some researchers from the post-Soviet space, who have subjected this issue to

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scientific investigations, through the prism of a legal and criminal analysis, world history demonstrates that one of the generating factors for the formation and spread of foreign military soldiers are political or economic crises. An eloquent example in this sense is brought to us by history by demonstrating the fall and subsequent dismemberment of such a world power as the Soviet Union, which also generated an increase in the number of former Soviet citizens who became foreign soldiers and were actively involved in local military conflicts in Transnistria, Abkhazia, South Ossetia, Ferghana, Karabakh, etc. (Stupishin, 2021: 23-24).

Referring to the national legal framework of the Republic of Moldova, we note that it has a considerable volume of academic information in this regard, thus offering investigators quite extensive possibilities for carrying out scientific and methodological tasks.

We consider it necessary to mention that, starting with 2002, when the new Criminal Code of the Republic of Moldova came into force, the offense provided for in Article 141, Mercenary activity, was not part of the list of the most incriminated until 2014, given the fact that for the native Moldovan society, these types of activities, as a criminal phenomenon, were inappropriate.

The analysis of both media resources and open informational mass media of judicial institutions demonstrates that until the outbreak of the armed conflict in eastern Ukraine, the Dombass region in 2014, the phenomenon of the activity of foreign soldiers was practically absent from the judicial practice of the Republic of Moldova.

Thus, it is obvious that the national specialty doctrine did not have consistent scientific research on this level. At the same time, we cannot ignore the fact that in the manual of scientific investigators A. Barbaneagra and V. Gamurari, as well as in the Commentary on the Criminal Code of the Republic of Moldova from 2009, this subject is analyzed in a complex way, as a component part of a wider group of crimes – namely, the field of war crimes (Barbaneagra and Gamurari, 2008: 56).

In order to elucidate the complex and socially negative nature of the investigated phenomenon, it is necessary to thoroughly examine it and identify its basic characteristic features.

In this regard, we also mention the work of researchers Brînza Sergiu and Stati Vitalie – Treatise on Criminal Law. Special Part, from 2015, where the theoretical basis is interconnected with the practical experiences of criminal investigation officers from internal affairs bodies, employees of the prosecutor's office and courts, who conducted investigations and findings in criminal cases initiated in accordance with the provisions of Article 141 of the Criminal Code of the Republic of Moldova (Brinza and Stati, 2015: 137).

According to the provisions of paragraph 1 of Article 141 of the Criminal Code of the Republic of Moldova, we understand that the participation of a mercenary in an armed conflict, in military actions or in other violent actions aimed at overthrowing or undermining the constitutional order or violating the territorial integrity of the state – constitutes a crime and is subject to criminal liability.

According to the provisions of paragraph 2 of Article 141 of the Criminal Code of the Republic of Moldova, we note that the hiring, training, financing, or other provision of a

mercenary, as well as their use in an armed conflict, in military actions or in other violent actions aimed at overthrowing or undermining the constitutional order or violating the territorial integrity of the state – also constitutes a crime and is subject to criminal liability (Criminal Code of the Republic of Moldova No. 985 of 18.04.2002).

The legal object of the crime provided for in paragraph 1 of Article 141 of the Criminal Code of the Republic of Moldova is the social relations regarding the non-admission of the participation of the mercenary in violent actions aimed at overthrowing or undermining the constitutional order or violating the territorial integrity of the state.

The objective side of the crime described in paragraph 1 of Article 141 of the Criminal Code of the Republic of Moldova constitutes two distinctive signs: the harmful act expressed by the action of participation in an armed conflict, in military actions or in other violent actions; the period of the commission of the crime, namely – during the conduct of the armed conflict, military actions or in the commission of other violent actions.

Thus, participation in an armed conflict, in military actions or in other violent actions, presupposes the activity organized or not, led or not by other persons, with a high degree of probability of the application of violent actions.

The respective participation can be carried out in various concrete ways, such as: attacking the headquarters of public authorities or communications centers or radio and television stations; attacking military units; occupying the headquarters of public authorities or the headquarters of parties or other legal organizations; opposing the bodies responsible for maintaining public order; disarming the law enforcement agencies; etc. (Brinza and Stati, 2015: 138).

With reference to the period of commission of the offense provided for in paragraph 1 of Article 141 of the Criminal Code of the Republic of Moldova, the legislator expressly establishes that the act may be committed only during armed conflict, military actions or the commission of other violent actions, regardless of whether such conflict or actions are international or domestic in nature.

Examining the offense provided for in paragraph 1 of Article 141 of the Criminal Code of the Republic of Moldova from a legal and doctrinal point of view, we find that it is a formal one, that is, it is considered consummated from the moment of direct involvement and participation in an armed conflict, military actions or other violent actions.

The subjective side of the analyzed offense is characterized by direct intent, and the motive, as a rule, consists of material interest.

The purpose of the crime provided for in paragraph 1 of Article 141 of the Criminal Code of the Republic of Moldova is expressed by the intention to overthrow or undermine the constitutional order or to violate the territorial integrity of the state.

The subject of the crime specified in paragraph 1 of Article 141 of the Criminal Code of the Republic of Moldova is a responsible natural person who at the time of the commission of the crime has reached the age of 16, having the special quality of a mercenary.

The special legal object of the crime established in paragraph 2 of Article 141 of the Criminal Code of the Republic of Moldova is the social relations focused on the inadmissibility of ensuring in any way the activity of mercenaries or their use in violent actions, aimed at overthrowing or undermining the constitutional order or violating the territorial integrity of a state.

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In the presence of the method of financing mercenaries, the material or immaterial object of the crime specified in paragraph 2 of Article 141 of the Criminal Code of the Republic of Moldova is goods of any nature acquired through any means or financial services.

In the context of the crime provided for in paragraph 2 of Article 141 of the Criminal Code of the Republic of Moldova, the notion of goods refers not only to corporeal entities. „Goods” means financial means, any category of values, tangible or intangible, movable or immovable, tangible or intangible assets, as well as documents or other legal instruments in any form, including electronic or digital form, which attest to a title or right, including any share, interest, with respect to these values (Brinza and Stati, 2015: 138).

As for the notion of financial services, in the opinion of the authors, the following financial activities are taken into account: granting loans, borrowing funds, etc.

In the presence of the modality of other mercenary insurance, the material object of the crime may be weapons, ammunition, other destructive devices or means, harmful substances, etc.

By „other insurance of mercenaries”, we mean: providing weapons, ammunition, other destructive devices or means, harmful or dangerous substances, other such means or instruments; hosting; facilitating entry into areas with limited access; making data about target objectives available; providing other support, in any form.

By „use of mercenaries in an armed conflict, in violent actions”, we mean the effective involvement of the mercenary in participating in an armed conflict, in military actions or in violent actions.

Similar to the crime mentioned in paragraph 1 of Article 141 of the Criminal Code of the Republic of Moldova, the crime analyzed in paragraph 2 of Article 141 of the Criminal Code of the Republic of Moldova is a formal one. It is considered to be consummated from the moment of hiring, training, financing or other provision of mercenaries or their use in an armed conflict, in military actions or other violent actions.

The subjective side of the crimes specified in paragraph 2 of Article 141 of the Criminal Code of the Republic of Moldova is characterized by direct intent. The motives of the crime consist of: the perpetrator's desire to facilitate his criminal activity; the perpetrator's desire to transmit criminal experience to the mercenary accumulated.

The purpose of the crime is a mandatory secondary sign of the subjective side of the crime provided for in paragraph 2 of Article 141 of the Criminal Code of the Republic of Moldova. It is taken into account the purpose of overthrowing or undermining the constitutional order or violating the territorial integrity of the state.

The subject of the crime specified in paragraph 2 of Article 141 of the Criminal Code of the Republic of Moldova is a responsible natural person who at the time of the commission has reached the age of 16.

The legislative basis of most states of the contemporary world contains normative acts of both a general order and those of a special nature, with reference to the protection of the most precious values of society, some of which are the life and health of the person.

Here we note that among the illegal attacks on social values in the contemporary world, the crime of mercenary activity is also listed, which directly attacks the life and health of the person.

Thus, in the continuity of the scientific approach, we try to analyze the norms of comparative criminal law relating to the crime in question, in order to identify the legal and conceptual similarities and differences between the notion of mercenary and other doctrinal definitions provided by national and international criminal legislation.

In this context, we have identified such notions as: foreign combatant; terrorist fighter; member of an illegal paramilitary organization – used in international practice and doctrine in the field of preventing and combating mercenary activity and related crimes.

In order to make a clear delimitation between these notions, several approaches encountered in contemporary national legislation were analyzed, which offer us various interpretations and adopt different qualifications in this regard.

The substantial argument on which the respective analytical study is based consists in the fact that often in the process of legal qualification of one status or another, which is necessary to attribute to persons involved in the commission of extremist-terrorist or military crimes, gaps are attested in the legislative framework and, as result, major problems of legal classification of their criminal activity.

Thus, researching crimes similar to mercenary, we notice that several common elements are found in the category of terrorist crimes and, of course, military crimes.

Thus, in Chapter XIII of the Criminal Code of the Republic of Moldova, we find Article 282, which provides for criminal liability for organizing or leading a paramilitary formation not provided for by the legislation of the Republic of Moldova, as well as participation in such a formation.

Here we identify some parallels with the establishment of so-called private military companies, which are non-state organizations and represent a specific form of mercenaryism, possessing powers provided by the state to solve various tasks related to the military activity of the state and whose activity is also prohibited by the legislation of several states.

The common features of mercenary and terrorist activity are not accidentally highlighted by several researchers.

Terrorism and crimes related to it are a multifaceted problem that requires multidimensional solutions. International experience shows that respect for and protection of human rights and the fundamental principle of the rule of law are not an obstacle, but a *sine qua non* condition for identifying effective responses and reactions against threats to national, regional and international security.

The threats generated by the activity of the so-called „foreign terrorist fighters” (FTF) and the countermeasures necessary to combat these threats are no exception. Human rights and the rule of law provide a solid basis for effective action against potential threats and challenges from tendencies to engage in terrorist activities.

At the same time, the fighter, the foreign terrorist fighter as a subject of the anti-terrorist level is only one of the categories of extras who carry out terrorist activity. His actions are strictly limited to participating in battles on the side of terrorist organizations against the constitutional authority of one state or another. An example in this regard can be the terrorist fighters within the international terrorist organization DAESH, who have widely

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fought to support the ideology of this organization on the territory of the Syrian Arab Republic and the Republic of Iraq.

However, these persons cannot be equated from a legal point of view with mercenaries, given that the reasons for their involvement and participation in battles are not identical.

The concept of „*foreign terrorist fighters*” (FTF) is not a new definition. Foreign fighters have taken part in about 100 civil wars over the past 250 years (Malet, 2015: 64).

The term „*foreign terrorist fighters*” (FTF) was first officially used to refer to militants who traveled outside the conflict zone to fight on the side of the Al-Qaeda terrorist organization in Afghanistan.

This term was later applied in the context of the terrorist insurgent movements that emerged in Iraq in 2003. In the absence of a legal definition, commentators and media representatives used this notion in various ways. Finally, a definition widely accepted by international academia was proposed by the International Academy of International Humanitarian Law and Human Rights in Geneva, as „a foreign combatant is a person who leaves his or her country of origin or habitual residence to join a non-state armed group in an armed conflict abroad and who is motivated primarily by ideology, religion and/or kinship” (Geneva Academy of International Humanitarian Law and Human Rights).

In accordance with the provisions of UN Resolution No. 2178 of 2014, adopted by the Security Council at its 7272nd meeting on 24 September 2014, foreign terrorist fighters – are persons who travel to a state other than their state of residence or nationality for the purpose of committing, planning, preparing for, or participating in terrorist acts, as well as providing or obtaining terrorist training, including in connection with the conduct of an armed conflict (Resolution nr.2178 on 2014).

Turning to the Dictionary of Basic Concepts in the Field of Preventing and Combating Terrorist Activity, we can see that the foreign fighter here is described as a person attracted by a terrorist organization for the purpose of carrying out terrorist actions. This person carries out his activity on an ideological basis, material remuneration or on the basis of a dependency.

Comparing the notion of a foreign terrorist fighter with that of a mercenary, we find that they share some identical elements, such as:

1. Participation in combat in an armed conflict;
2. Neither one nor the other is a member of the armed forces of a party to the conflict;
3. They have not been sent by a state on an official mission as a member of the armed forces of that state;
4. They are neither nationals of a party to the conflict nor residents of the territory controlled by a party to the conflict;

At the same time, there are also some differences, such as: the mercenary takes part in hostilities mainly in order to obtain a personal advantage, and persons in the FTF category mostly join terrorist groups on an ideological or religious basis. At the same time, neither material remuneration nor other circumstances are excluded, which forced him to take part in

hostilities in support of terrorist groups, for example: on the basis of any kind of dependence, blackmail, etc.

As we can see, the risks generated by both compared categories are largely similar and pose significant dangers to international security. With the beginning of the „Arab Spring”, mercenaries from all over the world began to gather in the region.

It is well known that the ranks of radical Islamist structures in Syria and Iraq were formed including an impressive number of foreign citizens, many of whom support terrorist groups not for ideological reasons.

The influx of foreign fighters into Syria, most of whom, according to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by UN General Assembly Resolution No. 44/34 of December 4, 1989, can be classified as mercenaries, has become one of the most serious challenges to the statehood of Syria.

According to the head of the Center for Scientific and Analytical Information of the Institute of Oriental Studies of the Russian Academy of Sciences, Doctor of Political Sciences, Nikolai Plotnikov, the participation of foreign fighters in the civil war in Syria has significantly increased the level of cruelty and duration of combat actions (Glossary of Key Terms in Counter-Terrorism).

According to eyewitness accounts, the terrorist militants who repeatedly demonstrated excessive brutality and cruelty were in most cases citizens of foreign states. The presence of these individuals in the ranks of homegrown terrorists was very useful for the leaders of the terrorist organization DAESH, given that the newly arrived fighters were trained to do the „dirtiest work”, starting with the torture of captured enemies and ending with their physical execution.

Considering the danger posed by the activity of the FTF, the UN Security Council periodically recalls its decision in resolution 2178 of 2014, according to which the legislation of all Member States must qualify as serious crimes the activities expressed in the travel, recruitment and financing of foreign terrorist fighters, and urges Member States to fully implement their obligations in this regard, including ensuring that their domestic laws and regulations establish sufficiently serious crimes to provide for the capacity for criminal prosecution and appropriate penalties that adequately reflect the gravity of the crime, and reiterates its call on Member States to cooperate and support each other's efforts to combat violent extremism that fosters the development of terrorist aspirations (Plotnikov: 2).

The definition adopted by the Security Council contains several elements that should be highlighted. First, the Security Council definition applies only to foreign fighters who travel for the purpose of terrorist activity. However, not all foreign fighters travel specifically for terrorist purposes. Thus, although these fighters may in some cases be charged in their home country with a specific crime for participating in an armed conflict in another country, they are not necessarily terrorists and therefore cannot be treated as such.

Secondly, the Security Council definition applies regardless of whether or not they participate in an armed conflict. However, the International Committee of the Red Cross warns of the „potentially negative effects” of combining the terms „armed conflict” with „terrorist activities”, which leads to the erroneous classification of all non-state armed groups as terrorists (International Committee of the Red Cross).

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Based on the latter, we find that foreign terrorist fighters, however, differ from mercenaries, who fight abroad on behalf of governments or privately funded entities (Lister, 2015: 46) and are „motivated to take part in hostilities essentially by the desire for private gain” (Additional Protocol No. 1 of 10.06.1977).

However, in situations where financial, political and ideological interests overlap significantly, these individuals can sometimes be defined as „*foreign terrorist fighters*”.

It is known that the ranks of radical Islamist structures in Syria and Iraq were formed by a significant number of foreign citizens, many of whom support terrorist groups for both ideological and other reasons.

Since June 2014, the number of militants arriving from the EU has practically doubled. Almost half of them were citizens of France, Great Britain, Belgium and Germany. A large number of mercenaries came from the former Yugoslavia – Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro.

The Law of the Republic of Moldova No. 120 of 21.09.2017 on preventing and combating terrorism defines the notion of a terrorist as follows: a terrorist is a person involved in any form in a terrorist activity (The RIA Radiosputnik news portal estimated the number of foreign fighters in Syria and Iraq).

The national legislator did not in vain provide for „involvement in any form”. This provision shows that not only the terrorist attack itself is attributed to terrorist crimes. The Criminal Code of the Republic of Moldova provides for 18 terrorist crimes, respectively, the commission of any of them places the perpetrator in the legal field as a terrorist.

Thus, according to the Law on the Prevention and Combating of Terrorism, a terrorist crime is one of the crimes provided for in Article 134¹¹ of the Criminal Code of the Republic of Moldova. International doctrine defines a terrorist crime as a prejudicial act provided for by national legislation and international conventions and treaties, carried out for terrorist purposes.

In this context, the foreign terrorist fighter is just one of the multiple manifestations of a terrorist. The same law provides that terrorism is a phenomenon with a high degree of social danger, characterized by a radical ideology and a practice of influencing through violence the decision-making of public authorities and institutions or international organizations, accompanied by intimidation of the population and/or other violent actions.

In this way, we find that terrorism is a complex socio-political and criminal phenomenon, conditioned by the internal and external contradictions of social development in different countries (Law No. 120 of 21.09.2017 on preventing and combating terrorism).

These conditions also form the personality of the terrorist, which is different each time, depending on the environment in which the future terrorist was educated and raised. Thus, the personality of the terrorist is composed of a set of personal, professional, age, psychological and other qualities that characterize a person involved in one form or another in terrorist activities. Knowledge of these qualities allows employees of special services and law enforcement agencies to shape his behavior, preventing him from committing terrorist acts, to apply measures to detect and neutralize him, for example: to divide and distinguish between „terrorist-leader”, „terrorist-actor”, „terrorist-suicide”, „terrorist-hero”, etc.

It is no coincidence that terrorism is considered one of the global problems of our time. A global problem means a world problem that is characteristic of many countries of the world. Terrorism is on an equal footing with other global problems, such as: drug addiction, poverty, AIDS, global warming and many others. These problems threaten the life and well-being of all mankind. Terrorism being one of them.

Conclusions

Following the analysis, we can draw conclusions, such as that the phenomenon of mercenarism is recognized as a specific crime in several countries. However, in the criminal doctrines of the respective states we identify some differences both in the issue of defining the mercenary, and in the legal regulation of the criminal component of mercenaryism. A number of problems are also found in explaining the legal object of this crime.

Persons are held criminally liable according to the existing legislation in several states, primarily for their participation as mercenaries in armed conflict, in military actions or for recruiting mercenaries. On the other hand, the criminalization of such acts as training, financing mercenaries and their use in armed conflicts or hostilities is not often attested. The plausible explanation probably lies in the difficulty of proving the purpose pursued by mercenaries by participating in hostilities. In many cases, this offense legally falls within a broader formulation of war crimes, being mentioned in this sense by attacking the constitutional order or territorial integrity of a state. In real situations, however, practice shows that in order to evade criminal liability, mercenaries often declare that they participated in combat actions not for financial purposes, but are guided by some „noble” principles, whether ideological of a political or religious nature, or „defense of those suppressed by illegally elected governments”. In the absence of evidence to the contrary, criminal liability for mercenary activity becomes impossible due to the absence of purpose, as it is usually formulated in the criminal legislation of several states.

Finally, we can conclude that mercenary activity has a number of negative consequences, namely: violation of fundamental human and citizen rights and freedoms, violation of peoples' rights to self-determination, damage to the territorial integrity of states, damage to their political independence and sovereign equality, undermining the stability of constitutionally formed governments in developing states.

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THE LEGALITY OF CRIMINALIZATION AND THE HISTORICAL EXCEPTION AT NÜRNBERG: A DOCTRINAL REASSESSMENT

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Abstract: This research reveals the general context of the principle of criminal legality in the architecture of the modern legal order, analyzed through the prism of its axiological foundation, which constitutes an essential guarantee of legal certainty and, implicitly, an instrument for preventing arbitrariness. The general issue focuses on the Nürnberg trials, approached from the perspective of a deeply philosophical derogation from the fundamental principle of criminal law *nullum crimen sine lege, nulla poena sine lege*. The paper addresses, from a theoretical and legal perspective, one of the most complex dilemmas of international criminal law - the relationship between criminal legality, as a fundamental guarantee of criminal law that protects the individual against arbitrariness, and the need to punish crimes against peace, humanity, and war in the absence of a pre-existing legal norm that clearly establishes the criminalization and punishment for such acts. The purpose of the research is to reevaluate the Nürnberg exception, which represented a turning point in light of subsequent developments in international criminal law. The results of the research directly highlight the fact that the Nürnberg exception did not actually undermine the principle of criminal legality but expanded its content, paving the way for the development of contemporary international criminal law and the strengthening of individual criminal responsibility for heinous international crimes. Therefore, the research highlights the role of the principle of criminal legality as an axiological foundation and guarantee of legal order, while also emphasizing the need for a nuanced understanding of it in contemporary international criminal law, where the balance between legality and moral equity remains a topical theoretical and practical issue.

Keywords: principle of legality, Nürnberg exception, international criminal law, criminal liability, criminal sanction, international crime, war crime, crime against humanity, etc.

1. INTRODUCTION

Above all, „law is order, and good law is good order” (Aristotle, 2007). The idea of the great philosopher Aristotle highlights the importance of law within the rule of law. So, the presence of sound laws, those that are clear, concise, predictable, and accessible, is the prerogative and guarantor of society, determining the normal functioning of a democratic state, a criminal investigation, and fair justice (Aristotle, 2007).

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Criminal legality is the guiding principle, indeed, a state could not exist without such a guarantee. Legality is an idea that has been embodied since ancient times, since the emergence of the state and the law, recognized since antiquity through the latin maxims „*nullum crimen sine lege, nulla poena sine lege*” (no crime without law, no punishment without law).

In this context, the principle of criminal legality becomes a fundamental pillar of the legal order, ensuring that no person can be criminally punished without a prior criminal offense expressly provided for by law (Charter of the International Military Tribunal). This principle, established since ancient times, has deep roots in Enlightenment philosophy and underpins the most important criminal codes of ancient times (Beccaria, 1764). In this paper, we will address the Nürnberg exception as a derogation from the principle of criminal legality, an exception enshrined in article 7 of the European Convention on Human Rights. Thus, article 7, (1) proclaims criminal legality as a fundamental right of the individual: „No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense, under national or international law, at the time when it was committed. Nor may a heavier penalty be imposed than that which was applicable at the time the criminal offense was committed”. Paragraph 2 establishes an exception according to which: „This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations”.

The historical experience of World War II and the atrocities committed during that period led to a profound legal debate on the application of this principle to the most serious crimes against peace and humanity. The Nürnberg Tribunal was perceived by some authors as an exceptional departure from legality, as the trial took place in the absence of written charges expressly stated prior to the commission of the acts (Zolo, 2009).

At the same time, however, other scholars argued that the Tribunal had enshrined the existence of fundamental rules of natural and customary law, ensuring criminal liability for acts which, although not codified, were deeply contrary to the moral order of humanity. Nevertheless, some authors argue that there were written rules at that time regarding the rules of warfare, in particular the Hague Conventions and the Geneva Conventions, starting in 1899 (Jackson, 1947. Pg. 180).

This aspect is a sensitive one in the present work, as the Nürnberg Tribunal and many other legal scholars have named the trial the „Nürnberg exception” and nothing else, the reason being that the prosecution of those guilty of atrocities was considered a deviation from the principle of *nullum crimen sine lege, nulla poena sine lege*, since the conviction and execution of the defendants was not based on legal grounds, the perpetrators being charged under a „non-existent” law, „post facto” (Taylor, 1949. Pg. 679).

The most important question raised by this work is whether the Nürnberg trials represented a violation of the principle of legality or a triumph of justice created by the victorious powers of the war despite the crimes committed against humanity?

On the contrary, we must acknowledge that the legislator has always advocated leniency in the law, applying the most favorable criminal penalty to the perpetrator, as predefined by the rule of retroactivity of criminal law.

However, the Nürnberg Tribunal became proof of the application of a law contrary to the rule of retroactivity of criminal law, the application of a harsh punishment, thus seeking to eliminate those who oppressed peoples, destroyed families, undermined humanity and peace in the world at that time, on the grounds that they were acting on the orders of their superiors or executing the orders of their superiors. Although the accused claimed during the trials that they had acted on the orders and command of their superiors and did not admit guilt for their actions (with the exception of the defendant Bormann), an exception was applied, and ultimately each participant was held individually responsible for such appalling acts (Charter of the International Military Tribunal).

In line with the above, we believe that justice is not sufficient as a moral value alone, it must have real power to be enforced. In this way, weak justice that cannot punish injustice or protect fundamental values automatically becomes ineffective and decorative (Ferencz B, Public Speeches on International Law).

Indeed, this process opened up new horizons in the development of international criminal law, establishing clear rules regarding war crimes, and the Tribunal provided a respite for what was to come in the period following World War II, ultimately establishing the principles of criminal responsibility for the commission of international crimes.

The central question in this paper is whether the solution adopted in Nürnberg represents a genuine derogation from criminal legality or, on the contrary, a confirmation of the universal vocation of this principle in defending humanity against barbarism, as discussed below.

The methodology of this paper is based on an interdisciplinary approach, of a theoretical-legal, historical, and comparative nature, focused mainly on the doctrinal re-evaluation of the principle of legality of criminalization in the context of the exception established by the International Military Tribunal at Nürnberg. *The logical method* was mainly used to formulate arguments regarding the compatibility or incompatibility of the Nürnberg exception with the foundations of the rule of law, with a view to identifying the tensions between the need to punish crimes against humanity and strict compliance with the legality of criminalization; *the historical method* was used to reconstruct the historical and normative context of the emergence of the Nürnberg Tribunal and to explain the rationale for invoking an „exception” to the principle of legality; *the comparative method*, used to compare various doctrinal approaches to the principle of legality of criminalization, as reflected in international criminal law and human rights protection systems. The comparative analysis focused, in particular, on the relationship between the classical interpretation of the principle of *nullum crimen, nulla poena sine lege* and the way in which it was nuanced and extended in the jurisprudence of the Nürnberg Tribunal.

2. The evolution of the principle of criminal legality from Beccaria's Enlightenment foundations to its establishment in the jurisprudence of the Nürnberg Tribunal

Only laws can establish penalties for crimes, and this authority must belong solely to the legislature.

(C. Beccaria)

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The principle of criminal legality, succinctly expressed by the latin maxim *nullum crimen, nulla poena sine lege*, is the cornerstone of the rule of law, establishing that no person may be convicted for an act that was not classified as a crime by law at the time it was committed and that no punishment may be imposed outside the legal framework.

Its theoretical origins are inextricably linked to the Enlightenment thinking of Cesare Beccaria, who, in his work „*Dei delitti e delle pene*”- (1764) (Beccaria, 1764) formulated a strong criticism of criminal arbitrariness, advocating for the subordination of the state to the law and for the limitation of the power to punish through clear, predictable, and accessible rules. For Beccaria, only the law, as an expression of the general will, can establish crimes and punishments, and the judge must not interpret but strictly apply the law in order to prevent abuse and inequality (Beccaria, 1764. Capitol XXVII).

From the enlightened formulations of Cesare Beccaria, who saw legality as a rational bridge against the arbitrariness of power, to its reinterpretations in the context of international tribunals after World War II, this principle has undergone an evolution marked by the tension between formal and moral justice. The Nürnberg trials represented a turning point, in which the traditional legal order was confronted with atrocities that exceeded any existing positive norm, and the strict application of legality was called into question in the name of universal responsibility (Gallant, 2009, Pg. 46).

We propose to analyze this transformation of criminal law, particularly from the enlightenment principle born out of the desire to limit state abuses in terms of criminalization and sentencing, to the modern principle of individual responsibility for crimes against humanity at the international level. At the same time, we will highlight how criminal law has evolved from protecting the individual against the state to protecting humanity against individuals who threaten it.

In his seminal work „*Dei delitti e delle pene*” (On Crimes and Punishments), the enlightenment thinker Beccaria essentially argued that: „No one can be punished for an act that was not defined as a crime before it was committed” (Beccaria, 1764). With this assertion, the distinguished criminologist and criminal lawyer of the time exposed the cruelty of the laws, the inhumanity of the procedures, and the arbitrariness of the judges, considering that the severity of a crime should be determined according to the damage caused.

Beccaria mainly exposes himself against those who confuse the idea of justice with harshness and savagery, against the system, torture, and the death penalty. He vehemently criticized the abuses of the criminal justice system of the time and the lack of legal predictability. Beccaria advocated for precision in the law, the elimination of judicial arbitrariness and the supremacy of the law as an expression of collective reason, believing that only a clear law could protect individuals against the excesses of power. Beccaria mainly criticized the nobility, the clergy, and the privileges granted to them, enshrining social equality, especially since punishments must be „the same for the first and last citizen, for all” (Beccaria, 1764).

At the same time, C. Beccaria’s research is based on promoting social values and human rights, exposing himself against the inquisitorial system. The author also argues for proportionality between crime and punishment (Beccaria, 1764). In the author's opinion, the severity of the crime must be determined by the dangerousness of the damage caused. Beccaria

is the author who pursued the idea of more favorable application of punishment, invoking the graduality of criminal responsibility (Beccaria, 1764).

In this context, Nürnberg became an exception to the promotion of the applicability of a more favorable punishment for the perpetrator, and we can say with certainty that it constituted a turning point for the principle of criminal legality, imposing individual responsibility for war crimes committed on the orders of a superior, even though international treaties and protocols of that period already provided that the execution of an order or instruction from a superior constituted a cause that expressly excluded the criminal nature of the act. In this way, the Nürnberg Military Tribunal overturned this provision and established specific penalties for the acts committed by each participant in the atrocities, with the penalty being proportional to the seriousness of the act committed, resulting in either life imprisonment or a fixed term of imprisonment (Verdict of the Ministry of Foreign Affairs).

In the 19th and 20th centuries, the principle of legality was expressly established in the criminal legislation of states, enshrined in the most important laws, including the Supreme Law of States, in this way becoming an essential guarantee against abuse of power and criminal arbitrariness, symbolizing the transition from discretionary power to the rule of law. However, the dramatic events of the 20th century put this unprecedented principle to the test. Totalitarian regimes, especially the nazi regime, demonstrated that formal legality can be used to legitimize crimes and repression and that the law, lacking a moral foundation, can become an instrument of pressure (Twist, 2012. Pg.62).

In this way, thanks to the Nürnberg trials, a transition was achieved from strictly positivist legality to legality with an ethical foundation, incorporating international customary norms and fundamental humanitarian principles.

However, the idea that the absence of a written criminalization cannot absolve responsibility when the act contravenes the fundamental values of humanity has become established. In fact, the Nürnberg principles were established, and on August 8, 1945, *the Charter of the Tribunal* (Charter of the International Military Tribunal) was adopted, whereby the victorious powers rallied together and established the rapid trial and punishment of the main war criminals, which led to the express legal regulation of the concepts of crimes against peace, war crimes, crimes against humanity, and conspiracy to commit these crimes.

At the same time, *Section II of the Charter and article 6* clearly and concisely stated that: „The following acts or any of them are crimes within the jurisdiction of the Tribunal and involve **individual responsibility**:

a) *Crimes against peace*: planning, preparing, initiating, or waging a war of aggression or a war in violation of international treaties, agreements, or assurances, or participating in a common plan or conspiracy to do any of the foregoing (Charter of the International Military Tribunal);

b) *War crimes*: violations of the laws or customs of war. These violations include killing, torturing, or deporting civilians in occupied territory into slavery or for other purposes; killing or torturing prisoners of war or persons at sea; killing hostages; pillaging public or private property; wantonly destroying cities or villages, devastation not justified by military necessity, and other crimes (Charter of the International Military Tribunal);

c) *Crimes against humanity*: murder, extermination, enslavement, deportation, and other acts of cruelty committed against a civilian population, before or during the war, or

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persecution on political, racial, or religious grounds, in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not these acts constituted a violation of the domestic law of the country where they were committed” (Charter of the International Military Tribunal).

In this sense, we conclude that the evolution from Beccaria to Nürnberg reflects the metamorphosis of legality from a formal principle of domestic rule of law into a universal standard, integrated into international criminal law. While Beccaria anchored legality in reason and natural law in order to limit state abuse (Beccaria, 1764) Nürnberg extended it to limit the abuse of political power at the global level. Legality in this way becomes not only an individual guarantee, but also an instrument for protecting the international legal order and human dignity, since we must give to each what is his (Charter of the International Military Tribunal).

3. Analysis of compliance with the principle of legality within the Nürnberg Tribunal: arguments for and against

Suum cuique tribuere - to give each person what is due to them, what is theirs.
(Ulpian)

The Nürnberg trials, held between November 1945 and October 1946, represent a turning point in the history of international criminal law. The trial of Nazi leaders for war crimes, crimes against peace, crimes against humanity, and conspiracy to commit these crimes generated much debate regarding the compatibility of the Tribunal’s actions with the principle of criminal legality.

As mentioned earlier in this study, legality essentially implies that a person can only be punished for acts expressly provided for by criminal law prior to their commission.

However, at the Nürnberg trials, a concept of criminal responsibility was applied that went beyond the strict boundaries of positive law, invoking international norms and universal moral principles.

One of the main dilemmas raised by these trials concerns the retroactivity of criminalization. Many of the acts tried, in particular crimes against peace and crimes against humanity, were not, at the time they were committed, criminalized by the domestic law of the German state or by any international criminal code (Răducanu, Pg. 121-126).

However, if we approach the issue of retroactivity of the law as an argument in favor of violating the rule of criminal legality, we can conclude that it consists in the fact that, in some circumstances, certain criminal laws extend their scope to the past, to crimes committed before their entry into force. As a logical continuation, criminal law provides that a criminal law that increases the penalty or worsens the situation of the person guilty of committing a crime does not have retroactive effect, and the issue of retroactivity of the law was not taken into consideration in the Nürnberg criminal trials (Manea, 2017. Pg. 74-78).

So, criminal law applies to crimes committed while it is in force. Criminal law is effective between the moment it comes into force and the moment it ceases to be in force, while it is in force, criminal law is binding and must be obeyed by everyone (Manea, 2017. Pg. 74-78).

Clearly, criminal law does not apply to acts which, at the time they were committed, were not classified as crimes. In other words, criminal law which criminalises an act „ex novo” does not apply to acts committed before it came into force (Răducanu, Pg. 121-126).

Criminal law does not apply to acts committed under the old law if they are no longer provided for in the new law. Criminal law cannot establish crimes or punishments retroactively – „*nullum crimen sine lege praevia*” (Manea, 2017. Pg. 74-78).

Critics of the Tribunal argued that this approach would clearly violate the principle of legality and turn criminal justice into an arbitrary instrument, allowing judges to determine guilt based on a subjective assessment of the morality of the act committed, but we do not support this view.

In contrast, supporters of the Nürnberg Trials invoked the concept of „moral justice” and the general principles of law recognized by civilized nations. The central argument was that certain acts, such as the systematic extermination of civilian populations, forced deportations, or unprovoked military aggression, were profoundly contrary to the fundamental norms of humanity, even if they were not explicitly criminalized in positive law at the time they were committed (Pivniceru, 1999. Pg. 83-131). In this context, the Court ruled that, in an international setting, such acts could not go unpunished and that moral justice and general principles of law must prevail in cases of extreme gravity.

We can mention that this approach has generated a new dimension of the principle of legality: legality is no longer viewed strictly as an expression of positive norms, but as a standard that integrates universal ethical values.

In this regard, the verdict rendered following the trial did not constitute, in the view of its supporters, an arbitrary violation, but rather a necessary adaptation of criminal law to address acts that gravely threatened the order and dignity of humanity. The situation, moreover, represents a form of „justified retroactivity”, in which the limitation of the principle of legality is offset by the imperative of preventing impunity for exceptionally serious crimes (Verdict of the Ministry of Foreign Affairs).

Today, this tension between the principle of legality and moral justice remains relevant for criminal law. Indeed, the Nürnberg Trials paved the way for the development of international criminal law, including the *International Criminal Tribunal for the former Yugoslavia*, the *International Criminal Tribunal for Rwanda*, and the *International Criminal Court* (Coman, 2010).

In all these cases, the concept of international criminal liability entails a reconciliation between strict adherence to the law and the necessity to punish acts that violate fundamental human values, even when their positive incrimination had not been formally established beforehand.

Thus, the fundamental dilemma of international criminal law is illustrated: how moral and universal principles can justify, in exceptional circumstances, the retroactive application of criminal law. We may argue that the Nürnberg Trials did not disregard the principle of legality, but rather reinterpreted it, adapting it to the extraordinary magnitude of the crimes committed and to the need for effective international accountability (Jackson, 1947). This historical experience demonstrates that criminal law and moral justice, although seemingly in conflict, can be reconciled within a framework that protects both individual rights and the universal order and values of humanity.

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Therefore, the dilemma of retroactivity is not a limitation of legality, but a necessary reinterpretation in extreme circumstances, which made it possible to punish the most serious crimes in history.

So, we can call the Nürnberg Tribunal the cornerstone of international criminal law, playing an essential role in consolidating the principle of individual criminal responsibility at the international level.

Unlike authoritarian regimes, where crime could be justified by orders or obedience to the state, Nürnberg established that individuals are personally responsible for their actions, even if they were committed in the context of state policy. This doctrine represented a clear break with the classical legal tradition, in which collective responsibility or obedience to authority could exonerate the guilty.

Another innovative element was the definition and criminalization of crimes against peace and crimes against humanity, concepts that had not previously been so thoroughly addressed in international law as written criminal norms. In doing so, the Tribunal integrated both the principle of legality and the imperative of moral justice, creating a framework in which atrocities of exceptional gravity could not go unpunished, even if positive law did not expressly provide for sanctions at the time they were committed (*Verdict of the Ministry of Foreign Affairs*).

We conclude that, by criminalizing international crimes, affirming individual responsibility, and reconciling criminal law with moral justice, the Tribunal has created the theoretical and practical framework that allows the international community to apply universal legal norms in the face of atrocities of exceptional gravity. We can emphatically state that this was not only a legal process, but also a reaffirmation of the fundamental values of humanity that underpin any system of international criminal law (Jackson, 1947).

On the contrary, the above-mentioned processes have led to a series of broad changes in international criminal law. These include:

- The extension of the concept of criminal responsibility, whereby individuals are personally accountable for their actions, excluding any differentiation based on their function, position, or authority within state structures, even if the actions were committed on the orders of a superior, which does not absolve them of criminal responsibility (Mettraux, 2008);
- Incorporating crimes against humanity and crimes against peace into international law - the Tribunal created a framework for criminalizing acts that affect the entire international community, not just the state in which they were committed (*Verdict of the Ministry of Foreign Affairs*);
- Retroactivity of criminal law, morally justified, whereby the Court introduced the concept of exceptional retroactivity, in which the application of criminal law is permitted for acts that are clearly contrary to the fundamental principles of international law and morality (*Verdict of the Ministry of Foreign Affairs*). Later, the exception was expressly enshrined in Article 7, (2) of the ECHR, thus reflecting a balanced view between the requirements of the principle of criminal legality and the imperatives of universal justice, providing a solid legal basis for the prosecution of serious international crimes, in the spirit of the common values of humanity;

- Consolidating the principle of the universality of fundamental norms, whereby it was concluded that, even if national laws vary, certain norms, such as the prohibition of genocide or military aggression, are considered universal norms;
- Laying the foundations and conceptualizing future international tribunals, with Nürnberg setting the precedent for the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, and the International Criminal Court, which apply internationally recognized principles to punish serious international crimes (Pivniceru, 1999).
- Finally, although formally invoking a violation of the principle of criminal legality by failing to comply with the rule of retroactivity of the law, the Court based its application of the rules on moral and ethical grounds, redefining criminal legality as a tool for preventing impunity for extremely serious crimes. In this context, we conclude that justice must prevail even in exceptional circumstances, and that international law has a duty to protect the fundamental values of the international community against systemic violence and institutionalised terror (Jackson, 1947).

4. From accusations of „victors’ justice” to recognition of the universality of criminal responsibility

Justice must be strong, and strength must be just (Negru B, 2018. Pg. 232).

(Blaise Pascal)

We must admit that justice is not enough as a moral or ideal value, it must have real power to be enforced. So, weak justice that cannot punish injustice or protect fundamental values automatically becomes ineffective and decorative. Society must provide laws and institutions with the authority, means, and capacity for coercion to ensure that justice is upheld (Negru B, 2018. Pg. 232).

The Nürnberg trials raised fundamental questions about the impartiality of the application of international criminal law: the central issue being whether impartial justice was applied or whether it was an instrument of the Allies’ victory (Zolo, 2009)?

The Nürnberg trials sparked intense debate about the nature and impartiality of international justice. One of the frequently cited criticisms is that of „victors’ justice”- a theory according to which the tribunal was an instrument of the allied powers, used to punish only the defeated, without analyzing their own behavior (Zolo, 2009). So, it is argued that the absence of a universally applied legal framework would diminish the moral and legal legitimacy of the trial.

In other words, the concept of „victors’ justice” thus becomes relevant when only some of the actors involved in a conflict are subject to criminal prosecution. On the other hand, the principles of universal human rights affirm that certain norms and values, such as the prohibition of genocide, torture, and aggression, are part of the category of universal norms and must be respected regardless of the power or status of the actors (Cloșcă, 1992). However, the criminals were tried by the four powers- the United States, Great Britain, the Soviet Union, and France-on the grounds that the Germans were no longer capable of administering fair and equitable justice (Jackson, 1947).

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The signatory powers created this Tribunal, defined the law it would apply prior to the start of the actual trial on August 8, 1945, and devised a procedure for the proper conduct of the trial. In doing so, they achieved together what any of them could have done individually, for there was no doubt that any country had the right to create special courts to apply the law in this way. As far as the organization of the trial was concerned, all the defendants had the right to demand was a fair trial based on facts and law (Verdict of the Ministry of Foreign Affairs).

At the same time, we cannot claim that the four victorious powers committed an abuse, since before adopting the sentence and establishing the punishments for each of the participants in the atrocities, the Charter of the International Military Tribunal was adopted, on August 8, 1945, which clearly and concisely specified the crimes falling under the individual criminal responsibility of war criminals, as well as the penalties for such acts, the Charter being adopted under the power of a special law. The jurisdiction of the Tribunal is defined exclusively by the Agreement and the Charter, and the crimes falling within the jurisdiction of the Tribunal and giving rise to individual criminal responsibility were expressly provided for in Article 6 (Charter of the International Military Tribunal).

The tribunal ultimately found that some of these defendants planned and waged wars of aggression against 12 states and are therefore guilty of these crimes. This eliminates the need to discuss in detail or even analyze in detail the extent to which these wars of aggression were also wars in violation of international treaties, agreements, and assurances. These treaties were presented in the annex to the Indictment (Verdict of the Ministry of Foreign Affairs).

According to the indictment, the defendants were accused of committing crimes against peace by planning, preparing, initiating, and waging wars of aggression in violation of international treaties, agreements, and guarantees. In addition, the defendants were accused of participating in the creation and execution of a common plan or conspiracy to commit all these crimes (Verdict of the Ministry of Foreign Affairs).

The Charter is not an arbitrary exercise of power by the victorious peoples, but, from the perspective of the Tribunal, as will be demonstrated, it is an expression of international law that already existed at the time of its creation and, in this sense, is itself a contribution to international law (Charter of the International Military Tribunal).

In defense of the defendants, it was insisted that the fundamental principle of both international and domestic law is that a crime can only be punished if there is a corresponding law: „*Nullum crimen sine lege, nulla poena sine lege*” (Verdict of the Ministry of Foreign Affairs). At the same time, as an argument for the violation of legality, it was argued that the principle of „*nullum crimen sine lege*” does not imply a limitation of sovereignty, but is only a general principle of justice (Verdict of the Ministry of Foreign Affairs).

It is clearly incorrect to claim that it is unjust to punish those who, contrary to treaties and guarantees, attack neighbouring states without warning. In such circumstances, the perpetrator must know that he is committing an unjust act, and not only would it not be unjust to punish him, but, on the contrary, it would be unjust to leave the evil he has committed unpunished. However, it is clear that, given the positions they held in the German government, the defendants, or at least some of them, must have known about the treaties signed by Germany prohibiting the use of war to resolve international disputes (Verdict of the Ministry of Foreign Affairs).

Affairs). They must have known that they were acting contrary to international law when they deliberately pursued their plans of aggression and invasion. If we consider this issue exclusively in the light of the present case, it may be concluded that this principle is inapplicable in the present circumstances.

The following arguments could also be used to support those mentioned above:

- ✓ modern international justice is based on the recognition of universal norms that determine the existence of fundamental limits in war and the protection of the civilian population;
- ✓ the concept of crimes against humanity was established at Nürnberg, reinforcing the idea that certain actions are always illegal, regardless of the national context or the power of the state;
- ✓ the moral argument: if mass atrocities go unpunished, fundamental human rights are violated and the international order is endangered;
- ✓ international tribunals must reconcile two realities: the limitations imposed by international politics and the need to uphold universal norms;
- ✓ Nürnberg represented a compromise: retroactivity was justified by the exceptional gravity of the acts and by universally recognized fundamental principles;
- ✓ in essence, the Tribunal was the first major experiment in international criminal responsibility, combining legality, morality, and political power;
- ✓ this approach sparked discussions about impartiality, equality in the application of the law, and preventing accusations of „victors’ justice”.

Modern international justice continues to be marked by tension between political interests and respect for universal principles (Schabas,1997,Pg.27). This tension remains relevant in contemporary courts, where criminal responsibility is applied selectively depending on geopolitical circumstances, but always in relation to recognized universal norms.

On the other hand, however, modern jurisprudence and doctrine highlight that the Nürnberg trials transcended the logic of revenge and legitimized the idea of a universal system of values, applicable regardless of the political interests of the time, affirming the principle that certain acts are intrinsically prohibited in all circumstances, as they represent direct attacks on human dignity and the international order (Pivniceru,1999).

5. Conclusions and Recommendations

The analysis carried out in this paper has highlighted the profoundly ambivalent nature of the Nürnberg trials in relation to the principle of criminal legality, enshrined in the maxim *nullum crimen, nulla poena sine lege*. The International Military Tribunal represented both a break with positivist-legalistic dogma and a founding stage in contemporary international criminal law.

Inevitably, this moment generated tensions between the imperative to punish the atrocities committed and the need to respect fundamental legal guarantees, among which the legality of criminalization occupies a central place.

On the one hand, the Nürnberg trial can be perceived as a deviation from criminal law. At the time the crimes were committed, crimes against peace and crimes against humanity were not regulated by an international criminal code with binding legal force. The Charter of the

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Tribunal of August 8, 1945, expressly introduced these criminal offenses after the acts had been committed, which, formally, is equivalent to a retroactive application of criminal law, an aspect that contravenes the principle of *nullum crimen sine lege praevia*.

At the same time, the defense based on the execution of superior orders was rejected, even though this ground for exemption from liability was recognized in international and military law at the time. This „exception to legality” sought to respond to an unprecedented context, but it raises the question of whether universal criminal law can allow exceptions even in extreme circumstances. In this scenario, Nürnberg risks being perceived as a manifestation of the principle of victors’ justice, whereby the victors created rules post factum to punish the vanquished. Critics might argue that the lack of a permanent court, the composition of the tribunal, and the absence of prior general provisions diminished the appearance of impartiality and equality of arms.

On the other hand, a thorough analysis reveals serious grounds for concluding that the Nürnberg Tribunal did not constitute a genuine violation of legality, but rather a necessary and legitimate extension of its content, adapted to situations of extreme barbarity.

Although written law was insufficient, international customary rules and existing conventions (The Hague 1899/1907, Geneva) already prohibited atrocities against the civilian population, mass extermination, torture, deportations, or wars of aggression. The crimes tried at Nürnberg were inherently violations of universal moral and legal principles already recognized by the international community.

The tribunal ruled that individuals in positions of command „should have known” that their actions violated international treaties and international law of war, thereby ruling out the excuse of legal ignorance and reinforcing individual criminal responsibility, even within totalitarian political systems. In this vein, the reconceptualization of criminal legality at Nürnberg sought to protect the fundamental values of humanity, given that Nazi domestic law had turned the law into an instrument of oppression and extermination.

The result was the affirmation of a substantive legality based on customary norms, moral imperatives, and fundamental principles of civilization, as opposed to a strictly formal-positivist legality, which was susceptible to covering up crimes committed under the guise of state legality.

The Nürnberg trial in this way inaugurated a legal model in which the law cannot serve barbarism, enshrining the idea that the supreme norm is the protection of humanity and that legality cannot become a shield for impunity. The tribunal demonstrated that justice cannot remain a theoretical value, but must possess normative force and real coercive capacity.

The rationale behind what has been termed the „exceptional retroactivity” of the norms applied at Nürnberg lies not in arbitrary legal innovation, but in the moral and juridical necessity to sanction offences that are imprescriptible and that threaten the international community as a whole.

This perspective later informed the creation and functioning of international tribunals for the former Yugoslavia and Rwanda, as well as the modern architecture of the International Criminal Court and the doctrine of individual criminal liability for grave international crimes.

Ultimately, the Nürnberg proceedings revealed that the principle of legality cannot be understood in an inflexible manner or detached from the superior values underpinning the

international legal order. Even if certain aspects may appear to diverge from classical legality, the essence and objective of the tribunal aligned with the spirit of the law, the ideal of justice, and the imperative to safeguard humanity from egregious violations. Rather than a repudiation of legality, Nürnberg represented a recalibration of its meaning.

So, the Nürnberg experience cannot be reduced either to „victors’ justice” or to a flawless embodiment of traditional legality. It stands as a pivotal historical synthesis where formal legality was reinforced by moral legitimacy, allowing law to emerge as a universal shield against extreme abuses of power. In this sense, the so-called „Nürnberg exception” functioned not as a deviation, but as a foundational element in the development of international criminal law- demonstrating that when confronted with barbarity, the law must evolve, not remain silent, in order to defend human dignity.

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ANALYSIS OF THE OBJECTIVE PART AND COMPOSITION OF THE CRIME AIMED AT VIOLATING PUBLIC ORDER AND PEACE

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Abstract: *The establishment of criminal liability, as well as the direct prohibition of human behavior that causes or may cause harm, constitutes one of the most important and complex tasks of criminal law. This mission derives from the fundamental need of society to protect its internal order and essential social relations, using the specific instruments of criminal law, considered the last and most energetic means of legal defense. In the doctrine of criminal law, an essential theoretical distinction has crystallized between the de facto basis and the de jure basis of criminal liability, each having its role in the process of establishing guilt and holding the person accountable. The de facto basis of criminal liability presupposes the finding of the existence of a concrete, prejudicial act, committed in the real world. This involves the identification and exact description of the conduct and the consequence produced or threatened, as well as the establishment of all elements related to the objective side of the crime: the illicit action or inaction, the socially dangerous consequence, the causal link, the means, the manner and the circumstances in which the act was committed. However, the mere presence of an act that corresponds to the objective characteristics of a crime is not sufficient to engage the criminal liability of a person. Criminal law does not only sanction the external manifestation of the conduct, but requires a complex, multidimensional analysis, which also includes other elements indispensable for the legal qualification. Consequently, there is a need to establish the de jure basis of criminal liability, which consists in determining the existence of all the constituent elements of the crime, in the sense fully defined by criminal legislation. This basis is much more comprehensive, because it involves not only verifying the objective side, but also the subjective side, the object of the crime, the subject of the crime and all the essential signs provided for by the incrimination norm. Only when all these elements are met can the existence of the crime be confirmed in the legal sense and, implicitly, the person can be held criminally liable. Thus, the composition of the crime becomes the true de jure basis for criminal liability, which is expressly provided for and enshrined by the legislation in force, more precisely by the provisions of art. 51 of the Criminal Code of the Republic of Moldova, which enshrines the principle according to which criminal liability can be incurred only if all the constitutive elements of the crime are present. In this regard, the doctrine emphasizes that, in the absence of any essential element of the composition, criminal liability cannot be established, even if the act itself presents a prejudicial appearance.*

Keywords: *meeting, place, time, method, order, silence, law enforcement bodies.*

Introduction

Within the general theory of law, the objective side of the crime represents one of the fundamental pillars of legal analysis, having the role of highlighting the concrete and perceptible manifestation of the illicit conduct. This includes, essentially, the material (objective) element, which constitutes the effective expression of the act and allows its assessment from the perspective of the social damage caused or the danger created. The material element is structured by means of a set of mandatory signs, which must always be

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present for the act to be legally classified as a crime, but can be supplemented, as the case may be, by optional signs, the presence of which influences the legal qualification or the severity of the liability. This distinction between mandatory and optional signs allows not only the individualization of each crime, but also the adaptation of criminal liability to the concrete circumstances of the act, providing a rigorous and flexible analytical framework for criminal law practitioners. In this sense, the objective side functions as a filter that separates the simple manifestation of conduct from the criminally relevant legal act, thus being indispensable for guaranteeing the legality and correctness of the application of sanctions.

The author A. Borodac argues that „the objective side of the crime constitutes the external aspect of socially dangerous behavior, which is expressed by causing, provoking a danger or causing damage to social relations” (Borodac, 1994:79).

The authors C. Mitrache and Cr. Mitrache mention that „the objective aspect or the objective side of the constitutive content of the crime designates the totality of the conditions required by the incrimination norm regarding the act of conduct for the existence of the crime” (Mitrache, 2009: 128).

In the understanding of the author N. I. Vetrov, the objective side of the crime is „a component (element) of a crime that characterizes the external manifestation of a specific socially dangerous behavior, an aggression occurring in certain conditions, place and time, causing harm to the object (social relations) protected by the criminal law” (Vetrov, 1999: 125).

Therefore, it is concluded that the objective side represents a set of necessary conditions, regulated in the content of the incriminating legal norm, which highlights the type of behavior of the person, considered as a crime. This is manifested through action or inaction, which brings about violations of social values and relations protected by criminal law.

Materials and Methods

In the analysis of the mentioned topic, the method of comparative analysis was used as the main research method. This is an universal procedure, which involves identifying similarities and differences between two or more aspects compared and drawing general conclusions based on them. At the same time, the present work includes extensive investigations of the criminal laws of the countries under comparative analysis. Other research methods have also been used, as well: systematics, logical analysis, logical interpretation etc. At the same time, it is stated that the scientific basis of the research is the analysis of studies on the subject in scientific articles, collections of conference materials, etc.

Basic content

From the examination of the objective side of the crime of mass disorder, it is found that the respective crime can be committed exclusively through action, that is, through active external manifestation of an illicit behavior. From the incriminating norm regulated in art. 285 of the Criminal Code of the Republic of Moldova, it is deduced that the harmful act is presented in the form of three groups of actions, and for qualification it is sufficient to commit at least one alternative normative method, among the following:

1) organizing mass disorder, accompanied by at least one of the following actions: the use of violence against persons; pogroms; arson; destruction of property; application of firearms; application of other objects used as weapons; offering violent resistance to representatives of the authorities; offering armed resistance to representatives of the authorities;

2) leading mass riots, accompanied by at least one of the actions listed *above*;

3) active participation in the commission of at least one of the actions listed;

4) calls for active violent disobedience to the legitimate demands of representatives of the authorities;

5) calls for mass riots;

6) calls for the commission of acts of violence against persons.

In order to carry out a broad and detailed analysis of the objective side of the crime of mass riots, we propose that its examination be initiated by highlighting the meaning of the notion of „mass riots”, which is expressly indicated in the title of the incrimination norm established in art. 285 of the Criminal Code of the Republic of Moldova. Since the notion of „mass disorder” does not find its legal regulation in the current normative framework of the Republic of Moldova nor in the historical one, it is mentioned that it is to be initially understood, through the light of explanations taken from the Explanatory Dictionary of the Romanian Language and from the specialized literature.

The notion of „mass disorder” is made up of two components, as follows: „disorder” and „mass”. According to the explanations provided by the Explanatory Dictionary of the Romanian Language, the word „disorder” can be interpreted under three aspects: „1) lack of order, disorder, disturbance; 2) lack of organization, discipline; disorder, disorganization, (social) disturbance, revolt, uprising; 3) confusion (in ideas), incoherence” (Explanatory dictionary of the Romanian language).

The second part of the aforementioned notion is made up of the word „mass” and is explained in the form of several meanings, but the most appropriate explanation in the case is: „a compact crowd of people, considered as a unit; large group of people with certain common characteristics; wide circles of the population”. In its ordinary meaning, the word „crowd” is explained as a gathering of people, regardless of sex, age, nationality, opinion, profession, ethnic, linguistic, political or religious affiliation, etc., who have a certain goal in common.

So, we argue that violence is a collective expression of aggression, which is externalized when the perpetrator, influenced by the crowd, loses control and acts impulsively, brutally, under its influence. However, such behavior resonates, from a legal point of view, with the constitutive elements of the crime of mass disorder, in light of the fact that the legislator prescribes in the norms of para. (1) and (2) of art. 285 of the Criminal Code of the Republic of Moldova the phrase „application of violence against persons”, and in the one established in paragraph (3) of the same article – the phrase „committing acts of violence against persons”.

The father of psychoanalysis S. Freud, through the theory of crowd behavior, points out two specific characteristics of the crowd: „1) contagiousness, which is understood as an action of hypnosis; 2) suggestibility, which is manifested through the reactions of the crowd to symbols, elements, individualized perceptions, completely avoiding general reasoning” (Freud, 2016: 21).

The authors O. P. Kopîlova, S. V. Medvedeva et al. note that: „mass riots are a crime in the course of which damage can be caused not only to representatives of state authorities, but also to society as a whole or to a particular person” (Kopylova, 2025: 15).

The author V. N. Grigoriev explains mass riots as „intentional acts, accompanied by pogroms, arson, destruction of property, as well as resistance to representatives of the authorities, undertaken by a group of persons, such as a crowd, which, by their actions, threaten public security” (Grigoryev, 2008: 5).

Authors L. D. Gauhman and S. V. Maksimov believe that the concept of „mass disorder” should be understood as „the actions of an indefinite number of persons (crowd), violating public security, the alternative content of which is related to the commission of pogroms, arson, destruction of property, the use of firearms, explosive substances or devices, as well as the offering of armed resistance to representatives of the authorities” (Gaukhman

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and Maksimov: 204).

However, the Public Order Act 1986, passed by the United Kingdom Parliament, sets a minimum number of participants for persons to be considered to have committed the offence of mass disorder. Thus, according to art. 1 para. (1) of the said Act „where 12 or more persons present together use or threaten to use unlawful violence for a common purpose and their conduct (taken together) is likely to cause any other person present at the scene to fear for his personal safety, each of the persons using unlawful violence for the common purpose is guilty of rioting”. In art. 2 para. (1) of the same law stipulates that „in the event that 3 or more persons present together use or threaten acts of illegal violence, and their behavior (taken together) is such as to cause another person present at the scene to fear for his or her personal safety, each of the persons who use or threaten acts of illegal violence is guilty of violent disorder” (Public Order Act 1986).

Therefore, mass disorder constitutes a negative social phenomenon, with a high degree of danger, which may occur in a space with public access, during demonstrations, meetings, protests or other events of a public nature, aimed at expressing dissatisfaction, disagreements, strident views towards state institutions, as well as towards the nature of other social, political, cultural, religious events, etc. (Chepestru, 2023: 150).

In our opinion, the simple determination of the number of participants in mass disorders is not sufficient. A complex analysis is indispensable that includes the scale of the disorders, the ability of the crowd to disrupt or paralyze the activity of the authorities, as well as the degree of social danger posed by the actions committed.

The material element of any crime is represented by the prohibited act of conduct (*verbum regens*), which indicates the prohibited action (Neagu, 2019: 86).

Based on the fact that the objective side of the crime of mass disorders can be materialized through three distinct normative varieties, in the following we propose to thoroughly analyze the particularities of each of them.

The prejudicial act provided for in paragraph (1) of art. 285 of the Criminal Code of the Republic of Moldova is committed by organizing or leading mass disorders, accompanied by the use of violence against persons, pogroms, arson, destruction of property, the use of firearms or other objects used as weapons, as well as by offering violent or armed resistance to representatives of the authorities (Criminal Code of the Republic of Moldova No. 985-XV of April 18, 2002).

Literally, according to the Explanatory Dictionary of the Romanian Language, the term „organization” represents, in the first sense, the action of organizing and its result, and in the secondary sense - composition, arrangement. In turn, the verb „to organize”, in the reflexive sense, is understood to proceed methodically and orderly in one's actions, to coordinate one's actions, orienting oneself according to a plan; to gather and strengthen one's forces; to thoroughly prepare an action according to a well-thought-out plan (Explanatory dictionary of the Romanian language online).

Similarly, the notion of „leading” is explained as the action of leading (oneself); the activity of the leader, and the verb „to lead” is explained as: „1. to guide a group of people, an institution, an organization, etc., having the entire responsibility of the work in the respective field; 2. to orient oneself according to someone; 3. to accompany someone” (Explanatory dictionary of the Romanian language online).

According to the opinions of the authors S. Brînză, X. Ulianoschi, V. Stati, etc., „the organization of mass disorders consists in the preparation, creation of conditions for the realization of mass disorders, as well as in the management of these disorders. On the other hand, the management of mass disorders is carried out by directing the masses of people, in order to commit mass disorders, coordinating the activity of the masses of people, etc.” (Brînză, 2005: 550).

Separately, the authors S. Brînză and V. Stati detail the meanings of the actions of organizing and leading mass disorders, as follows: “the organization of mass disorders is expressed, as the case may be, by: a) preparing and planning provocations, in order to incite the aggressiveness of the masses of people; b) creating a favorable atmosphere for the application of violence against individuals – pogroms, arson, destruction of property, the use of firearms or other objects used as weapons or the offering of violent or armed resistance to representatives of the authorities; c) creating other necessary conditions for the implementation of mass disorders. In turn, the management of mass disorders involves, as the case may be: a) directing the masses of people in order to commit mass disorders; b) coordinating the actions of the participants in mass disorders; c) directly guiding the masses of people in order to apply violence against individuals, commit pogroms, arson, destruction of property, of the use of firearms or other objects used as weapons, or in order to offer violent or armed resistance to representatives of the authorities, etc. (Brînză and Stati, 2015: 582).

In the same vein, the author A. Borodac notes that „by organizing mass riots one should understand their preparation by manufacturing and distributing leaflets or other materials, public appeals to gather a crowd of people, etc. Leading mass riots involves directing the gathered crowd by calling on them not to obey the authorities, to gather, instigating people in the crowd to block transport arteries, to disrupt the normal activity of enterprises, institutions and organizations, or to resist representatives of the authorities” (Borodac, 2004: 415).

The authors L. D. Gauhman, L. M. Kolodkin and S. V. Maksimov elucidate that „the organization of mass riots is expressed in the actions of a person to create a crowd in order to disrupt public security through agitation, calls for violence or other illegal acts, or to lead a crowd, with the aim of disrupting public security” (Gaukhman, 1999: 560).

At the same time, the authors M. I. Yakubovich and V. A. Vladimirov argue that „the organization of mass disorder constitutes an illicit action, which encompasses the preparation of a crime, by making prior agreements in this regard, identifying a criminal plan for the persons participating in mass disorder, leading them in the process of committing the acts, addressing calls to persons to form a crowd by various methods, instigating the mob to cause fires, pogroms, destruction, by propagating aggressive and slanderous opinions” (Yakubovich and Vladimirov, 1961: 149). We do not fully support the opinion of the authors M. I. Yakubovich and V. A. Vladimirov, since, based on the definitions researched, the organization and leadership of mass disorder constitute two distinct actions, both from the explanatory reasoning and from the point of view of the methods of committing. However, we do not exclude the situation in which one and the same subject can successively or simultaneously carry out both activities of organization and leadership of mass disorder.

In such a case, the organization of mass disorders primarily includes the coordination of the perpetrator's arrangements for committing the illicit act (drafting action plans, choosing methods, means and instruments in this regard, etc.), while their management directly refers to the process of orientation and guidance of participants in the process of mass disorders.

In order for the harmful act to be legally classified under paragraph (1) of art. 285 of the Criminal Code of the Republic of Moldova, it is sufficient for the perpetrator to commit one of the two illicit actions described *above* (Chepestru, 2024: 526). In the case, the moment of consummation of the offense is important, which is determined by the adjacent actions of the criminal activity. Therefore, in order for the actions of organizing or leading mass disorders to have a consummated character, it is indispensable that the latter be accompanied by the application of the actions listed in the incrimination norm, following the rendering of the normative modalities.

In the context in which the mandatory actions that accompany the basic criminal act

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have a major importance in the process of its legal classification, we opine on the imperativeness of explaining each adjacent action of the organization or management of mass disorders, in the event that they are typical and the normative manner stipulated in paragraph (2) of art. 285 of the Criminal Code of the Republic of Moldova, and the application of acts of violence being also characteristic of the act indicated in paragraph (3) of art. 285 of the Criminal Code of the Republic of Moldova.

The first adjacent action stipulated in the content of paragraph (1) of art. 285 of the Criminal Code of the Republic of Moldova is „**the application of violence against persons**”.

To begin with, the term „violence” will be investigated, which comes from the Latin „*violenstus/violentum*”, and in general terms means: „1. the attribute, the character of what is violent; power; 2. lack of control in words or deeds. 3. the fact of using brute force; violation of the legal order” (Explanatory dictionary of the Romanian language online).

At the same time, by application we mean: „1. to put one thing on (or over) another in order to fix them, unite them, make them a common body; 2. to put something into practice; 3. to administer” (Explanatory dictionary of the Romanian language online).

From a legal point of view, violence represents the general violation of the rights of the human being: the right to life, to security, to dignity and to physical and mental integrity. In a general sense, it designates the use of physical force or other persuasive means, in order to cause damage to property or harm to the integrity of a person. In this sense, an act of violence has, most of the time, a premeditated character, being committed with intent or signifying the intention to cause suffering or physical harm to another person (Căprioară, 2013: 481).

The authors V. Bujor and A. Tighineanu call „violent crimes” those criminal acts in whose normative content „the presence of violence is necessarily mentioned: „with the application of violence”; „accompanied by violence”; „with the threat of violence”; „acts of violence”, and in some cases – by expressions that imply violence: „particularly cruelty”; „torture or torture”; „with the use of a weapon” etc. [...] are crimes of violence all the components that have the effect of attacking the life and health of a person, regardless of the fact that in the context of the Criminal Code they are found within different sections or chapters” (Bujor and Tighineanu, 2015: 13).

The authors V. D. Ivanov and P. V. Ivanov explain that „the violence applied within mass disorders can be both physical and psychological. Physical violence is manifested by hitting, beating and injury to health of varying severity. Psychological violence consists of mental coercion to commit the named actions” (Ivanov, 2001: 273).

The author M.-V. Grigoriu identifies three types of violence: „1) private violence, which in turn can be: a) criminal violence: deadly (murder, poisoning of persons, capital executions); corporal (intentional blows and injuries); sexual; b) non-criminal violence, which involves suicide and attempted suicide, road accidents, work accidents, etc.; 2) collective violence, which includes: a) violence of citizens against the government, terrorism, revolutions and strikes, b) violence of the government against citizens, state terrorism, industrial violence; 3) paroxysmal violence – war” (Grigoriu, 2006: 26). We consider that, in the case of mass disorders, the form of collective violence is applied, since this crime is specific to the common conceptions of the mob. Therefore, it is characterized by the formation of groups of people, who pursue common goals, namely to act exactly in the manner in which they were instructed and/or influenced by the organizer or leader of the crime.

The author A. I. Rarog explains the notion of violence through the lens of the crime of mass disorder, as follows: „violence is understood as physical and psychological. It can be expressed by causing or threatening to cause minor, medium and serious injuries to health, as well as by imposing or threatening to inflict beatings and blows. Causing death or qualified

types of serious bodily harm requires additional qualification” (Rarog, 2001: 313).

In the Commentary on the Criminal Code of the Republic of Moldova with amendments up to August 8, 2003, drafted by the author A. Barbăneagră, the typology of violence is presented, in the context of the crime of mass disorder, which manifests itself both physically and psychologically (Barbăneagră, 2003: 836).

The author Y. Nabat notes that „the very term „violence” is regularly used to denounce both the commission of physical violence against individuals, and the causing of material and psychological damage” (Nabat, 2025: 358-378).

The authors V. Bujor and O. Bejan emphasize that „violence represents the influence of one subject over another, an act of applying power, although the act of violence is not limited only to actions such as the application of force or the threat of such application. The act of violence cannot be reduced only to coercion, it can also fulfill the function of repression or even destruction of the object of violence” (Bujor and Bejan, 2016: 61).

Given the immediate impact of the analyzed crime and the profound psychosocial effect it can cause, we align ourselves with the opinions of the aforementioned doctrinaires, who consider that, when committing the crime of mass disorder, both physical and psychological violence can be applied. Therefore, physical violence, being the most visible and clear form of committing the crime in question, causes immediate effects on public security, which can materialize through: physical aggressions on individuals, causing bodily harm to individuals, as a result of the application of violence against individuals, causing pogroms, arson, destruction of property, the application of firearms or other objects used as weapons, as well as the opposition of violent or armed resistance to representatives of the authorities, etc.

On the other hand, psychological violence in mass disorders can manifest itself through: spreading collective threats, causing fear in society through various rumors, displaying behavior that induces fear in society, forcing participants to act violently, etc.

At the normative level, two types of violence are recognized: non-dangerous and dangerous to the life or health of the person.

According to point 5 of the Decision of the Plenum of the Supreme Court of the Republic of Moldova no. 23 of 28.06.2004 on judicial practice in criminal trials on theft of property, violence not dangerous to the life or health of the person is considered to be that type of physical aggression, as a result of which insignificant injuries were caused to the bodily integrity or health of the person (which did not generate a health disorder for more than 6 days, nor loss of work capacity) or the intentional application of blows or the commission of other violent actions that caused physical pain (art. 78 paragraph (1) of the Code of Minor Offences), if these actions did not create a danger to the life and health of the victim (Decision of the Plenum of the Supreme Court of Justice on judicial practice in criminal trials on the theft of property: no. 23 of 28.06.2004).

In the context, point 35 of the Regulation on the forensic assessment of the severity of bodily injury or health, approved by Government Decision no. 534/2023 regulates the criteria for assessing insignificant bodily injury or health, as follows: „lack of health impairment or health impairment for no more than 6 days and lack of permanent general incapacity for work” (Government Decision No. 534/2023).

According to point 6 of the Decision of the Plenum of the Supreme Court of the Republic of Moldova no. 23 of 28.06.2004 on judicial practice in criminal trials on the theft of goods, the spectrum of violence dangerous to the life or health of the person includes medium or light injuries to the bodily integrity or health of the person or which, although they did not cause these consequences, at the time of its application, due to the operating method, pose a real danger to life and health (Decision of the Plenum of the Supreme Court of Justice on judicial practice in criminal trials on the theft of property: no. 23 of 28.06.2004).

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So, according to point 32 of the Regulation on the forensic assessment of the severity of injury to bodily integrity or health, approved by Government Decision no. 534/2023, the criteria for assessing light injury to bodily integrity or health are: short-term health disorder and permanent and insignificant general incapacity for work. And according to points 33 and 34 of the same regulation, short-term health disorder is a morbid condition caused by trauma, which lasts for more than 6 days, but not more than 21 days, inclusive, and by permanent and insignificant general incapacity for work is meant an incapacity of up to 10%, inclusive (Government Decision No. 534/2023).

Extrapolating the above, we can highlight the following particularities of violence:

- 1) it represents an illicit, intentional manifestation and has a high degree of danger;
- 2) depending on its typology, it can be physical and psychological;
- 3) depending on the degree of harm, it can be dangerous and non-dangerous for the life or health of the person;
- 4) it is applied directly or indirectly;
- 5) the exact type of violence specific to the result sought by the perpetrator is applied to the victim.

The second adjacent action of the act of organizing or leading mass disorders is manifested by provoking **pogroms**.

The term „pogrom” comes from the Russian word „*погром*”, translating as „to destroy, to consume”, with the meaning of „massacre, carnage”. Making a contingency with the general meaning of the respective notion, we note that „pogrom” is explained as the massacre of a minority national or racial group, organized by ultranationalist, chauvinistic elements (Explanatory dictionary of the Romanian language online).

Author A. I. Rarog notes: „pogroms are actions that include the damage to living spaces or work offices, vehicles, means of communication, as well as their destruction or looting” (Rarog, 2001: 638).

Author I. Macari explains that „pogrom means the destruction or destruction of buildings, property, means of transport and communications, which are often accompanied by mass killings of people, acts of robbery, looting, etc.” (Macari, 2003: 324).

We express a reserved opinion regarding the way of explaining the notion of „pogrom” offered by the author I. Macari, because, according to his opinions, it would be presumed that pogroms include degradation and destruction of property, accompanied by other criminal acts, which constitute components of separate crimes. However, when legally qualifying such acts, the competent authority is to classify the perpetrator’s actions as concurrent crimes, because the listed actions cannot be prescribed as actions specific to the act of organizing or leading mass disorders, since they constitute components of distinct crimes. Respectively, in the stated cases, art. 285 of the Criminal Code of the Republic of Moldova is to enter into competition with the relevant article, which incriminates another crime committed by the perpetrator during the mass disorders, as the case may be with art. 145 of the Criminal Code of the Republic of Moldova (intentional murder), art. 151 of the Criminal Code of the Republic of Moldova (intentional serious injury to bodily integrity or health), art. 187 of the Criminal Code of the Republic of Moldova (robbery), art. 188 of the Criminal Code of the Republic of Moldova (robbery), etc.).

The authors S. Brînză and V. Stati mention that „by 'pogroms' we mean vandalism, that is, desecration of buildings or other premises, violent resistance or destruction of property in public transport or in other public places. In the case under consideration, the additional qualification according to art. 288 CP RM” (Brînză and Stati, 2015: 583).

The author A. M. Bagmet argues that „pogrom is a chauvinistic spectacle against a nationality or other group of the population, accompanied by robberies and murders. Pogrom is a collective term that characterizes the socially dangerous actions of active participants in

mass disorders and is aimed at the destruction or devastation of property, means of transport, means of communication, which are often accompanied by violence, mistreatment of persons, murder, rape, robbery, theft. The commission of separate crimes committed during a pogrom should be qualified in accordance with the rules on the accumulation of crimes” (Bagmet, 2019: 56-61).

Therefore, we conclude that the meaning of the concept of pogrom is practically clarified differently in the specialized literature, some authors considering that pogroms are related to the destruction or devastation of buildings, means of transport and goods, and others emphasizing that they are limited to the looting, ruining of various material objects, homes, spaces, buildings of institutions, enterprises and organizations. In light of the various existing explanations regarding the notion of „pogrom”, we believe that it is necessary to take into account that, in the case of mass disorders, the provocation of pogroms cannot be limited to only one crime. In the legal analysis of the notion in question, it is necessary to establish all the signs that delimit the action of pogrom carried out within the framework of mass disorders from other similar crimes.

The third adjacent action to the act of organizing or leading mass disorders is manifested by **arson**.

The general explanation of the notion of „arson” is summarized in the action of setting fire and its result. The verb „to set fire” means to set fire, to cause a fire (with the aim of destroying) (Explanatory dictionary of the Romanian language online).

The authors S. Brînză and V. Stati understand by „arson” – „the causing of fires, by triggering a physical-chemical phenomenon, through which the combustion of one or more combustible substances occurs in the presence of oxygen in the air. In the case of destruction of goods, any other goods than buildings or other rooms, or goods in public transport or other public places are affected. Damage to goods is not taken into account” (Brînză and Stati, 2015: 583).

Another definition of „arson” is proposed by the author A. Borodac, namely, arson consists of „the ignition or burning of property, even if it was not destroyed when the fire was extinguished” (Borodac, 2004: 416).

The author V. G. Enghibarian argues that „arson is an act aimed at setting fire to buildings, various objects and vehicles, which causes by various means the appearance of open flames capable of turning into a fire, that is, a process of uncontrolled combustion accompanied by the destruction of material values and endangering the life and health of people” (Engibarian, 2015: 85).

Thus, it is concluded that, during mass disorders, fires are characterized as deliberate actions, which generate the ignition and burning of various movable or immovable property, regardless of their type of ownership.

The fourth adjacent action of the act of organizing or leading mass disorders is materialized through the **destruction of property**.

In a general sense, the term „destroy” is explained as „to cause to cease to exist” (Explanatory dictionary of the Romanian language online).

The authors A. I. Rarog, V. P. Stepalin, etc. are of the opinion that „the destruction of property occurs when the goods become completely unusable and it is impossible to use them for the purpose for which they were intended” (Rarog, 2000: 197).

The authors S. Brînză and V. Stati argue that „in the case of the destruction of goods, any other goods than buildings or other premises or goods in public transport or other public places suffer. The deterioration of goods is not taken into account” (Brînză and Stati, 2015: 583).

On the other hand, I. Macari argues that „the destruction occurs when the good has been caused considerable damage and without the necessary repair it cannot be used

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according to its intended purpose”. In the context, we deduce that the notion of „destruction of goods” refers to the action of partial devastation of material objects, which subsequently, due to the deplorable state in which they are, can no longer be used according to their original purpose, as well as their total devastation (Chepestru, 2024: 67).

The fifth adjacent action to the act of organizing or leading mass disorders is materialized by **the use of a firearm or other objects used as a weapon**.

The mentioned action can have multiple connotations, respectively, it is important to realize the difference between the application of a firearm and the application of other objects used as a weapon.

The authors V. Cușnir and C. Nemțanu note the following: „some crimes are inextricably linked to the illegal handling of weapons and ammunition. When committing crimes involving violence (and not only) as a special means to achieve the criminal result, various types of weapons are used, among which the most commonly used is the firearm. It is not by chance that the application of a weapon when committing a crime constitutes an aggravating circumstantial sign within several articles of the Special Part of the Criminal Code” (Cușnir and Nemțanu, 2024: 102).

According to art. 2 of Law no. 130/2012 on the regime of weapons and ammunition for civilian use, a firearm is a portable weapon with a barrel that can throw, is designed to throw or can be converted to throw a shot, a bullet or a projectile through the action of a propellant. It is considered that an object can be converted to throw a shot, a bullet or a projectile through the action of a propellant, if it has the appearance of a firearm and, as a result of its construction or the material from which it is made, can be converted for this purpose. Also in the content of the mentioned article is found the notion of „application of a firearm”, which is defined as „execution of firing a firearm (Law No. 130/2012).

At the same time, in art. 2 para. (2) of Law no. 218/2012 on the application of physical force, special means and firearms, the notion of „application of a firearm” is also explained as „firing a shot at the target” (Law No. 218/2012).

A detailed definition of a firearm is outlined in Joint Order No. 4MAI/44MJ/17-O/MF/6CNA/1SIS/4SPPS of January 11, 2018 on the approval of the Guide on professional intervention in the exercise of the function, which is explained as a portable weapon with a barrel that can throw, is designed to throw or can be converted to throw a shot, a bullet or a projectile by the action of a propellant. It is considered that an object can be converted to throw a shot, a bullet or a projectile by the action of a propellant if it has the appearance of a firearm and, as a result of its construction or the material from which it is made, can be converted for this purpose (Joint Order No. 4 MAI/44 MJ/17-O MF/6 CNA/1 SIS/4 SPPS of January 11, 2018).

In the context of the application of the firearm, it is important that the firearm is in the appropriate condition to be used according to its intended purpose. If the perpetrator uses a weapon that has a certain defect, a fake, unloaded weapon, a mold or a model of a weapon, this fact cannot be considered an eloquent sign for the act to be considered as having been committed with the use of a firearm.

„Other objects used as weapons” means any object that has a purpose other than attacking a person, or defending against an attack, but which may cause damage to the health or life of the person (knives, including kitchen knives, razors, crowbars, axes, clubs, metal rods, chains, etc.), as well as objects intended for the temporary disorientation of the victim, such as revolvers, balloons and other devices with neutralizing toxic gases. Incidents are weapons, which cannot be used to neutralize a person (art. 2 of Law no. 130/2012 on the regime of weapons and ammunition for civilian use). By „application of a weapon or other objects used as a weapon” is meant the use of these objects in order to annihilate the victim (targeted firing of firearms, application of blows, demonstration of a weapon or object used as a weapon for the

purpose of intimidation, etc.), (Poalelungi, 2019: 408).

The authors V. D. Ivanov and P. V. Ivanov explain: „a weapon is any firearm or bladed weapon used in an attack to harm the life or health of people. Objects used as weapons may include various items, both prepared in advance and those found in the possession of the perpetrators at the time of committing the crime. The use of firearms consists in making shots, which harm human life and health” (Ivanov, 2001: 464).

In these circumstances, one of the optional signs of the objective side appears, namely the means used to achieve the criminal purpose, in this case the firearm or other objects used as a weapon.

From the legal analysis of the normative acts and the doctrine, we note that the notion of „firearm” has a narrower meaning compared to the notion of „weapon”, or, according to art. 129 para. (1) of the Criminal Code of the Republic of Moldova, weapons are understood as instruments, parts or devices declared as such by legal provisions. Likewise, paragraph (2) of the same article provides that any other objects that could be used as weapons or that have been used for attack are assimilated to weapons (Criminal Code of the Republic of Moldova No. 985-XV of April 18, 2002).

According to art. 2 of Law no. 130/2012 on the regime of weapons and ammunition for civilian use, a weapon is an object or device provided for in the categories in annex no. 1 to the aforementioned law, designed or adapted, through which bullets, bullets or other projectiles or harmful substances, regardless of their state of aggregation, can be projected by explosive, gaseous or atmospheric pressure or by means of other propellant agents (Law No. 130/2012).

From the corroboration of the meanings of the notions „weapon” and „firearm”, we note that the spectrum of firearms does not include weapons in category C (such as: pneumatic weapons, short weapons specially made to disperse harmful, irritating or neutralizing gases, tranquilizer weapons, crossbows and bows intended for sports shooting, arrows related to them, etc.) and category D (such as: airsoft weapon replicas, tear gas or irritant sprays, electroshock devices, edged weapons, etc.) from Annex No. 1 to Law No. 130/2012 on the regime of weapons and ammunition for civilian use.

Generally, we highlight that category C includes weapons that are subject to declaration, and category D includes other weapons not subject to authorization.

We consider that, in the context of art. 285 of the Criminal Code of the Republic of Moldova, the legislator's limitation of weapons in categories C and D of Annex No. 1 to Law No. 130/2012 on the regime of weapons and ammunition for civilian use generates significant normative gaps for the application of the criminal law. For example, in mass disorders, the perpetrator may apply pneumatic weapons, edged weapons, electroshock devices, tear gas or irritant sprays, etc., weapons that are found exclusively in categories C and D of the said annex, the consequences of the application of which may be practically similar to those of the application of firearms.

In addition, according to Art. 2 of Law No. 130/2012 on the regime of weapons and ammunition for civilian use, non-lethal weapons and ammunition are considered to be weapons and ammunition in category B letter m) and in category C, according to Annex No. 1 to the respective law, which have a utilitarian purpose or which are intended for leisure or self-defense, made in such a way that, when used, they do not cause the death of persons (Law No. 130/2012).

Therefore, from the aforementioned explanation, the legislator categorically excludes as a harmful consequence – „causing the death of persons”, as a result of the use of weapons included in category C, but does not guarantee that after their use serious, medium or light injuries cannot be caused, as the case may be.

In the event that the legislator establishes in art. 285 of the Criminal Code of the

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Republic of Moldova, exclusively, only the necessity of using a firearm, the weapons in categories C and D of annex no. 1 to Law no. 130/2012 on the regime of weapons and ammunition for civilian use remain outside legal control, making it impossible to legally classify the crime, based on that article. So, although they may be dangerous for the health of the person, the use of these types of weapons in mass disorders is possible, but, at the moment, does not attract criminal liability, in the sense prescribed in art. 285 of the Criminal Code of the Republic of Moldova.

The presence of this normative gap generates the emergence of a different legal treatment compared to similar acts, which are committed with the types of weapons indicated in categories C and D and which may have the same degree of danger as firearms. For example, the use of an air pistol or a tear gas spray during mass riots cannot be sanctioned under art. 285 of the Criminal Code of the Republic of Moldova, which denotes the emergence of a discriminatory regime against identical criminal behaviors, depending on the type of weapon used. At the same time, in the absence of a clear legal norm, for such types of weapons, uncertainties may arise in the application of the law by criminal investigation bodies and courts, which may issue non-unitary or even arbitrary solutions.

On the other hand, we would like to mention that edged weapons, as well, are part of category D of annex no. 1 to Law no. 130/2012 on the regime of weapons and ammunition for civilian use, but their scope “does not include folding knives, kitchen knives and tourist knives with a blade length of up to 105 mm and a thickness of up to 3.5 mm” (Law No. 130/2012). For this reason, the typology of the aforementioned knives will fall within the scope of the notion of “other objects used as weapons”.

In a comparative aspect, it is noted that the Romanian Criminal Code criminalizes in art. 372 paragraph (1) the act of carrying without right, at public gatherings, cultural-sports events, in places specially arranged and authorized for entertainment or leisure or in public transport: a) a knife, dagger, box or other such objects manufactured or made specifically for cutting, stabbing or hitting; b) non-lethal weapons that are not subject to authorization or electric shock devices; c) irritating-tear-producing substances or paralyzing substances (Criminal Code of Romania of July 17, 2009).

Therefore, tangentially to the local criminal legislation, we note that the objects prohibited in par. (1) of art. 372 of the Romanian Criminal Code, largely coincide with certain weapons in categories C and D of annex no. 1 to Law no. 130/2012 on the regime of weapons and ammunition for civilian use, such as: crossbows, bows for sports shooting, arrows related to them, tear gas or irritant sprays, etc.

Based on the factual and legal arguments invoked, we consider it appropriate to replace the phrase „firearm” with the word „weapons”, so as to expand the scope of application of art. 285 of the Criminal Code of the Republic of Moldova, in the part related to the use of weapons. This amendment will have the following benefits:

- 1) it will ensure extensive and efficient legislative coherence;
- 2) it will exclude the limitation of weapons in categories C and D of Annex No. 1 to Law No. 130/2012 on the regime of weapons and ammunition for civilian use in the process of legal qualification of the crime, based on art. 285 of the Criminal Code of the Republic of Moldova;
- 3) will guarantee criminal liability for committing the crime of mass disorder with the use of weapons that are not apparently „firearms”;
- 4) will contribute to the prevention and fight against the „mass” criminal phenomenon.

The last adjacent action of the act of organizing or leading mass disorders is carried out by **offering violent or armed resistance to representatives of the authorities**.

In the context, it is relevant to elucidate the mentioned action, by outlining the

differences between the concepts of „opposition to violent resistance” and „opposition to armed resistance”.

By opposition to violent resistance to representatives of the authorities is meant the commission of active physical actions of opposition to resistance, which is carried out in the process of committing criminal acts. Ignoring the demands of representatives of the authorities to cease criminal activity does not constitute opposition to resistance, but only physical intervention, the use of force to stop physical actions is considered as opposition to resistance (Decision of the Plenum of the Supreme Court of the Republic of Moldova on judicial practice in criminal cases on hooliganism: no. 4 of 19.06.2006).

Authors V. D. Ivanov and P. V. Ivanov are of the opinion that „armed resistance means active opposition to representatives of the authorities, including law enforcement officers and military personnel, who perform tasks of suppressing mass disorders by using weapons, explosive devices or the threat of their use” (Ivanov, 2001: 284).

Authors A. I. Rarog, V. P. Stepalin and O. F. Shisov explain armed resistance to a representative of the authorities as „the direct use of firearms, bladed weapons or other weapons or the threat of their use against a representative of the authorities in order to prevent the restoration of order and the suppression of mob outrages. The use of violence against a representative of the authorities during armed resistance is regulated separately as a violation of the right to life of a law enforcement officer or military personnel during the commission of mass disorders, respectively, requires additional legal qualification” (Rarog, 2000: 314).

According to the opinions of the authors S. Brînză and V. Stati, violent or armed resistance to representatives of the authorities constitutes „the commission of active physical actions of resistance. Ignoring the demands of the indicated persons to cease criminal activity does not constitute resistance. Only intervention in order to counteract the actions of representatives of the authorities, assuming the application of violence or weapons against them, is considered violent or armed resistance to representatives of the authorities within the meaning of the provision of paragraph (1) of art. 285 of the Criminal Code of the Republic of Moldova. It is not the subject of the crime specified in paragraph (1) of art. 285 of the Criminal Code of the Republic of Moldova who applies the accompanying actions, he only organizes or directs the performance of these activities. The direct performance of such activities is characteristic of the person who commits the crime provided for in paragraph (2) of art. 285 of the Criminal Code of the Republic of Moldova” (Brînză and Stati, 2015: 583).

In our opinion, the notion of „violent resistance” is explained by the idea that the perpetrator applies dangerous or non-dangerous violence to the representative of the authority, causing, as the case may be, insignificant, light or medium injuries to the body or health, using physical force or various objects as a weapon. In the case of armed resistance, the weapon becomes the only means of committing the criminal act, or, the use of the weapon by the perpetrator in the process of mass disorder makes the exclusive distinction between the types of manifestation of resistance.

In support of that conclusion, it is relevant to note the following case from judicial practice: „X, on 06.09.2015, starting at 14.00, by mutual agreement and by understanding with XXX, acting with direct intent, aware of his actions, with the aim of destabilizing the situation, in complicity with other unidentified persons, actively participated in violent resistance to representatives of the authorities, expressed by pushing and striking them with objects on them, used as weapons” (Sentence of the Chisinau Court (Râșcani seat) of June 28, 2017. File no. 1-334/2017).

Therefore, in the case cited, the court concluded that, if the perpetrator uses other objects used as weapons in resisting the representatives of the authorities, then this constitutes violent resistance and not armed resistance, or, armed resistance necessarily involves the use

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of a weapon by the perpetrator.

In the situation where, as a result of violent or armed resistance, the representative of the authority is caused serious bodily harm or health or in the event of his death, the harmful act is to be qualified in conjunction with one of the crimes specific to each separate case, art. 285 and, as the case may be, art. 145 of the Criminal Code of the Republic of Moldova (intentional murder), art. 151 of the Criminal Code of the Republic of Moldova (intentional serious bodily harm or health), etc.

In the process of offering violent or armed resistance to representatives of the authorities, it is necessary that this action be carried out during the course of mass disorders. In the event that the offering of violent or armed resistance to representatives of the authorities occurs following the completion of mass disorders, the respective act will not be qualified under art. 285 of the Criminal Code of the Republic of Moldova, because the respective action can no longer be considered an action inherent to the act of organization or leadership, or active participation in mass disorders. In such cases, depending on the harmful degree of the committed acts, the illicit act is to be legally classified either under art. 349 of the Criminal Code of the Republic of Moldova (threat or violence committed against a person with a responsible position or a person performing his public duty), or according to art. 353 of the Code of Minor Offenses no. 218/2008 (insulting a collaborator of law enforcement agencies, offering resistance).

In order to clarify the materialization of the normative modality incriminated in art. 285 para. (1) of the Criminal Code of the Republic of Moldova, the practical case is outlined, in which the court notes that: „X., in agreement and by agreement with XX., being in the immediate vicinity of the headquarters of the General Prosecutor's Office, in order to destabilize the situation, organized and led mass disorders, in which several people participated, including by applying violence and opposing violent resistance to representatives of the authorities, expressed by pushing and hitting with objects on them, used as weapons. [...] The witness states that the defendant X. had an aggressive behavior, inciting people to violence, trying to break the cordon of employees to enter the premises of the Prosecutor's Office. The witness states that the defendant X had the quality of organizer. Everyone listened to him, [...] and through his behavior, it was observed that he was an influential person. Whatever he said, they did. [...] The witness states that the defendant X instigated acts of violence. [...] X pleads guilty to committing the crime provided for in art. 285 paragraph (1) of the Criminal Code and based on this Law, he is sentenced to imprisonment for a term of 4 (four) years” (Sentence of the Chisinau Court (Râșcani seat) of June 28, 2017. File no. 1-334/2017).

The selected case clearly nuances the behavior that can be included in the spectrum of the act of organizing or leading mass disorders, as well as the actions that may accompany the harmful act. In the cited case, the practical ways are highlighted, through which the act incriminated in paragraph (1) of art. 285 of the Criminal Code of the Republic of Moldova is committed, namely: breaking the cordon of employees of public authorities, shouting about violent actions to be taken, demonstrating aggressive and influential behavior, which generates provocations among the participants.

Following the research of the mandatory adjacent actions for the commission of the crime of mass disorders, we find that, in practice, the forms of manifestation of the respective actions do not exhaustively cover all the illicit actions that may occur during the commission of this crime.

It is mentioned that, in the case of art. 285 of the Criminal Code of the Republic of Moldova, the legislator did not provide sufficient levers for holding the perpetrator criminally liable. However, mass disorders, in the forms outlined in paragraphs (1) and (2), may be committed, including with the use of explosive devices or other devices with lethal effect.

Attention is drawn to the fact that art. 134⁴ of the Criminal Code of the Republic of Moldova regulates the meaning of the notion of „explosive device or other device with lethal effect”, as: a) explosive or incendiary weapon or device intended or capable of causing death, serious bodily injury or health or essential material damage; b) weapon or device intended or capable of causing death, serious bodily injury or health or essential material damage by the release, dissemination or action of toxic chemical substances, biological agents or toxins or other analogous substances, radiation or radioactive substances (Criminal Code of the Republic of Moldova No. 985-XV of April 18, 2002).

Likewise, it is noted that on March 28, 2024, Law No. 67 on the regime of explosives for civil use was adopted, which partially transposes Directive 2014/28/EU of the European Parliament and of the Council of February 26, 2014 on the harmonisation of the laws of the Member States relating to the making available on the market and supervision of explosives for civil use, published in the Official Journal of the European Union L 96/1 of March 29, 2014. Accordingly, according to Art. 3 of the aforementioned law, an explosive device is an assembly of parts connected together in a certain way, which performs a well-determined function in a technical system with explosive properties (Law No. 67/2024).

The use of explosive devices or other lethal devices in mass disorders involves a high degree of social danger, as they can cause death of people, bodily harm, mass destruction, instability, social chaos, paralysis of social, political, economic activities, etc., affecting public security. Thus, the express omission of the phrase „explosive devices or other lethal devices” in art. 285 of the Criminal Code of the Republic of Moldova significantly exhausts the criminal regime for preventing, suppressing and sanctioning their use in mass disorders. At the same time, this regulatory lapse may allow for the avoidance of criminal liability in cases where explosive devices or other lethal devices are used in mass disorders.

Therefore, it is proposed to complete the list of mandatory additional actions provided for in par. (1) of art. 285 of the Criminal Code of the Republic of Moldova, which are applicable including for par. (2), by including a new adjacent action, namely the application of explosive devices or other lethal devices, which although they can practically manifest themselves during mass disorders, currently cannot be included in the spectrum of adjacent actions specific to art. 285 of the Criminal Code of the Republic of Moldova.

In the same context, we propose to supplement the adjacent actions indicated in par. (1) of art. 285 of the Criminal Code of the Republic of Moldova, which are applicable also for par. (2), with the phrase „toxic substances”, or, it is pointed out that, just like explosive devices and other lethal devices, toxic substances constitute a major social danger to public security.

In fact, toxic substances can be used in mass disorders, being easy to procure or manufacture, including having lethal potential. The absence of the phrase „toxic substances” from the legal text may create difficulties in the process of legal classification of the offense based on art. 285 of the Criminal Code of the Republic of Moldova, if the perpetrator uses such substances to commit the act. Therefore, the use of toxic substances in mass disorders can generate dangers to the life and health of a large number of people, the possibility of contamination of public space with various pathogens, the creation of a climate of fear and social destabilization.

Therefore, the express inclusion of the phrases „explosive devices or other devices with lethal effect” and „toxic substances”, in the appropriate grammatical form, in the list of adjacent actions provided for in paragraph (1) of art. 285 of the Criminal Code of the Republic of Moldova will contribute to a clear and efficient regulation of actions that may pose a real and imminent threat to public security.

The harmful act regulated in paragraph (2) of art. 285 of the Criminal Code of the Republic of Moldova is carried out by active participation in the commission of the actions

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provided for in paragraph (1), i.e. the use of violence against persons, pogroms, arson, destruction of property, the use of firearms or other objects used as weapons, as well as the offering of violent or armed resistance to representatives of the authorities (Criminal Code of the Republic of Moldova No. 985-XV of April 18, 2002).

According to the author A. Borodac, active participation in mass disorders consists of: „the activity of participants in mass disorders in the application of physical or mental violence, which causes minor, medium or serious bodily harm, in causing fires or in destroying means of transport, offices or other property. Causing minor or medium bodily harm is included in the given modality of mass disorders, and causing serious bodily harm constitutes a contest of crimes” (Borodac, 2004: 415).

The authors L. D. Gauhman, L. M. Kolodkin and S. V. Maksimov are of the opinion that „participation in mass disorder is explained as the commission by a person of any of the actions that constitute the content of the objective side of the respective crime, with the exception of actions of organizing or leading them. These actions are: the use of violence, provoking pogroms, arson, destruction of property, use of firearms, explosive substances or explosive devices” (Gaukhman, 1999: 561).

The author O. V. Shvedova believes that „participation in mass disorder, namely the use of violence, provoking pogroms and arson and other actions provided for in the provision of the criminal norm, is a less dangerous act in comparison with the organization of mass disorder, taking into account the fact that in judicial practice, participation in mass disorder is sanctioned more leniently” (Shvedova, 2016: 48).

Regarding participation in mass disorder, author T. Rotsch believes that „the act is not materialized by simple participation, but rather by committing acts of violence or threats to public security. Criminal liability can only be applied to the member of the crowd, who endangers public security” (Rotsch, 2015: 583).

There are also opinions that argue that individuals should be held criminally liable not only for committing illegal actions, but also for simply being present in a crowd. Thus, the author A. M. Bagmet is of the opinion that „if a person voluntarily joined a disorderly crowd and began to move within it, he has already committed the crime of mass disorder” (Rotsch, 2015: 48).

We disagree with the opinion expressed by the author A. M. Bagmet, because the mere presence of a person in a crowd, without committing one of the actions specific to mass disorder, cannot attract criminal liability. The very essence of the act in question consists in active participation in mass disorder, which must necessarily include the performance at that moment of one of the adjacent actions listed in paragraph (1) of art. 285 of the Criminal Code of the Republic of Moldova.

Furthermore, in the case of *Ezelin v. the French Republic*, the applicant challenged his conviction for a disciplinary sanction with a reprimand for taking part in a demonstration which had resulted in damage to public property. The ECtHR thus found a violation of Article 11 of the ECHR and held that „if the participants in a demonstration which has harmful consequences do not themselves commit violent acts, they cannot be prosecuted solely on the ground of their participation in the demonstration. The freedom to participate in a peaceful assembly is of such importance that a person cannot be subject to a sanction – even one of the lower level of disciplinary sanctions – for taking part in a demonstration, as long as that person has not himself committed any reprehensible act on such an occasion” (Case *EZELIN v. French Republic*. Application no. 11800/85. ECtHR judgment of 26 April 1991, final of 26 July 1991 (Strasbourg)).

Making a jurisprudential connection with those presented above, in order to highlight the illicit actions that can be prescribed within the scope of the normative modality of active participation, the following practical case is considered: „X., being part of a group of protesters,

throwing stones at the building of the Parliament of the Republic of Moldova, actively participated in the mass disorders of April 7, 2009, expressed through violent actions resulting in causing bodily injuries of varying degrees to 296 collaborators of the internal affairs bodies; by setting fire to and destroying the premises of the Parliament and the Presidency of the Republic of Moldova, the means of transport located nearby, the furniture, the computing equipment, other material goods, the prior material damage to which was assessed at the amount of 146707941 lei, seriously affecting public order and security” (Decision of the Criminal Chamber of the Supreme Court of Justice of the Republic of Moldova of January 29, 2014. File no. 1ra-175/14).

Along the same lines, another relevant case from national jurisprudence stands out, as follows: „X., being part of a group of protesters, prone to aggression, who incited the demonstrators to acts of public violence by expressing uncensored words to representatives of the authorities, pushing the cordon of police officers who ensured public security, acted with direct intent, in a violent manner, and struck the deputy of Parliament Y., causing him, according to the forensic report, minor bodily injuries. In this way, X. actively participated in the mass disorders, expressed through acts of violence, resulting in causing bodily injuries of varying degrees to employees of internal affairs bodies and other persons; by damaging nearby means of transport, damaging portions of the building of the Parliament of the Republic of Moldova, seriously endangering public order and security” (Sentence of the Chisinau Court (Buiucani seat) of January 27, 2021. File no. 1-818/17).

From these cases it follows that, under the aegis of the action of active participation, the following actions are included: blocking the main transport arteries, setting fire to and destroying buildings and movable property, throwing stones at public administration buildings, damaging and overturning means of transport, mocking people and committing acts of violence against them, etc.

On the other hand, the authors S. Brînză and V. Stati argue that „it is difficult not to manifest subjectivism when dissociating active participation from inactive participation. For this purpose, the following dissociative criteria should be considered: a) the degree of aggressiveness of the participant in the mass disorders; b) his/her spirit of initiative; c) the ability to make decisions and execute them; d) the refusal to spare the victim; e) recalcitrance in relation to representatives of the authorities, etc. Liability cannot be applied under paragraph (2) of art. 285 of the Criminal Code of the Republic of Moldova in the case of inactive participation in the use of violence against persons, in pogroms, arson, destruction of property, in the use of firearms or other objects used as weapons or in the offering of violent or armed resistance to representatives of the authorities” (Brînză and Stati, 2015: 585).

The author S. Copețchi is of the same opinion, who specifies that „in order for the offense provided for in paragraph (2) of art. 285 of the Criminal Code of the Republic of Moldova to be imputable, it is necessary and sufficient that the perpetrator has committed at least one of the six actions. What is important is that the perpetrator's behavior implies active participation in the commission of the named actions. In other words, a simple participation in the commission of the actions that form the mass disorder is not enough. An active involvement of the perpetrator is necessary” (Copețchi, 2020: 28).

Therefore, we agree with the opinion of the authors S. Brînză, V. Stati and S. Copețchi, that the distinction between active and non-active participation, in the case of the offense of mass disorder, involves an analytical exercise susceptible to subjective influences, since the actions of active participation can be diverse, and the margin of appreciation in terms of active or non-active participation can be erroneous.

As an example, in a practical case, the court notes that „X. , on 03.09.2015, starting at 9:00 p.m., together with XX, [...] actively participated in mass disorder, expressed by active violent disobedience to the legitimate demands of the employees of the indicated institution

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to cease illegal actions, calling the employees of the indicated institution with uncensored and obscene words, destroying cell doors, video recording cameras, lighting lamps in the corridor and detention cells, chairs and other objects, including damaging the plaster on the walls, using objects as weapons in this regard. [...] X. is found guilty of committing the offense provided for in art. art. 42 para. (2) and (3), 285 para. (2), art. art. 42, 321 of the Criminal Code” (Sentence of the Chisinau Court (Buiucani seat) of May 31, 2024. File no. 1-354/2020).

Therefore, in practical cases related to para. (2) of art. 285 of the Criminal Code of the Republic of Moldova do not clearly and precisely state the ways of active participation in mass disorders, the courts being limited only to listing the mandatory actions specific to the act, which are expressly established in the incriminating norm. These omissions regarding the phrase „active participation” confirm the impossibility of assessing and explaining the active nature of participation in mass disorders. However, we point out that the very action of participation in the commission of actions such as: the application of violence against persons, pogroms, arson, destruction of property, the application of firearms or other objects used as weapons, as well as violent or armed resistance to representatives of the authorities, viewed as a whole, manifests itself as active behavior in the commission of mass disorders (Criminal Code of the Republic of Moldova No. 985-XV of April 18, 2002).

Therefore, we conclude that, from a normative point of view, the phrase „active participation” generates interpretations in the process of legal qualification of the act, based on para. (2) of art. 285 of the Criminal Code of the Republic of Moldova.

This aspect raises reasonable doubts about the compliance with the quality standards of the legal norm regulated in paragraph (2) of art. 285 of the Criminal Code of the Republic of Moldova, or, taking into account the guarantees expressly provided in art. 7 of the ECHR, it is noted that the legislator must present the text of the criminal law in such a way as to protect the person from a possible accusation, conviction and arbitrary punishment. Accordingly, the explanation of the composition of the crime must be formulated in such a way that from its highlighting, the person independently or through the litigants understands the essence of the committed crime (Chepestru, 2022: 125).

Therefore, the aforementioned gives expression in modern terms to the adage *nul lum crimen, nulla poena sine lege*, prohibiting an extensive application of the criminal law by analogy (Charrier and Chiriac, 2008: 306).

Based on Article 7 of the ECHR, two principles are recognized: 1) the principle of legality of the criminal offence, according to which no one may be convicted of any act or omission which, at the time it was committed, did not constitute a criminal offence, under national or international law, and 2) the principle of non-retroactivity of criminal law, in the sense that a more severe penalty than that which was applicable at the time the offence was committed may not be applied (Cojocaru and Larii, 2019: 119). The aforementioned requirement is also transposed into the national criminal law, which in Article 3 paragraph (1) provides that no one may be declared guilty of a criminal offence, nor subjected to a criminal penalty, except on the basis of a court decision and in strict accordance with the criminal law, and in paragraph (2) of the same article provides that the extensive unfavourable interpretation and the application by analogy of the criminal law are prohibited (Criminal Code of the Republic of Moldova No. 985-XV of April 18, 2002).

In this context, we establish that the normative text of paragraph (2) of art. 285 of the Criminal Code of the Republic of Moldova does not accurately indicate the limits within which it would be considered that the perpetrator actively or non-actively participates in mass disorders, which may create biased aspects in the process of qualifying the act by the criminal investigation body. At the same time, this normative dissonance complicates the activity of the courts, which, arising from the ambiguity of the legal norm stipulated in paragraph (2) of

art. 285 of the Criminal Code of the Republic of Moldova, cannot provide a precise assessment of the act of active participation in mass disorders. Accordingly, there is a risk that the courts will pronounce arbitrary or non-unitary sentences, which would seriously violate the rights of the potential guilty person. Thus, in the absence of objective criteria for establishing the limits of the act of active participation in mass disorder, courts are put in a position to reach different conclusions in similar cases, alarmingly affecting the unity of judicial practice.

Another problem that may be generated by the perpetuation of the phrase „active participation” in the wording of paragraph (2) of art. 285 of the Criminal Code of the Republic of Moldova is the extensive application of the legal norm. This aspect may determine the criminalization of actions that, in fact, do not meet the objective elements of the respective act, that is, without clear and accurate demonstration of the person's guilt. Therefore, the right to a fair trial and the presumption of innocence, which constitute essential principles in judicial processes, are directly violated.

In conclusion, we support the idea that it becomes impossible to elucidate the differences between active and inactive behavior during participation in mass disorder, which is why we opt for a legislative intervention in the normative content of paragraph (2) of art. 285 of the Criminal Code of the Republic of Moldova, in the sense of excluding the word „active” from the content of the mentioned paragraph.

According to paragraph (3) of art. 285 of the Criminal Code of the Republic of Moldova, calls for active violent disobedience to the legitimate demands of representatives of the authorities and for mass disorder, as well as for committing acts of violence against persons, are criminalized (Criminal Code of the Republic of Moldova No. 985-XV of April 18, 2002).

Generally, within the meaning of the aforementioned paragraph, the call should be understood as an appeal, a request made publicly to an undetermined number of persons, with the aim of provoking them to commit illegal activities.

In the view of the authors S. Brînză and V. Stati, the aforementioned act knows, in turn, the following alternative normative modalities:

„1) addressing calls for active violent disobedience to the legitimate demands of representatives of the authorities;

2) addressing calls for mass disorder;

3) addressing calls for committing acts of violence against persons” (Brînză and Stati, 2015: 585).

It is noted that the subject of the summons differs substantially in the hypostasis of the three normative modalities of commission.

In the case of addressing the summons to active violent disobedience to the legitimate demands of the representatives of the authorities, it is important to draw special attention to the following aspects:

1) the requests of the representatives of the authorities must be carried out within the limits of the law, because in the event of their illegality, the act cannot be qualified under art. 285 para. (3) of the Criminal Code of the Republic of Moldova;

2) simple neglect of the requests of the representatives of the authorities or the manifestation of disobedience to them does not constitute grounds for holding them liable, according to art. 285 para. (3) of the Criminal Code of the Republic of Moldova. For such legal classification, the perpetrator must take violent actions against the representatives of the authorities, thereby expressing disagreement with the legal demands submitted.

Addressing calls for active violent disobedience to the legitimate demands of representatives of the authorities directly aims at determining individuals to undertake concrete physical actions of active opposition, manifested through hostile, aggressive

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behavior or blocking the exercise of legal powers by the authorities.

For example, in the Sentence of the Chisinau Court (Buiucani seat) of August 3, 2020, the court notes that „[...] ignoring the demands of the authorities' representatives to cease criminal activity does not constitute resistance, only the intervention in order to stop the actions of the authorities' representatives, assuming the application of violence against them, is considered active violent disobedience to the legitimate demands of the authorities' representatives within the meaning of the provision in paragraph (3) of art. 285 of the Criminal Code of the Republic of Moldova. In this case, the demands of the authorities' representatives must be legitimate. Addressing calls for active violent disobedience to the illegitimate demands of the authorities' representatives does not fall under the provision in paragraph (3) of art. 285 of the Criminal Code of the Republic of Moldova” (Sentence of the Chisinau Court (Buiucani seat) of August 3, 2020).

The authors L. D. Gauhman, L. M. Kolodkin and S. V. Maksimov note that „calls to violence against persons are manifested by making exhortations to a group of people (crowd), which contain an incentive to cause harm to health, bodily integrity or restrict the rights and freedoms of an indefinite number of persons” (Gaukhman, 1999: 561).

Addressing calls to commit acts of violence against persons is materialized by provoking some persons to commit acts of violence against other persons. It is important to specify that acts of violence against third persons must be applied exclusively in connection with mass disorders and in no way with other circumstances.

The author Borodac A. expresses his opinion that „calls to active disobedience to the legitimate demands of representatives of the authorities and to mass disorder, as well as to commit acts of violence against persons consist, as well as in active participation in mass disorder, in the activity of participants in mass disorder to carry out the stated calls, because the realization of these calls by the organizer or leader of mass disorder will constitute the first two actions of mass disorder provided for in art. 285 para. (1) of the Criminal Code of the Republic of Moldova” (Borodac, 2004: 415).

Accordingly, it is deduced that only if the calls for active violent disobedience to the legitimate demands of the representatives of the authorities and for mass disorder are made by the participants, the act can be qualified according to art. 285 paragraph (3) of the Criminal Code of the Republic of Moldova. However, in the case of addressing the mentioned calls by the organizer or leader of the mass disorder, they are included in the composition of the crime incriminated in art. 285 paragraph (1) of the Criminal Code of the Republic of Moldova, because in this sense the submission of the calls can be considered as a stage in the organization of the mass disorder.

The public nature of the calls is a mandatory condition, regardless of the method/means used by the perpetrator to ensure the dissemination of criminal ideas. Calls for active violent disobedience to the legitimate demands of the representatives of the authorities and for mass disorder can be made in various ways:

- 1) directly in front of an audience (spectators, listeners, eyewitnesses);
- 2) indirectly, in a way that the information becomes or may become known to an unlimited number of persons.

In this context, a wide range of methods and means can be used, in verbal and/or written form, by which the perpetrator can make calls for active violent disobedience to the legitimate demands of the representatives of the authorities and for mass disorder, such as: audio-visual means, sound amplifiers, photographs, placards, leaflets, etc. Regardless of the way in which the information is provided, all methods and means of informing the public must have an instigating character.

However, at present, calls for active violent disobedience to the legitimate demands of the representatives of the authorities and for mass disorder can be actively disseminated

among Internet users, through social networks or any other interactive channels in Internet networks, which, in our opinion, can be considered a method of committing an illegal action.

The authors S. Brînză and V. Stati note that „the addressing of calls for mass disorder represents the so-called „qualified incitement” in relation to those committed by the subject of the offense provided for in paragraph (2) of art. 285 of the Criminal Code of the Republic of Moldova. The act of the one who commits „qualified incitement” is assimilated to the act of the perpetrator of the offense. Consequently, in the case of addressing calls for mass disorder, it is not necessary to refer additionally to paragraph (4) of art. 42 and to paragraph (2) of art. 285 of the Criminal Code of the Republic of Moldova” (Brînză and Stati, 2015: 586).

The author A. Borodac mentions that „the actions indicated in paragraph (3) of art. 285 of the Criminal Code of the Republic of Moldova cannot be considered as an incitement to trigger mass disorder, they do not have the specific character of actions of leading the crowd to direct the disorder. Calls for violent disobedience to legitimate demands, stated by representatives of the authorities, and for mass disorder, as well as for committing acts of violence against persons, are to be delimited from the similar activity of organizing and leading mass disorder” (Barbăneagră, 2009: 629).

Based on the legal norm provided for in paragraph (3) of art. 285 of the Criminal Code of the Republic of Moldova and based on the opinions of the authors S. Brînză, V. Stati and A. Borodac, we consider that this actually takes the legal form of incitement to mass disorder. Therefore, it is mentioned that such an approach should be found in a separate article, which would exclusively criminalize the crime of incitement to mass disorder.

The current wording of paragraph (3) of art. 285 of the Criminal Code of the Republic of Moldova cumulatively and relatively includes the actions of calls for active violent disobedience to the legitimate demands of representatives of the authorities, calls for mass disorder and calls for the commission of acts of violence against individuals.

This legal formulation fails to make an explicit differentiation between the forms of manifestation of the act, the means used in its commission and the gravity of such calls. In such circumstances, we propose to exclude the content of paragraph (3) of art. 285 of the Criminal Code of the Republic of Moldova, with the completion of the Special Part of the Criminal Code of the Republic of Moldova, according to art. 285, with a new article – Article 285¹. „Incitement to mass disorder”, which would criminalize incitement by any method to commit the crime of mass disorder mass disorder.

We would like to point out that, following the proposed amendment, the current regime for sanctioning the act provided for in paragraph (3) of art. 285 of the Criminal Code of the Republic of Moldova is maintained, continuing to be part of the category of minor offenses.

By analogy, we highlight that in the Criminal Code of Romania, the act of public incitement is distinctly criminalized in art. 368. This is materialized by „the action of urging the public, verbally, in writing or by any other means, to commit offenses and is punishable by imprisonment from 3 months to 3 years or by a fine, without exceeding the penalty provided by law for the offense to which the incitement was committed” (Criminal Code of Romania of July 17, 2009).

In relation to the aforementioned legal norm, the authors G. Nistoreanu and A. Boroi mention that „incitement means an incitement, the awakening of an interest, which means less than a determination and is not directed at a specific person, but is addressed to the public, in order to disobey the laws or to commit crimes. This can be done by speech, writing or by any other means” (Nistoreanu and Boroi, 2002: 480).

This fact is also supported by the authors V. Dobrinioiu and N. Conea, who additionally mention that „criminal participation is possible in all its forms: co-authorship,

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instigation or complicity. Co-authors carry out the instigation action together. An instigator can be someone who causes another to urge the public to disobey the laws or to commit crimes. An accomplice can be someone who helps or facilitates the perpetrator to commit the crime, providing him with the means to disseminate the instigation of the public to disobey the laws or to commit crimes” (Dobrinioiu and Conea, 2000: 559).

So, we note that in the local criminal legislation the crime of mass disorder is reflected through the prism of three standard variants of committing criminal activities, and the Romanian legislator divides each prejudicial act into separate articles.

For example, by possibly including art. 285¹, a clear definition of the act of incitement to commit mass disorder would be ensured, regardless of the method, as well as a terminological and logical concordance with modern criminal concepts, which impose a clear and proportionate sanctioning of incitement to commit crimes.

In another vein, we would like to mention that current realities, which endanger public security, are influenced by a possible significant increase in acts of violence committed on a mass scale. At the moment, the criminal legislation does not cover in any way the preparatory stages of the crime of mass disorder, such as: training, self-training or receiving training, for the purpose of organizing or leading, or participating in mass disorder accompanied by the actions provided for in paragraph (1) of art. 285 of the Criminal Code of the Republic of Moldova.

We consider it very important to expand the scope of criminalization of actions preceding the crime of mass disorder, basing ourselves exclusively on the imminence of effective prevention of acts of collective violence, which endanger public security.

This aim comes to strengthen the capacity of reaction and intervention of the competent authorities in advance, in order to timely stop the actions of training, self-training or receiving training, for the purpose of organizing or leading, or participating in mass disorder, thus discouraging the respective actions. In this way, the prevention of the commission of the harmful acts incriminated in paragraphs (1) and (2) of art. 285 of the Criminal Code of the Republic of Moldova will be strictly ensured, public security being guaranteed.

Additionally, we propose to include a form of release from criminal liability of the person, if he/she has notified the authorities about the training, self-training or receiving training for the purpose of organizing or leading, or participating in mass disorders, has contributed to the discovery of the committed crime, or to the unmasking of other trained persons, instructors, financiers, organizers of such training, if his/her actions do not contain another component of the crime.

In this way, a configuration of non-punishment of persons is to be conditionally established, having as its prerogative the encouragement of active collaboration of potential perpetrators with the law enforcement authorities. This will facilitate the unmasking of persons or groups of persons who are preparing to commit mass disorders.

It is specified that the proposed regulation complies with the principles of legality and proportionality in criminal matters, since training, self-training or receiving training for the purpose of organizing or leading or participating in mass disorders are actions that are committed with direct intent and in no way in the context of peaceful public demonstrations.

Furthermore, it is noted that similar provisions are found in art. 279¹ of the Criminal Code of the Republic of Moldova, relating to the terrorist act, which constitutes a coherent approach with reference to the criminalization of the preparatory stages of the terrorist act. Despite the fact that mass disorders differ from the terrorist act, both crimes have in common the organized nature, the potential for social disruption and the provoking of harmful consequences both on public order and security, and on other social values and relations, such as: life, health, physical and mental integrity of the person, his property, etc.

Therefore, it is justified to expand the mechanism for punishing actions of training, self-training or receiving training, for the purpose of organizing or leading, or participating in mass disorder, in a similar way to the existing regulations in the field of combating terrorism. Overall, the highlighted additions will contribute to strengthening the state's capacity to prevent and combat threats to public security quickly, without prejudice to the fundamental rights of individuals.

In another sense, attention is drawn to the optional signs of the objective side of the crime: the place, time, method and means of committing the harmful act, which will be further characterized. Optional signs take the form of main signs of the objective side only in cases where they are directly regulated in the enacting terms of the criminal legal norm. Otherwise, optional signs may be treated as circumstances that aggravate or mitigate criminal liability, respectively, they are taken into account by the court when determining the type and term of the criminal punishment.

It is worth noting that the incriminating text does not provide for special conditions of place or time for the existence of the crime (Dobrinouiu and Conea, 2000: 541).

The **place** of commission of the crime of mass disorder, regardless of the normative modality committed by the perpetrator, constitutes a sign of the objective side with particular importance for establishing the elements of the objective side.

There are several theories on the place of commission of the crime: „1) the action theory – explains that the place of commission of the crime is that of the commission of the action, as a material element of the criminal act, without regard to the place where the harmful result occurred; 2) the result theory – considers that the place of commission of the crime is that of the production of the result, without regard to the place where the action was committed; 3) the preponderance theory – sets the place of commission of the crime according to the place where the most important act for the commission of the crime was committed, the act that has the greatest efficiency within the criminal activity; 4) the theory of illegality – considers that the place of commission of the crime is where the first punishable activity was committed (preparatory or attempted acts), which demonstrates sufficient guilt to attract criminal liability; 5) the subjective theory of the offender's will – considers that the place of commission of the crime is where the offender understood, wanted the result to occur, even if it took place in another territory (Ulianovschi, 2009: 17); 6) the theory of ubiquity – which indicates that the crime is considered committed wherever the criminal activity was carried out or any of the consequences of this activity occurred, except for places that served only as a transit for the criminal activity” (Grama, 2016: 121).

From a legal point of view, according to art. 12 par. (1) of the Criminal Code of the Republic of Moldova, the place of commission of the act is considered the place where the prejudicial action (inaction) was committed, regardless of the time of the consequences (Criminal Code of the Republic of Moldova No. 985-XV of April 18, 2002).

In the context, the legislator establishes that the place of commission of the act is considered the place where the prejudicial action or inaction was committed, regardless of the time (and not the place) of the consequences (the legislator accepting the theory of action for determining the place of commission of the crime), and on the other hand, all crimes committed on the territory of the Republic of Moldova are to be punished according to the criminal law of the Republic of Moldova (the legislator accepting the theory of ubiquity), (Grama, 2016: 122).

So, in the case of art. 285 of the Criminal Code of the Republic of Moldova, the legislator does not specifically establish in the incriminating norm the place of committing mass disorders, but we can deduce that the prejudicial act can be committed in a place where a large gathering of people is present.

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Based on the public nature of the crime of mass disorders, we emphasize that, in the event of committing the crime of mass disorders, the criminal law does not establish in the incriminating norm the imperativeness of its commission in a public place, but rather the public's awareness of the nature of the prejudicial act.

Or, according to art. 133 of the Criminal Code of the Republic of Moldova, „an act committed in public is understood to mean an act committed: a) in a place which, by its nature or destination, is always accessible to the public, even if at the time of the act no person was present in that place, but the perpetrator was aware that the act could become known to the public; b) in any other place accessible to the public if at the time of the act two or more persons were present; c) in a place inaccessible to the public, with the intention, however, that the act be heard or seen, if it occurred in front of two or more persons; d) in a gathering or reunion of several persons, with the exception of reunions that can be considered family in nature, due to the nature of the relationships between the participating persons; e) by any means resorting to which the perpetrator was aware that the act could become known to the public” (Criminal Code of the Republic of Moldova No. 985-XV of April 18, 2002).

By analogy, we highlight the Decision of the Plenum of the Supreme Court of the Republic of Moldova on judicial practice in criminal cases on hooliganism, which notes that when examining criminal cases, the fact that the commission of the crime of hooliganism in a public place is not a mandatory characteristic of this crime will be taken into account. The public nature of the crime is mandatory: hooligan acts are committed in the presence of certain persons or the result of hooligan acts inevitably becomes known to other persons. However, it is important that the perpetrator resorts to such procedures that make it possible for the act or communication about it to reach the public (for example, displays some offensive texts or images at night in a public place where no other persons were at that time), (Decision of the Plenum of the Supreme Court of the Republic of Moldova on judicial practice in criminal cases on hooliganism: no. 4 of 19.06.2006).

In par. previously, the criteria for grouping mass disorders put forward by the author Starostin S. A. were also highlighted, one of which is the place of commission of mass disorders, in turn being divided into: localities and penitentiary institutions (Starostin, 1994: 84).

Thus, the place of commission of the examined crime constitutes a public space, predestined for a large gathering of people, which in itself forms a crowd.

So, mass disorders can be committed in various places, both in urban and rural areas. They can usually occur in those places or near those places, which represent the source of the conflict and, respectively, arouse the discontent of the people or against whom these discontents are directed. Such places can be the administrative buildings of state authorities, such as: Presidency, Parliament, Government, ministries, courts, headquarters of public authorities, etc., as well as the places adjacent to them.

As a rule, mass disorders can often also occur in places of large concentrations of people, such as: squares, stadiums, boulevards, streets, etc.

The **time** of commission of the crime of mass disorders constitutes an additional sign of the objective side, since it is not relevant in the process of legal classification of criminal activity. According to Art. 9 of the Criminal Code of the Republic of Moldova, the time of commission of the act is considered the time when the prejudicial action (inaction) was committed, regardless of the time of occurrence of the consequences (Criminal Code of the Republic of Moldova No. 985-XV of April 18, 2002). The time of the commission of the investigated crime may be taken into account when individualizing criminal liability, especially in cases where the perpetrator commits the illicit acts during protests, public demonstrations of a cultural, religious, sports nature, as well as other mass gatherings involving a large number of participants.

The **method** of committing the crime of mass disorder is not important in the process of qualifying the criminal act, but just like the time of the crime, it may be taken into account when individualizing criminal liability. For the most part, this optional sign appears when establishing the objective side of art. 285 para. (3) of the Criminal Code of the Republic of Moldova, where calls for active violent disobedience to the legitimate demands of representatives of the authorities and for mass disorder can be carried out by various methods, which have already been explained in the process of describing the respective act.

The **means and instruments** of committing the crime of mass disorder are expressly deduced from art. 285 para. (1) of the Criminal Code of the Republic of Moldova, which are typical, including for paras. (2) and (3). Respectively, these may be firearms or other objects used as weapons, which were previously characterized in a particular way in the explanation of the accompanying actions of the normative modalities of committing the analyzed crime.

Taking into account the means of committing the act provided for in art. 285 para. (1) of the Criminal Code of the Republic of Moldova, in the Sentence of the Chisinau Court (Buiucani seat) of August 3, 2020, the court explains the meaning of the word „summons” as „an invitation made by a sign, a gesture, a signal. Convocation (official in nature) to a meeting, a public event, in front of a court of law or a state authority. Oral or written expression of someone's desire for someone to come near or to a certain place. Urge to participate in an action, in an act” (Sentence of the Chisinau Court (Buiucani seat) of August 3, 2020. File no. 1-755/2019).

In this sense, the authors T. Toader and O. Loghin point to the imperative existence of three cumulative conditions: „1) the existence of the incitement; 2) the incitement being addressed to the public. If the incitement is addressed to one or more specific persons, the requirement of the law is not met;

3) the incitement must refer to the non-compliance with laws or the commission of crimes. It may be the non-compliance with a specific law or legal provision or the non-compliance with laws in general. Likewise, it may be the commission of a specific crime or the commission of crimes in general” (Toader and Loghin, 1999: 587).

In our opinion, we cannot limit ourselves to the means of commission exhaustively regulated in the text of the law, because during mass riots, perpetrators can also use other technical means, explosive devices or other devices with a lethal effect, toxic substances, which can endanger the health and bodily integrity of persons and, in general, people's lives. Taking into account the fact that in the previous chapter the criminal legislations of other states were investigated, based on the crime of mass riots, it is noted that in the criminal legislations of Georgia, the Russian Federation, Kazakhstan, the Republic of Azerbaijan, the Republic of Armenia, the Republic of Kyrgyzstan, the Republic of Tajikistan, the Republic of Turkmenistan, in addition to weapons, the legislator also recognizes as means of commission: explosive devices, toxic, incendiary or radioactive, poisonous or other substances, which endanger the life, health and bodily integrity of persons.

In the case of mass disorders, the **circumstances** in which the criminal activities were committed are not important in the process of legal classification of the act, but may be relevant for the individualization of criminal liability.

In what follows, we will analyze the structure of the composition of the crime of mass disorders, depending on the signs of its objective side. The identification of the taxonomy of the crime component under investigation will be accomplished by concisely presenting each type of crime component. Formal crime components are the components in whose content the objective side of the crime is described only by the prejudicial act (action/inaction). Thus, a characteristic of formal components is the fact that for their existence the criminal law does not require the production of a certain result, implicitly or explicitly provided for by the incriminating norm itself as a constitutive sign (Copețchi and Hadârca, 2015: 67). Material

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crimes are those whose content the law has provided for the consequence, which, as a rule, consists of an injury, in the production of a material result (Botnaru, 2005: 134).

Conclusion

Given that the occurrence of harmful consequences is not an indispensable condition for the existence of the objective side of the crime of mass disorder, it should be noted that the crime provided for in art. 285 of the Criminal Code of the Republic of Moldova presents, in all three standard modalities regulated by law, a formal component. In other words, to establish the consummation of this crime, it is not necessary to prove material consequences, but it is sufficient to carry out the conduct prohibited by the criminal norm, even if it did not generate concrete harmful effects.

As for the acts incriminated by para. (1) and (2) of art. 285 of the Criminal Code of the Republic of Moldova, they are considered consummated from the moment the subject begins to organize or lead mass disorder, or from the moment of active participation in such disorder. For the existence of the crime, however, the law requires the presence of additional actions, likely to enhance the social danger of the conduct. Such actions may include: the use of violence against persons; the commission of pogroms or other anarchic manifestations; the setting on fire of goods or buildings; the intentional destruction or damage of property; the use of firearms or other objects used as weapons; as well as the offering of violent or armed resistance to representatives of public authorities. Therefore, the mere presence at the scene of mass disorder is not sufficient; visible and active involvement is necessary, accompanied by the adjacent actions listed by law.

As for the act incriminated in paragraph (3) of art. 285 of the Criminal Code of the Republic of Moldova, it is committed when the perpetrator publicly launches calls for violent and active disobedience to the legitimate demands formulated by representatives of the authorities, as well as incitements to trigger or amplify mass disorder. Also, the crime is considered committed when direct calls are made to exercise acts of violence against persons. An essential element of this method is the public perception: the calls must be formulated in a way that allows the audience to consider them real, credible and likely to be implemented. It is not necessary for the public to actually respond to these calls; it is sufficient that the calls be likely to incite, in a plausible manner, to violent actions or to disrespect the legitimate authority of the state. In conclusion, all three standard methods provided for in art. 285 of the Criminal Code of the Republic of Moldova have in common the fact that they emphasize the dangerous nature of the conduct itself, and not its possible material consequences. The law aims to sanction any form of behavior that risks destabilizing public order, affecting the authority of state bodies or generating a climate of collective violence.

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ASSESSING THE EFFECTIVENESS OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (UNCLOS) IN NIGERIA'S MARITIME RESOURCE GOVERNANCE

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Abstract: *The United Nations Convention on the Law of the Sea (UNCLOS) provides the primary international legal framework for maritime resource governance. This paper examined the effectiveness of UNCLOS in Nigeria's maritime domain, analyzing its implementation across Nigeria's maritime zones and resource sectors. Through doctrinal legal analysis, the study evaluated Nigeria's compliance with UNCLOS obligations in fisheries management, environmental protection, and maritime security. It revealed that while Nigeria has ratified UNCLOS and enacted implementing legislations, significant gaps exist between normative commitments and practical implementation. The paper argued that UNCLOS effectiveness in Nigeria is undermined by inadequate domestic legislation, institutional fragmentation, enforcement deficits, and limited technical capacity. It concluded that enhancing UNCLOS effectiveness requires comprehensive legislative reform, institutional strengthening, improved enforcement mechanisms, and enhanced regional cooperation.*

Keywords: UNCLOS, implementation Maritime Governance, resources, Nigeria

Introduction

The United Nations Convention on the Law of the Sea (UNCLOS), adopted in 1982 and entering into force in 1994, constitutes the primary international legal framework governing the use and management of ocean spaces and marine resources (Tanaka, 2019:1). Often described as a “constitution for the oceans”, UNCLOS establishes comprehensive rules for maritime jurisdiction, resource management, environmental protection, navigation, and dispute settlement for state parties (Havercroft and Kloker, 2023). Nigeria ratified UNCLOS on 14 August 1986, thereby accepting the Convention's rights and obligations regarding its maritime domain (Babatunde & Abdulsalam, 2021: 533).

Nigeria possesses an extensive maritime domain comprising approximately 853 kilometers of coastline, an Exclusive Economic Zone (EEZ) extending 200 nautical miles into the Atlantic Ocean covering approximately 210,900 square kilometers, and continental shelf claims extending beyond the EEZ (Fadola, 2024: 42). This maritime domain contains significant natural resources, including fisheries, offshore oil and gas deposits, maritime transportation routes, and potential renewable energy sources (Ateme, 2021: 335). Effective governance of these resources is critical for Nigeria's economic development, food security, and environmental sustainability.

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Despite ratifying UNCLOS nearly four decades ago, Nigeria faces persistent challenges in maritime governance, including illegal, unreported, and unregulated (IUU) fishing; maritime insecurity manifested through piracy and armed robbery at sea; environmental degradation from offshore oil operations; and inadequate surveillance and enforcement capabilities (Okafor-Yarwood, 2019: 414). These challenges raise fundamental questions about UNCLOS's effectiveness as a governance framework in the Nigerian context.

This paper critically examines the effectiveness of UNCLOS in Nigeria's maritime resource governance. The central research issue deals with the extent to which UNCLOS provisions have been implemented in Nigeria. The paper employs the doctrinal research methodology, examining UNCLOS provisions, Nigerian implementing legislations, institutional frameworks, and compliance with treaty obligations. It is structured as follows: section 1 examines the UNCLOS normative framework and maritime zone regime; section 2 evaluates Nigeria's legal and institutional implementation framework; and section 3 assesses the UNCLOS effectiveness in Nigeria's maritime governance across key sectors. The conclusion summarizes the finding and made recommendations.

1. UNCLOS Normative Framework, Maritime Zones and Classification System

1.1 Historical Development and Adoption

UNCLOS emerged from the Third United Nations Conference on the Law of the Sea, which convened from 1973 to 1982, representing one of the most complex and prolonged multilateral negotiations in international law history (Cai, et al. 2022: 1166). The Convention was adopted on 10 December 1982 in Montego Bay, Jamaica, and entered into force on 16 November 1994, twelve months after the sixtieth ratification. As of 2025, UNCLOS has achieved near-universal acceptance with 169 state parties, demonstrating its status as customary international law (Vaangal, 2022: 7). UNCLOS codified and progressively developed existing customary law while creating new legal regimes for ocean governance (Zou & Qiang Ye, 2023). The Convention balances the competing interests of coastal states, maritime powers, landlocked and geographically disadvantaged states, and the international community as a whole. Its adoption represented a "package deal" whereby no provision could be subject to reservations, ensuring the Convention's integrity and universal application (Rothwell & Stephens, 2016: 22).

1.2 Maritime Zones under UNCLOS

UNCLOS establishes a comprehensive zonal approach to state maritime jurisdiction, creating distinct zones with varying levels of coastal state authority and corresponding obligations. It establishes seven of such distinct zones including internal waters, territorial sea, contiguous zone, exclusive economic zone, continental shelf, high seas and the area (Treves, 2015: 39).

By Article 8 of UNCLOS, internal waters comprise waters on the landward side of the baseline from which the breadth of territorial waters is measured. Coastal states exercise complete sovereignty over these waters, equivalent to sovereignty over land territory, subject only to treaty obligations and customary international law (Tuhulele, et al. (2020: 376). Internal

waters include ports, harbors, bays, estuaries, and waters enclosed by straight baselines (UNCLOS, art. 8).

The territorial sea extends up to 12 nautical miles from the baseline (UNCLOS, art. 3). Coastal states exercise sovereignty over the territorial sea, including the airspace above it, the seabed, and subsoil (UNCLOS, art. 2; Martial, 1952: 245). However, this sovereignty is subject to the right of innocent passage, whereby foreign vessels may navigate through territorial waters without prior notification or authorization, provided the passage is not prejudicial to the peace, good order, or security of the coastal state (UNCLOS, art. 17-19). Activities such as weapon exercises, espionage, pollution, and fishing render passage non-innocent (Agyebeng, 2006: 371). Next to the territorial sea is the contiguous zone, which extends up to 24 nautical miles from the baseline (UNCLOS, art. 33). Within this zone, coastal states may exercise control necessary to prevent and punish infringement of customs, fiscal, immigration, and sanitary regulations within their territory or territorial sea. The contiguous zone represents a limited extension of coastal state enforcement jurisdiction rather than sovereignty (Eschenhagen & Jürgens, 2018: 1).

The Exclusive Economic Zone (EEZ) is the vast sea immediately after the contiguous zone, extending up to 200 nautical miles from the baseline (UNCLOS, art. 57). Within this zone, coastal states possess sovereign rights for exploring, exploiting, conserving, and managing living and non-living natural resources in the waters superjacent to the seabed, the seabed, and its subsoil; sovereign rights regarding other economic activities, such as energy production from water, currents, and winds; and jurisdiction over the establishment and use of artificial islands, installations, and structures (UNCLOS, art. 56). Coastal states also have jurisdiction over marine scientific research and protection and preservation of the marine environment in the EEZ. The EEZ regime represents a *sui generis* zone, neither territorial sea nor high seas, where coastal states possess functional jurisdiction rather than full sovereignty (Arévalo-Ramírez & Godio, 2026). Other states retain freedoms of navigation, overflight, and laying submarine cables and pipelines, subject to due regard for coastal state rights (UNCLOS, art. 58).

The continental shelf comprises the seabed and subsoil of submarine areas extending throughout the natural prolongation of a coastal state's land territory to the outer edge of the continental margin, or to 200 nautical miles where the continental margin does not extend that far (UNCLOS, art. 76). Where the continental margin extends beyond 200 nautical miles, coastal states may claim an extended continental shelf based on geological and geomorphological criteria, subject to approval by the Commission on the Limits of the Continental Shelf. Coastal states exercise sovereign rights over the continental shelf for exploring and exploiting its natural resources, primarily mineral and non-living resources, and sedentary species of living organisms. These rights are inherent and do not depend on effective occupation or express proclamation (*North Sea Continental Shelf case*, 1969).

The high seas comprise all ocean areas beyond national jurisdiction, open to all states for navigation, overflight, fishing, laying submarine cables and pipelines, constructing artificial islands, and marine scientific research (UNCLOS, art. 87). High seas freedoms are exercised with due regard for other states' interests and UNCLOS provisions (Oxman, 2020: 796). No state may subject any part of the high seas to its sovereignty (UNCLOS, art. 89).

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UNCLOS establishes a special international regime for the exploitation of natural resources in the High Sea under the designation of “The Area”, which comprise of the seabed, ocean floor, and subsoil beyond national jurisdiction (UNCLOS, art. 1). Under Article 136 of UNCLOS, the Area and its resources are the “common heritage of mankind”, to be exploited for the benefit of all humanity, with particular regard for developing states' interests. The International Seabed Authority is established to regulate activities in the Area and ensure equitable benefit sharing (UNCLOS, art. 156-157).

It is worthy of note that even before the adoption of UNCLOS III in 1982, Nigeria had enacted its domestic legislations on maritime jurisdiction that aligns with the provisions of the Convention. In 1967, Nigeria proclaimed its territorial waters through the Territorial Waters Act (TWA), which established a 12 nautical mile territorial sea (TWA, s. 1). In 1978, it enacted the Exclusive Economic Zone Act (EEZA), which proclaimed Nigeria's EEZ, consistent with emerging UNCLOS provisions, granting Nigeria sovereign rights over natural resources within 200 nautical miles (EEZA, s.1). Nigeria also submitted preliminary information on its extended continental shelf claim to the Commission on the Limits of the Continental Shelf in 2009, followed by a full submission in 2022 (UN Division for Ocean Affairs, 2025). These proclamations establish Nigeria's jurisdictional framework under UNCLOS, creating the legal basis for resource management, environmental protection, and enforcement within Nigerian maritime zones.

2. Nigeria's Legal and Institutional Regime for UNCLOS Implementation

2.1 Constitutional Framework

The Constitution of the Federal Republic of Nigeria 1999 (as amended) provides the foundational legal framework for maritime governance. Section 44(3) vests all minerals, mineral oils, and natural gas in, under, or upon any land (including land covered by water) in, under, or upon the territorial waters and the EEZ in the Federal Government. This provision establishes federal ownership of maritime resources, creating exclusive federal authority over resource exploitation (Egede, 2005: 73). The Constitution's Second Schedule, Part I (Exclusive Legislative List) grants the National Assembly exclusive legislative powers over matters relating to citizenship, immigration, emigration, passports, and visas (Item 17); maritime shipping and navigation, including ships and shipping on tidal waters (Item 39); and ports and harbors (Item 46).

These provisions establish federal legislative competence for maritime matters, preventing state-level interference with maritime governance (*A.G. Federation v. A.G. Abia* 2002). However, Section 6(6)(c) of the constitution declares Chapter II (Fundamental Objectives and Directive Principles of State Policy) non-justiciable (Odike et al, 2016). Section 20 within Chapter II provides that “the State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria”. The non-justiciability of environmental protection directives prevents citizens from directly enforcing constitutional environmental obligations through judicial proceedings, creating a significant gap in environmental rights protection including in the maritime domain (Okeke, 2025).

2.2 Legislative Implementation Framework

2.2.1 Exclusive Economic Zone Act 1978

The Exclusive Economic Zone Act (EEZA) 1978 constitutes Nigeria's primary legislation implementing UNCLOS EEZ provisions. Section 1 proclaims Nigeria's EEZ extending 200 nautical miles from the baseline, granting Nigeria sovereign rights for exploring, exploiting, conserving, and managing natural resources. Section 2 grants Nigeria jurisdiction over artificial islands, installations, marine scientific research, and environmental protection. However, the Act lacks substantive provisions on resource management methodologies, conservation measures, environmental protection standards, and enforcement mechanisms (Bassey, Ibas & Akpan, 2017: 215). It functions primarily as a jurisdictional proclamation rather than comprehensive resource management legislation, creating an implementation gap between UNCLOS obligations and domestic law (Folami, 2017).

2.2.2 Sea Fisheries Act 1992

The Sea Fisheries Act 1992 regulates fishing in Nigerian waters, including territorial waters and the EEZ (Akpan, 2017: 25). The Act prohibits fishing without a license, establishes licensing requirements for fishing vessels, and empowers the Minister to make regulations for fisheries management. However, it does not fully align with the UNCLOS in many aspects of conservation and exploitation of fishing: the absence of provisions requiring determination of maximum sustainable yield (MSY) or total allowable catch, contradicts Article 61 obligations of UNCLOS; it lacks ecosystem-based management approaches or precautionary principles; it does not contain adequate penalties for violations, limiting deterrent effect; there are inadequate provisions for monitoring, control, and surveillance; and the absence of provisions addressing IUU fishing comprehensively is debilitating (Obidimma, et al 2023: 70).

These deficiencies render the Act inadequate for fulfilling Nigeria's UNCLOS fisheries management obligations, contributing to overfishing and resource depletion (Okafor-Yarwood, 2019: 417).

2.2.3 Petroleum Industry Act 2021

The Petroleum Industry Act (PIA) 2021 modernized Nigeria's hydrocarbon governance framework, replacing previous fragmented legislation (Omorogbe, 2022: 22). The Act establishes regulatory authorities for upstream and midstream/downstream petroleum operations, creates frameworks for petroleum taxation and administration, and includes environmental management provisions. Part IV addresses environmental management, requiring environmental impact assessments for petroleum operations, establishing remediation obligations for environmental damage, and imposing penalties for environmental violations. However, critics argue that environmental protection provisions remain inadequate, particularly regarding offshore operations' environmental impacts, oil spill prevention and response, and liability for environmental damage (Okoro and Arinze-Umobi, 2022: 95).

2.2.4 Suppression of Piracy and Other Maritime Offences Act 2019

The Suppression of Piracy and Other Maritime Offences Act 2019 criminalizes piracy and related maritime offences, aligning Nigerian law with UNCLOS anti-piracy provisions (UNCLOS, arts. 100-107). Section 3 defines piracy consistent with UNCLOS Article 101, including illegal acts of violence, detention, or depredation committed for private ends by the

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crew or passengers of a private vessel against another vessel in the high seas or outside any state's jurisdiction (Ikoro & Onyekozuru, 2022: 2). The Act grants Nigerian courts universal jurisdiction over piracy, authorizes Nigerian naval vessels to seize pirate vessels, and establishes penalties including life imprisonment for piracy (SPOMO, ss.4-9). This legislation represents significant progress in implementing UNCLOS maritime security provisions, though enforcement challenges persist (Arugu, 2024: 147).

2.2.5 Other Relevant Legislation

Other relevant legislations relating to the implementation of UNCLOS in Nigeria, include the National Oil Spill Detection and Response Agency (NOSDRA) Act 2006, which establishes NOSDRA to coordinate oil spill response and environmental protection; the Nigerian Maritime Administration and Safety Agency (NIMASA) Act 2007, establishing NIMASA to regulate maritime transportation and shipping; the Coastal and Inland Shipping (Cabotage) Act 2003, to implement the Cabotage policy reserving domestic coastal trade for Nigerian vessels; and the Merchant Shipping Act 2007, which regulates merchant shipping operations in Nigerian waters.

These legislative frameworks while extensive, suffers from fragmentation, gaps, and inconsistencies, undermining comprehensive UNCLOS implementation in Nigeria (Orie & Nkum, 2023: 1).

2.3 Institutional Framework

Nigeria's maritime governance involves multiple institutions with overlapping and sometimes conflicting mandates.

2.3.1 Nigerian Maritime Administration and Safety Agency (NIMASA)

Established under the NIMASA Act 2007, NIMASA regulates maritime transportation, shipping safety, seafarer certification, and Cabotage implementation (NIMASA Act, s.22). NIMASA leads the Deep Blue Project (Integrated National Security and Waterways Protection Infrastructure), a maritime security initiative launched in 2021 to combat piracy and enhance surveillance (Arugu and Oyagiri, 2018: 90). Despite these responsibilities, NIMASA faces challenges including inadequate funding, corruption allegations, and limited enforcement capacity (Uzodike & Okoro, 2019: 1).

2.3.2 Nigerian Navy

The Nigerian Navy constitutes the primary maritime security enforcement agency, responsible for defending Nigerian waters, combating piracy and armed robbery at sea, preventing illegal fishing, and enforcing maritime laws (CFRN 1999, s.217). Constitutional provisions establish the Navy as part of the Armed Forces with maritime defense responsibilities. Resource constraints significantly limit Navy effectiveness, including insufficient vessels for extensive EEZ patrol, outdated equipment and technology, inadequate training and personnel, and limited operational funding (Omeni, 2022: 45). These constraints compromise surveillance and enforcement capabilities, enabling maritime crimes to persist.

2.3.3 Department of Fisheries

Located within the Federal Ministry of Agriculture and Rural Development, the Department of Fisheries regulates fisheries resources, issues fishing licenses, and develops fisheries policies (Ogunji & Wuertz, 2023). The Department suffers from chronic underfunding, limited technical capacity, inadequate scientific research capability, and insufficient enforcement personnel (Eli et al, 2025: 52). The absence of adequate fish stock assessments and monitoring systems prevents implementation of science-based fisheries management consistent with Article 61 of UNCLOS. Limited coordination with the Navy and NIMASA further undermines enforcement effectiveness (Kayoda, 2012: 152).

2.3.4 National Oil Spill Detection and Response Agency (NOSDRA)

The NOSDRA coordinates oil spill response, monitors compliance with environmental regulations in the petroleum sector, and enforces environmental standards (NOSDRA Act, ss.5-7). Challenges include limited resources for comprehensive monitoring, dependence on industry self-reporting, inadequate technical capacity for environmental assessment, and jurisdictional overlaps with other agencies (Osuji & Agbakwuru, 2022: 1125).

2.3.5 Nigerian Ports Authority

The Nigerian Ports Authority (NPA) manages seaport operations, develops port infrastructure, and ensures port security (NPA Act, s.7). Various challenges limit its functions and effectiveness, include port congestion, corruption and bribery, inadequate infrastructure, and security concerns (Okpara & Enyioko, 2022).

Despite the establishment of these institutions, Nigeria's maritime governance suffers from persistent coordination challenges. Effective UNCLOS implementation requires coordinated institutional responses, which is a challenge in Nigeria. For instance, multiple agencies possess overlapping responsibilities for maritime security, environmental protection, and resource management, creating jurisdictional confusion and duplication of effort (Kayoda, 2012: 154). There is limited information sharing between these agencies, which undermines coordinated enforcement and resource management. Coupled with this, Nigeria lacks a comprehensive national ocean policy integrating maritime governance across sectors and agencies (Anozie, 2019:193).

These challenges undermine UNCLOS implementation effectiveness, as the Convention's integrated approach requires harmonized institutional responses across maritime zones and resource sectors (Oke, 2023: 95).

3. Assessing UNCLOS Effectiveness in Nigerian Maritime Governance

This section assesses UNCLOS effectiveness by examining Nigeria's compliance with treaty obligations across key maritime sectors, identifying implementation gaps and their causes.

3.1 Fisheries Management and Conservation

Article 61(1) of UNCLOS requires coastal states to determine the allowable catch of living resources in their EEZ. Article 61(2) mandates using best scientific evidence available to ensure proper conservation and management measures, maintaining or restoring populations

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at levels producing maximum sustainable yield (MSY). Article 61(3) requires taking into account fishing patterns, interdependence of stocks, and internationally recommended standards. Article 62 obligates coastal states to promote optimal utilization of living resources, granting other states access to the surplus of allowable catch where the coastal state lacks capacity to harvest the entire allowable catch. Articles 63-64 require cooperation for shared stocks and highly migratory species. Article 73 authorizes enforcement through boarding, inspection, arrest, and judicial proceedings.

Nigeria's implementation of these UNCLOS treaty obligations is laden with substantial difficulties by the very nature of the technological advancement required to achieve success. First, Nigeria lacks comprehensive scientific data on fish stock status, population dynamics, and ecosystem health (Eli et al, 2025: 52). The Department of Fisheries possesses limited research capacity, and stock assessments are rarely conducted (Esin, 2025: 724). This deficiency violates Article 61(2) obligations requiring determination of allowable catch based on best scientific evidence. Second, Nigeria has not established MSY levels for fish stocks in its EEZ, contrary to Article 61 requirements (Bassey, Ibas and Akpan, 2017: 218). Without MSY determination, fisheries management lacks scientific basis, leading to potential overfishing and stock depletion (Somvanshi, 2003: 13). Third, while the Sea Fisheries Act requires fishing licenses, the licensing system suffers from corruption, inadequate monitoring of licensed vessels, limited enforcement of license conditions, and insufficient penalties for violations (Okafor-Yarwood, 2019: 418). Also, Illegal, Unreported, and Unregulated (IUU) fishing remains widespread in Nigerian waters, estimated to cost Nigeria approximately \$600 million annually (Yonmo & Asanebi, 2022: 2). Foreign fishing vessels, particularly from distant water fishing nations, engage in illegal fishing with limited enforcement consequences (Folami, 2017). Factors enabling IUU fishing include limited surveillance capability due to insufficient patrol vessels, corruption facilitating illegal access, weak penalties failing to deter violations, and jurisdictional confusion between enforcement agencies.

Coupled with these challenges, while Nigeria is a member of regional fisheries organizations, it has not fully implemented Article 63-64 cooperation obligations for shared and highly migratory stocks with regional countries (Chikelu, 2021: 27). As a result, UNCLOS effectiveness in Nigeria's fisheries sector is severely constrained. The absence of science-based management, widespread IUU fishing, and limited enforcement indicate fundamental implementation failures. While UNCLOS provides comprehensive normative obligations, Nigeria lacks the institutional capacity, technical expertise, and political will to translate these norms into effective resource management (Bassey, Ibas and Akpan, 2017: 220).

3.2 Environmental Protection

Part XII of UNCLOS establishes comprehensive environmental protection obligations. Article 192 imposes a general obligation to protect and preserve the marine environment. Article 194 requires states to take measures to prevent, reduce, and control pollution from all sources, including land-based sources, seabed activities, vessels, dumping, and atmospheric sources. Article 194(5) requires measures protecting rare or fragile ecosystems and habitats of depleted, threatened, or endangered species. Article 206 mandates environmental impact assessments when states have reasonable grounds to believe planned activities may cause

substantial pollution or significant ecological changes. These obligations apply throughout maritime zones, including the EEZ and continental shelf (Birnie, Boyle and Redgwell, 2009: 390).

An assessment of Nigeria's environmental protection framework reveals significant implementation gaps. For instance, although offshore oil production dominates Nigeria's maritime economy accounting for approximately 70% of national oil output, environmental oversight remains inadequate (Ole & Herbert, 2022: 144). NOSDRA lacks the capacity for comprehensive monitoring, and depends almost entirely on industry self-reporting, which creates conflict-of-interest concerns, inadequate environmental impact assessment enforcement, and insufficient penalties for environmental violations (Kumor, 2021: 162).

Oil spills also constitute a persistent environmental problem in Nigerian waters (Amah & Faga, 2021: 123). Factors that contribute to inadequate spill response include delayed detection due to limited surveillance, slow response time, inadequate cleanup technology and resources, insufficient operator liability, and limited environmental restoration (Faga & Ngwoke 2021: 225). Between 2015 and 2020, over 3,000 oil spills were recorded in Nigeria, many affecting marine and coastal ecosystems (Osuji and Agbakwuru, 2022: 1124). The government's heavy dependence on oil revenue creates conflicts between environmental protection and economic imperatives, undermining UNCLOS Article 192 obligations.

Similarly, land-based pollution, including agricultural runoff, industrial discharge, and solid waste, significantly impacts Nigerian coastal and marine areas (Diop, 1999: 55). Limited regulation and enforcement of these pollution sources violate Article 194 obligations requiring control of pollution from all sources. Moreover, Nigeria has established limited Marine Protected Areas (MPAs) to protect rare or fragile ecosystems, contrary to Article 194(5) obligations (Agbeja, 2017: 159). The absence of a comprehensive MPA network undermines ecosystem conservation and biodiversity protection. On the other hand, although the Environmental Impact Assessment Act 1992 requires EIAs for specified projects, implementation remains inconsistent, particularly for offshore operations (Eni, 2024: 9). EIAs often lack rigorous independent review, fail to adequately assess cumulative impacts, and impose inadequate mitigation requirements (Okoro and Arinze-Umobi, 2022: 96).

From the above assessment, it is clear that UNCLOS environmental protection provisions have limited effectiveness in Nigeria. While the normative framework exists, enforcement is severely constrained by institutional weaknesses, resource constraints, corruption, and economic dependencies. The government's prioritization of short-term economic gains over long-term environmental sustainability contradicts UNCLOS Article 192 obligations and threatens marine ecosystem health.

3.3 Maritime Security

Article 100 of UNCLOS requires states to cooperate to the fullest possible extent in repressing piracy. Article 101 defines piracy to include illegal acts of violence, detention, or depredation committed for private ends from one vessel against another on the high seas or outside any state's jurisdiction. Article 105 authorizes universal jurisdiction, permitting any state to seize pirate vessels, arrest persons, and seize property. Article 110 grants warships the right to board foreign vessels on the high seas where reasonable grounds exist to suspect piracy

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or unauthorized broadcasting. Within the EEZ, coastal states exercise enforcement jurisdiction over resource and environmental violations pursuant to Article 73.

This is an aspect of UNCLOS obligation that Nigeria has made measured progress in recent years to improve maritime security. First, the Suppression of Piracy and Other Maritime Offences Act 2019 in section 12 criminalized piracy and established universal jurisdiction, aligning Nigerian law with UNCLOS provisions. The Act also defines piracy in section 3 consistent with Article 101, authorizes Nigerian courts to prosecute pirates regardless of nationality or location of offense, and establishes severe penalties, including life imprisonment (s.6). Second, Nigeria launched the Deep Blue Project in 2021, which represents a comprehensive maritime security initiative that integrates air, sea, and land assets for surveillance and rapid response (Fadola, 2024: 47). The project consists of different components including a command, control, computer, communication, and information centre for integrated monitoring; special mission vessels for patrol and interdiction; special mission aircraft for aerial surveillance; fast intervention vessels for rapid response; and an armored vehicles for shoreline patrol. It has contributed immensely to the reductions in piracy incidents in Nigerian waters, demonstrating improved enforcement capacity. Third, Nigeria participates in regional maritime security initiatives, including the Gulf of Guinea Commission and the Yaoundé Architecture for maritime security cooperation (Ohagwa, 2022: 38). These initiatives facilitate information sharing, coordinated patrols, and joint enforcement operations. However, Nigeria has made limited efforts to deal with removal of abandoned or disused maritime installations or shipwrecks, which constitute security threat to maritime navigation, contrary to Article 60(3) obligation (Ole & Faga, 2017: 141).

Conclusions

This paper examined the effectiveness of UNCLOS in Nigeria's maritime resource governance. The analysis revealed a fundamental disconnect between Nigeria's normative commitments under UNCLOS and practical implementation. While Nigeria ratified UNCLOS in 1986 and enacted implementing legislations, substantial gaps exist in translating treaty obligations into effective resource management, environmental protection, and maritime security.

Despite the attempts made at aligning Nigeria's domestic legislations with UNCLOS, the paper found the existence of certain implementation challenges including legislative gaps that prevent full UNCLOS incorporation, institutional weaknesses limiting technical and enforcement capacity, inadequate inter-agency coordination fragmenting governance, competing economic priorities undermining sustainability objectives, and limited stakeholder engagement reducing governance legitimacy. These challenges demonstrate that UNCLOS, despite providing a comprehensive normative framework, cannot be effective without robust domestic implementation architecture, adequate institutional capacity, political commitment to enforcement, and inclusive governance processes.

The paper's findings have several implications. First, international legal frameworks, regardless of normative comprehensiveness, require strong domestic implementation to achieve effectiveness. Second, maritime governance demands integrated approaches transcending sectoral and institutional boundaries. Third, effective resource management

requires scientific capacity, enforcement capability, and political will—areas where Nigeria faces significant deficits. Fourth, sustainable ocean governance necessitates balancing economic development with environmental protection and long-term resource sustainability. UNCLOS provides Nigeria with a sound legal framework for maritime governance, but its effectiveness depends entirely on Nigeria's commitment to implementation. Realizing UNCLOS's potential requires comprehensive reforms addressing legislative gaps, institutional capacity, enforcement mechanisms, and governance coordination.

Based on the foregoing analysis, the following recommendations are proposed:

- a) Nigeria should consolidate its fragmented maritime statutes into a single, comprehensive Ocean Governance Act, aligning fully with UNCLOS obligations and providing clear rules for resource management, environmental protection, and enforcement.
- b) Existing laws, such as the Sea Fisheries Act and environmental regulations, should be revised to include science-based management, ecosystem approaches, stronger penalties for violations, and enforceable environmental standards for offshore operations.
- c) A central coordinating body should be established to harmonize the functions of agencies, such as NIMASA, the Navy, and NOSDRA, ensuring effective inter-agency collaboration, information sharing, and coherent maritime governance.
- d) Nigeria must invest in advanced surveillance technology—satellite tracking, vessel monitoring systems, and aerial patrols—while strengthening prosecution capacity and increasing penalties to deter illegal fishing, pollution, and piracy.
- e) Developing national marine research capacity through dedicated institutes and partnerships with international bodies is essential to support evidence-based policymaking and sustainable exploitation of marine resources.
- f) Nigeria should expand participation in Gulf of Guinea security initiatives and regional fisheries bodies to enhance shared patrols, legislative harmonization, and collective resource management across maritime boundaries.
- g) Maritime governance should incorporate coastal communities, civil society, and the private sector through participatory decision-making, benefit-sharing arrangements, and public awareness campaigns promoting ocean stewardship.
- h) Formulating a unified National Ocean Policy and implementing marine spatial planning will align economic, security, and environmental interests, ensuring sustainable development of Nigeria's maritime domain in line with UNCLOS and SDG 14.

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CRITICISMS REGARDING THE LEGAL STATUS OF WORK GROUPS IN THE NEW PENSION LAW IN ROMANIA

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Abstract: *This paper brings to the fore a more detailed discussion of what work groups are and their implications in establishing the right to a pension for persons who meet the conditions set out in the legal provisions in force at the date on which the right to a pension arises. We consider this topic to be particularly important and topical because in Romania there are many pensioners who receive pensions and who, in many cases, turn to the competent courts, specifically the courts in the district where the pensioners who are plaintiffs are domiciled, in order to have the amounts that the territorial pension houses must pay as pensions correctly determined. Next, we will start with a series of activities that are considered to be in work groups I and II, and we will analyse a series of normative acts that regulate the method of calculating pensions according to work groups based on the date on which the right to a pension arises. We will also analyse some provisions of the new pension law, namely Law No. 360/2023, which concerns the method of granting pensions based on work, which we will also examine through the filter of constitutionality. Through examples from case law, we will highlight whether the courts have correctly determined the pension due to the retired claimants by applying the relevant regulatory provisions.*

Keywords: Pension, Law, Romania.

I. Introductory aspects

In order to better understand how a person's pension is determined without going into too much technical detail, from an analysis of the pension legislation we can see that the contribution period is the period of time during which the pensioner, whether employed or self-employed, etc., paid the contributions due to the public pension system.

When we talk about the contribution period, we mean the contributory period, i.e. those periods for which social security contributions have actually been paid, but also the assimilated periods, i.e. those periods which the law considers to be contribution periods but during which no social security contributions have actually been paid (sick leave, periods of study, etc.). Non-contributory periods are those which, under certain conditions, may be recognised as contribution periods even though no social security contributions were paid during these periods. When we talk about the full contribution period, we are referring to the period of time during which a person worked and paid contributions to the public pension system. This is a particularly important criterion for determining pension entitlement. The sine qua non condition for a person to be eligible for an old-age pension is that they must have completed the full contribution period of 35 years, regardless of whether the applicant is male or female.

The minimum contribution period is the minimum period of time during which the person applying for an old-age pension has paid contributions to the public pension system, which in Romania is 15 years for both men and women.

II. CONSIDERATIONS REGARDING WORK GROUPS

In order to understand which activities belong to work group I or II, we must refer to Order No. 50 of 5 March 1990, as amended and supplemented, to specify the jobs, activities and professional categories with special conditions that fall within work groups I and II for the purpose of retirement, issued by the Ministry of Labour and Social Protection, the Ministry of Health and the National Commission for Labour Protection, which was repealed on 1 April 2001 .

Annex I to this Order specified the jobs, activities and professional categories falling within Group I of work, as established by Article 2 of Decree-Law No 68 of 1990. These include: underground work; the manufacture of silica bricks; the manufacture of ferroalloys; coking; the manufacture of alpha and betanaphthylamine; the sintering sector in steelmaking; grinding, roasting, agglomeration, charging, smelting of ores or lead concentrates; manufacture of ammunition and ammunition components; work in leprosariums; permanent work underwater at overpressure; manufacture of aluminium powder; welding under a microscope in the electronics industry; welding operations in enclosed spaces, etc.

Annex 2 of the above Order contains a list of jobs, activities and professional categories that have been established in accordance with Article 2 of Decree-Law No 68/1990 and are included in Group II work. These include: the manufacture of refractory products and materials; bulk handling of cereals and cement in silos and inside ships; port operations; casting of iron on a belt and in moulds in furnaces; preparation of sands and moulding and core mixtures; thermochemical treatment of steel; repair of lead-acid batteries; manufacture of non-ferrous alloys with less than 50% lead; reduction of dichromate in tanneries; wood distillation; manufacture of activated carbon; manufacture of collector brushes for electric machines; hospitals specialising in contagious diseases; personnel working with sludge or hydrogen sulphide treatments, etc.¹

III ASPECTS RELATING TO WORK GROUPS WITHIN THE MEANING OF THE PROVISIONS OF LAW NO. 360 OF 29 NOVEMBER 2023 ON THE PUBLIC PENSION SYSTEM

This law expressly repeals Law No. 263/2010 and other previous legal provisions relating to the calculation of pensions and introduces a number of controversial provisions, particularly with regard to pensioners who have worked in work groups I and II.

The new pension calculation formula benefits those pensioners who have worked for more than 25 years.

¹ Order No. 50 of 5 March 1990, as amended and supplemented, specifying the jobs, activities and professional categories with special conditions that fall within groups I and II of work for the purpose of retirement, issued by the Ministry of Labour and Social Protection, the Ministry of Health and the National Commission for Labour Protection.

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Their pensions will be significantly increased and they will benefit from stability points.

The stability points will be 0.50 points/year for the years between 26 and 30 of employment inclusive; 0.75 points/year for the years between 31 and 35 inclusive, and 1 point/year for persons who have worked for more than 35 years, as provided for in Article 85(3) of Law No 360/2023. The controversy begins with Article 15 of Law No 360/2023, which provides in paragraph (1) that additional periods, i.e. contribution periods under special conditions, shall be granted.

The controversy begins with Article 15 of Law 360/2023, which in paragraph (1) provides that additional periods, i.e. contribution periods under normal conditions, shall be granted for those periods which constitute contribution periods completed in jobs under special conditions or in special circumstances.

The amount of these periods is 4 months for each year worked in jobs under special conditions and 6 months for each year worked in jobs under exceptional conditions. The additional periods to the length of service that were granted on the basis of the legal provisions prior to 1 April 2001 for periods completed in work groups I and/or II shall constitute contribution periods under normal working conditions, as provided for in paragraph (2) of Article 15 of Law 360/2023.

The additional period granted for periods of contribution completed under special and/or exceptional working conditions after 1 April 2001 shall constitute a period of contribution under normal working conditions, as provided for in Article 15(3) of Law No 360/2023.

The Bistrița-Năsăud Court, invested with a dispute concerning Article 15 of Law No. 360/2023, ruled that the additional periods referred to in Article 15 of Law No. 360/2023 must be considered contributory periods and that pensioners who had these periods must benefit from the pension increase.

Thus, by its decision of 29 April 2025, the Bistrița-Năsăud Tribunal decided to refer the matter to the High Court of Cassation and Justice-Panel for the resolution of certain questions of law in order to clarify whether the provisions of Article 15(2) and (3) of Law No 360/2023 should be interpreted as meaning that the additional periods of service granted under the legislation prior to 1 April 2001 for periods completed in Group I and/or II and the additional period granted for periods of contribution completed under special and/or exceptional working conditions after 1 April 2001, as provided for in Article 15(2) and (3) of Law 360/2023, constitute contributory periods, within the meaning of the provisions of Article 3(r) of the same legislative act, which must be taken into account when granting stability points in accordance with the provisions of Article 85(3) of the law or, on the contrary, represent non-contributory contribution periods.²

With regard to the above aspects, we also believe that the periods provided for in Article 15, paragraphs (2) and (3) of Law 360/2023 should be considered contributory periods and, consequently, the pensions of these categories of beneficiaries should be calculated/recalculated correctly in order to increase them, because jobs in groups I and II involve work in areas and places where conditions are more difficult and the people who work

² Anonymised conclusion of the Bistrița-Năsăud Tribunal dated 29 April 2025, consulted on: <https://www.scj.ro/cms/0/publicmedia/getincludedfile?id=26014> on 25 July 2025.

there, for example as locomotive mechanics, in mines, etc., are exposed to greater risks and the working conditions in those places/areas of activity are much more difficult.

With regard to jobs in special conditions, we give as examples pathological anatomy and autopsy services in hospitals; pathological anatomy and autopsy in forensic medicine institutions; teaching anatomy, histology, pathological anatomy and cell biology in universities, in accordance with Article 27(3) of Law 360/2023. If we consider jobs in special conditions, as defined by the new regulations, we can mention: research, exploration, exploitation or processing of nuclear raw materials in zones I and II, as well as in zones III and IV, in accordance with Article 27(3) of Law 360/2023.

If we consider jobs in special conditions, as defined by the new regulation, we mention: research, exploration, exploitation or processing of nuclear raw materials in radiation zones I and II; civil aviation for certain categories of flight personnel; artistic activity carried out in certain professions, etc., as provided for in Article 28(1) of Law 360/2023.

The standard retirement age is 65 for both men and women. The minimum contribution period is 15 years and the full contribution period is 35 years, according to Article 47, paragraphs (1), (2) and (3) of the same law. Article 83 of the same law shows how the pension is calculated, i.e. by multiplying the total number of points earned by the insured person by the reference point value.

Article 83 of the same law shows how the pension is calculated, i.e. by multiplying the total number of points earned by the insured person by the reference point value. The reference point represents the ratio between the value of the pension point on the date of the law's entry into force and the average level of contribution periods, i.e. level 25 according to Article 84, paragraph (1) of the same law.

Another controversy generated by the new pension law concerns the practical application of Article 85, paragraphs (3) and (6) of Law No. 360/2010. These provisions state: "(3) For the contributory period exceeding 25 contributory years, a number of stability points shall be awarded as follows:

- a) 0.50 points for each year completed over 25 years;
- b) 0.75 points for each year completed over 30 years;
- c) one point for each year completed over 35 years.

Paragraph (6) provides: "(6) The provisions of paragraphs (3)-(5) shall not apply to periods in which the public pension or, as the case may be, the service pension granted under special laws is cumulated with income insured under the law."

We consider that the biggest problem with these legal provisions is that if it is interpreted that stability points are only granted to certain categories of persons, namely those who have completed a contributory period exceeding 25 years, for the periods during which they actually worked and contributed financially to the social security budget before their retirement date, excluding categories of persons who have completed contributory periods after their retirement date in the event that they have combined their pension with their salary, as well as excluding persons who have completed contribution periods relating to the period during which they received a disability pension and excluding persons who have completed contribution periods relating to special or exceptional working conditions or contribution periods assimilated to special or exceptional working conditions, namely in group I or group II of work in the period prior to 1 April 2001, contravenes the Romanian Constitution. We

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consider that this violates Article (15), paragraph (2) of the Romanian Constitution, i.e. the principle of non-retroactivity of civil law.

Only criminal and contravention law, which is more favourable, is retroactive, while the provisions of civil law apply from the date of entry into force for the future.

We also consider that the provisions of Article 16(1) of the Romanian Constitution are being violated because certain categories of pensioners are being discriminated against, given that all categories must be treated equally and granted their rights.

We also consider that Article 22(1) of the Romanian Constitution, namely the right to life, to physical and mental integrity, for the categories of pensioners to whom the criticisable legal provisions do not apply, because these pensioners also have the right to obtain the medicines necessary to treat the conditions from which they suffer and to undergo certain medical procedures, which are often costly and for which their pensions are insufficient in most cases.

The legal provisions of Article 85, paragraphs (3) and (6) of Law No. 360/2023 also violate Article 44, paragraphs (1) and (2) of the Constitution, which concern the right to property, because as long as social benefits also have a patrimonial character, they constitute in some cases a right to property within the meaning of Article 1 of Additional Protocol No. 1 to the European Convention on Human Rights for beneficiary pensioners. The extensive case law of the ECHR is also in line with this.

We consider that the provisions of Article 47(2) of the Romanian Constitution, which concern, among other things, the right to a pension, are not being respected, because certain categories of pensioners are excluded from receiving a pension in an unjustified, unfounded and legally unsubstantiated manner. We consider that it is necessary to recognise the periods of service corresponding to the conditions (group) of work as periods of contributory service for which stability points are awarded.

We consider that it is necessary to recognise as contributory periods for which stability points are awarded the periods of service corresponding to the conditions (group) of work and the periods corresponding to the assimilated service, as we are dealing with acquired rights that must be realised through the granting of stability points for these periods.

Since the stability points corresponding to the above periods are not granted, we are faced with a flagrant violation of the provisions of Article 15(2) of the Romanian Constitution, i.e. the principle of non-retroactivity of the law, because there is a change in the legal regime of the working conditions under which the pensioner agreed to carry out his or her activity. of the Romanian Constitution, i.e. the principle of non-retroactivity of the law, because there is a change in the legal regime of the working conditions under which the pensioner agreed to work during his working life, a legal regime that was valid when they obtained the right to receive a pension and which did not contain a legal provision allowing the legislator to retroactively modify this legal regime provided for by civil law, including the financial consequences established by previous laws.

We cannot accept as fair and in line with the values and principles of a democratic state that a pension law should negatively alter pension rights previously established by law, based on the *tempus regit actum* principle. This principle does not allow for the adoption of

subsequent legislation that diminishes pension rights by establishing a different method of calculation that is disadvantageous compared to the existing law.

We can look at the issue of the effects of the new pension law on the legal effects of the period of service in the work groups regulated by the previous legislation from another point of view, namely *the theory of acquired rights*.

The origin of the theory of acquired rights lies in classical civil law and in the principles developed in the 19th century by the French legal school, in particular by Charles de Montesquieu and later by Jean-Étienne-Marie Portalis, one of the drafters of the French Civil Code of 1804.

The theory was based on the idea of legal certainty and the principle of non-retroactivity of the law, according to which the law cannot suppress the legal effects produced under a previous law. Thus, a right that has been legally established and exercised becomes "acquired" and cannot be annulled by new rules.

At the international level, this concept was taken up and consolidated by the European Convention on Human Rights (ECHR) in Article 1 of Protocol No. 1, which guarantees "the right to respect for property". Although the text apparently refers to material property, the European Court of Human Rights has interpreted the term "*property*" in a broad sense, including legally acquired patrimonial rights: the right to a pension, salary, social benefits, compensation or other economic benefits.

In the case law of the ECHR, cases such as *Buchen v. the Czech Republic* (2002), *Stec and Others v. the United Kingdom* (2006) and *Kopecký v. Slovakia* (2004) have reinforced the idea that rights recognised by law or by a final decision constitute protected property. Thus, an already established pension right or a legally granted allowance cannot be withdrawn retroactively, as this would violate the principle of legal certainty and the protection of legitimate expectations.

The Court also distinguished between an acquired right, which is certain and current, and a legitimate expectation, which is a hope based on a solid legal basis. Both can be protected, but to different degrees. On the other hand, a mere future hope, without a concrete legal basis, does not fall within the scope of protection offered by the Convention.

Therefore, the theory of acquired rights, born out of reasons of fairness and legal stability, has evolved from the classic principle of non-retroactivity of the law to a modern guarantee of respect for acquired property rights. In the interpretation of the ECHR, it is not limited to real estate, but extends to all certain economic rights, such as pensions, salaries and social benefits, thus becoming an essential component of the protection of human rights and the European rule of law.

In summary, we consider that the innovative legal provisions establishing pension rights, which were introduced by Law No. 360/2023, should have been and should be applied only to persons who become entitled to pension rights after the entry into force of this law.

IV. Conclusions

A number of conclusions can be drawn from the content of this paper. Thus, in order for a person to be entitled to a pension, they must meet several conditions, namely be at least 65 years of age, have been employed under an individual/collective employment contract, collaboration contract or any other legal form, and have paid their social security contributions

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on time. The contribution period must also be fulfilled, i.e. a minimum of 15 years and a maximum of 35 years, as stipulated by Law 360/2023. In previous regulations, the provisions were somewhat similar, but for certain categories of persons, the contribution period was 20 years (work group I) or 25 years (work group II).

On the other hand, we can also see that the work groups were specifically established by the legislator through normative acts such as: Law No. 3/1977; Decree-Law No. 68 of 1990; Order No. 50 of 5 March 1990, with subsequent amendments and additions, specifying the jobs, activities and professional categories with special conditions that fall within work groups I and II for the purpose of retirement, issued by the Ministry of Labour and Social Protection, the Ministry of Health and the National Commission for Labour Protection, which was repealed on 1 April 2001. Decision No. 9/2016 of the ICCJ established the method of calculating the pension for pensioners who worked in groups I and II.

Another conclusion we can draw is that the applicable law is the one in force on the date of entitlement to a pension with regard to the method of determining the amount of the pension. We consider that the legislator does not have the right to intervene retroactively in the matter of pensions, i.e. if the right to a pension has been established on the basis of legal provisions, it is not possible for Law No. 263/2010, Law No. 360/2023 or other similar normative acts to diminish the pensioner's rights previously established. We consider that if the new legal provisions contain provisions that would lead to an increase in the pension already being paid to persons who have previously retired, there is nothing to prevent these legal texts from being applied in the future and pensions from being increased.

We also conclude that, as the High Court of Cassation and Justice has pointed out, the full contribution period to be taken into account in order to determine the average annual score for persons whose pension rights were opened between 1 July 1977 and 31 March 2001 and who worked in special categories of employment is that regulated by Article 14 of Law No 3/1977 on state social insurance pensions and social assistance.

Even many courts, in their decisions on specific cases, have ruled that if a person's old-age pension rights were acquired under Law No 3/1977, the subsequent recalculation of the pension carried out in accordance with the provisions of Law 19/2000, even until the date of application of Government Emergency Ordinance No. 4/2005, had to take into account the full contribution period and the retirement ages established by the normative act on the basis of which the retirement was made.

If we consider the new pension regulations, especially those in Law No. 360/2023, in addition to rewarding those who had more years of , during which they worked and contributed to the social security system, i.e. they have paid social security contributions in the sense that they are awarded more stability points and, implicitly, a higher pension, it is unfair to other pensioners whose rights were established by previous regulations and who worked in groups I and II, under special or exceptional conditions.

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PARTICULARITIES OF LEGAL ACTION FOR COMPENSATION OF DAMAGES CAUSED TO THE ANIMAL KINGDOM

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Abstract: *The legal regulations concerning the procedural aspects of compensating for damage caused to the animal kingdom establish the normative framework and mechanisms through which harm to wildlife is assessed and remedied. These regulations include provisions from civil, administrative, and, in some cases, criminal law, aiming to protect biodiversity and ensure accountability for those responsible for damages. The damage compensation procedure follows several stages, including identifying the harm, determining the form of legal liability, assessing the impact on the ecosystem, and implementing compensatory or ecological restoration measures. This study aims to analyse the legal regulations applicable to the compensation for damage to the animal kingdom, highlighting both theoretical aspects and practical challenges encountered in their implementation. Additionally, it will examine the procedural mechanisms involved in damage assessment, liability determination, and the application of compensatory or ecological restoration measures.*

Keywords: *animal kingdom, environmental damage, judicial competence, court decision, civil action, compensation, monetary equivalent.*

1. INTRODUCTION

The protection of the animal kingdom represents a crucial component of environmental law, with significant implications for the balance of ecosystems and biodiversity. Damage to wildlife, whether caused by economic activities or through negligent human actions, necessitates the adoption of clear legal regulations regarding the prevention, documentation, and remediation of environmental harm.

In this context, the national and international legislative framework establishes specific mechanisms of legal liability, guiding principles, and administrative and judicial procedures aimed at restoring affected ecosystems and compensating for the damages caused.

2. Materials and methods

The present research is a scientific-applied study on the legal aspects related to compensating for damages caused to the animal kingdom. Consequently, the analysis method, the comparative method, and the deduction method were applied in a compiled manner. Additionally, the methods of systematization and generalization have a significant impact on the proposed study.

3. **Material and territorial jurisdiction of the court over actions for compensation of damage caused to the animal kingdom**

The administration of justice is possible when the competencies and responsibilities of courts are clearly delineated. This necessity arises due to the existence of multiple judicial bodies, requiring the precise definition of their duties so that their activities do not overlap with those of other institutions and to ensure that no legal areas remain unaddressed.

As stated in specialized legal literature: *"(T)he competence of a judicial body represents, therefore, what the law determines that it can and must do in the capacity with which it is entrusted; it defines the limits within which its regular and normal activity can extend, and it constitutes its legal aptitude to perform certain acts, particularly to exercise a specific portion of its jurisdictional function"* (Boroi G. Stancu M. (2023). p.176).

Consequently, actions for damage compensation fall within the jurisdiction of the district court, as it is the court of first instance.

Previously, procedural civil legislation assigned jurisdiction over cases involving damage to the animal kingdom to the **Courts of Appeal**. For instance, Article 33 of the **Civil Procedure Code of the Republic of Moldova**, in its version prior to 2012, established that the Courts of Appeal, as courts of general jurisdiction, adjudicated in the first instance civil cases concerning the protection of the rights and interests of the state and administrative-territorial units related to environmental protection (Civil Procedure Code of Republic of Moldova. art. 33).

Today, lawsuits and claims regarding damages resulting from matters related to the use and protection of the animal kingdom fall under the jurisdiction of the courts.

Additionally, current legislation upholds the rule that actions for compensation of damages caused to the animal kingdom are to be resolved by the court in the jurisdiction where the defendant is located (Civil Procedure Code of Republic of Moldova.art.38). Furthermore, Article 39 of the Civil Procedure Code of the Republic of Moldova grants the claimant the option to choose the competent court within the limits set by law.

In the same vein, Article 40 of the Civil Procedure Code of the Republic of Moldova establishes specific regulations regarding exclusive jurisdiction, as follows:

Lawsuits concerning rights over land, subsoil resources, forest strips, perennial plantations, isolated water resources, houses, premises, constructions, and other immovable properties, as well as possessory actions related to these goods and actions for the removal of sequestration from goods, shall be filed in the court where these goods are located. If the goods subject to the action are situated within the jurisdiction of multiple courts, the claim may be filed in any court within whose territorial jurisdiction a part of the goods is located (Civil Procedure Code of Republic of Moldova.art.38, para.1). Regarding lawsuits for damages caused to the environment, such actions shall be brought against the owners (or possessors) of equipment in the court where the equipment is installed, except in cases where it is installed abroad (Civil Procedure Code of Republic of Moldova. art.38).

We believe that although the Civil Procedure Code of the Republic of Moldova contains clear and rigid regulations concerning territorial jurisdiction, the rules should be reconsidered when it comes to damages affecting wildlife.

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In this regard, we are of the opinion that the legislator should reconsider the procedural stance and establish the rule according to which the place for examining the case concerning the damages caused to the animal kingdom should be determined by the place where the damage occurred. Such an approach would not pose a difficulty for the plaintiff in terms of traveling to the defendant's location. Moreover, it would serve as a deterrent to the perpetrator. Furthermore, we consider that an alternative solution could be to establish a regulation whereby the issue of the location for examining the case related to the repair of damages caused to the animal kingdom would be left to the discretion of the plaintiff. In such a case, the plaintiff could even choose the court from their place of residence.

Thus, we would propose supplementing Article 38 of the Civil Procedure Code with a new paragraph with the following content: "(3) *The action regarding the repair of damages caused to the environment may be filed, at the discretion of the plaintiff, at the court in the territorial jurisdiction of the plaintiff's domicile (registered office), the defendant's domicile (registered office), or the place where the damage occurred.*"

In this way, the plaintiff, filing an action regarding the repair of damages caused to the animal kingdom, will be able to choose, depending on their interest, whether the case will be examined at the court in the location of their domicile or registered office, at the domicile or registered office of the defendant, or at the court in the place where the damage occurred.

If the claims are made regarding several defendants, the territorial jurisdiction of the court concerning the location of the defendant, the plaintiff will choose it depending on the location of any of the defendants (Trofimov I. Gugulan E. (2023). p. 43-54).

4. The parties in the action for damages

The existence of a civil case cannot be conceived without the court and, at least, two parties with opposing interests involved in the case: on one side, the "*claimant*," who usually formulates the claim, and on the other side, the "*defendant*," who comes to defend themselves in court against the claims made – "*actus trium personarum: iudicis, actoris atque rei.*" (Boroi G. Stancu M. (2023). p. 88).

The Civil Procedure Code of Romania (Cornu G. Foyer J. Procédure civile. (1996).p.496) uses the notion of "*party*" or "*parties*" for the individuals between whom a conflict has arisen, but it does not specify the legal content.

Establishing the content of the notion of "*party*" is more of a doctrinal task, but approaching it in a simplistic way would constitute a major error (Leş I. Ghiţă D. Lozneau V. (2020). p.86).

Thus, in specialized French legal literature, some authors categorically state that the notion of "*party*" is a "*procedural notion*." (Cornu G. Foyer J. Procédure civile. (1996).p.496). The characterization of the concept of "*party*" provided by Gérard Cornu and Jean Foier is significant and entirely valid in our law as well: "*parties must be considered only the persons between whom the process is initiated, **the parties in the case**, just as other persons are parties in a contract.*" (Vincent J. Guinchard S. (1999). p. 351).

More recent formulations are provided by Loïc Cadiet and Emmanuel Jeuland, who in turn consider the notion of "*party*" as one of the most delicate issues of judicial law. They

observe that the claimant is the one who initiated the action, and the defendant is the one against whom the claim was made (Leş I., Ghiţă D., Lozneau V. (2020). p. 86).

A group of authors argue that, understanding this concept is of interest for determining the rights and obligations of the procedural participants. This is because, on the one hand, some rights and obligations are provided by law only for the parties, and on the other hand, the judicial decision will produce direct effects only for the persons who participated in the judicial activity as parties (Savva A., Tihon V., Gugulan E., Mariţ M. (2025). p. 99).

Consequently, before discussing the parties involved in the action to repair the damage caused to the animal kingdom, it is necessary to make a remark, namely that we must distinguish between the parties and participants in procedural relations, where the parties are those participants who invoke and claim the defence of a specific right, while other participants, other than the parties, usually cannot invoke a personal interest.

The general rule, which we are accustomed to referring to when talking about the parties in the legal relationship of liability for damages caused to the animal kingdom, is that the parties in the liability relationship for damage caused to the animal kingdom are the state and administrative-territorial units on one hand, and the natural and legal persons who caused the damage, on the other hand. However, it must be understood that this formula is general and sometimes even incorrect, as the combinations of participation in the liability relations for damages caused to the animal kingdom can be quite diverse.

This is because the perception that the state or, as the case may be, administrative-territorial units can only have the status of the claimant is a mistaken perception. The same applies to natural and legal persons in relation to their exclusive status as offenders. Thus, not only natural and legal persons can have the status of offenders (wrongdoers), but also the State, as well as the administrative-territorial units.

The state can cause damage to the animal kingdom, which represents the area of interest for the administrative-territorial unit, and vice versa. In the same sense, the state can cause damage to the animal kingdom, thus disturbing the interests of natural or legal persons, including private ones.

Therefore, we will not refer to a specific quality from the perspective of the subject's legal status, but we will analyze the range of possibilities and duties provided by law for the parties in the process of examining disputes related to damages caused to the animal kingdom, without referring to the type of subject.

Thus, in accordance with the provisions of Article 55 of the Civil Procedure Code of the Republic of Moldova, the participants in the process are considered to be: the parties, interveners, representatives, the prosecutor, persons who, in accordance with Article 7 Civil Procedure Code of the Republic of Moldova paragraph (2), Articles 73 and 74 Civil Procedure Code of the Republic of Moldova, are authorized to address the court with requests to defend the rights, freedoms, and legitimate interests of other persons or who intervene in the process to submit conclusions in defence of the rights of other persons, as well as persons interested in cases with special procedures (Trofimov I. Gugulan E.(2023).p. 43-54).

Taking into account the public nature of the interest pursued through liability mechanisms for the damage caused to the animal kingdom, the claimant can invoke an action

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for repairing the damage caused to the animal kingdom only if another person has not made such a claim, as well as if the amount and extent of the claims do not differ.

If such a claim has already been made, the claimant can only join the process. They may request the supplementation of the claims without repeating those already made.

In fact, as previously mentioned, the claimant can file multiple claims. However, the court will examine them separately and will not apply distinct conditions and procedures. All the claims will be examined in the same process, as they have the same subject – the concrete damage caused to the animal kingdom.

It is important to note that often the damage caused to the animal kingdom is associated with damage to other environmental elements. For example, the death of fish in a water basin is usually associated with pollution of the water basin. In such cases, the claimant does not file separate actions for the repair of each category of polluted natural resources. On the contrary, the comprehensive approach to the situation allows the court to examine both the evidence proving the damage and the causal relationship between the polluting phenomena.

In this sense, each claim, although it may refer to different natural resources, will still be examined in the context of the interdependence of the phenomena.

Similarly, an important subject in this regard is the issue related to the succession of the right to claim damages caused to the animal kingdom.

Although it has been previously mentioned that damages caused to the animal kingdom are subject to succession according to the general rules, starting from the provisions of Article 37 of the Constitution of the Republic of Moldova, once any person is the subject of the environmental interest, the necessity of succession of such a right is not necessarily justified. At the same time, it should not be considered that addressing the subject related to the succession of liability for damage caused to the animal kingdom is entirely meaningless (Lupan E. (2003). p. 238).

In this regard, the logic of the succession of responses is grounded in the fact that the successor can oppose all the exceptions raised by the deceased claimant against the defendant. Thus, in the case where the successor, during their time, could have intervened in the process against the perpetrator but did not do so due to the absence of a real interest, and in fact did not intervene, they acquire the possibility to intervene as a result of the opening of the inheritance and identify a real interest. Therefore, they can support all the claims and requests that the deceased claimant had. At the same time, the successor substitutes the deceased claimant in the process and takes over all the procedural opportunities missed by the claimant due to their initial non-intervention in the process.

As previously mentioned, if the damage results from the actions of multiple individuals, they are jointly liable. However, the claimant can file the action without being obligated to name all the perpetrators, having the possibility to submit claims against any of the perpetrators. These claims can be made in relation to the full damage. In turn, the defendant who lost the case is entitled to approach the court for recourse (Trofimov I. Gugulan E. (2023). p. 43-54).

It should be noted that if the defendant, summoned to court to answer jointly for the actions of multiple perpetrators who caused harm to the animal kingdom, is liable according

to environmental responsibility rules, in the recourse action, the defendant who lost the case will be held liable according to the rules of joint debtor responsibility under civil law provisions, without the possibility of invoking environmental law responsibility. In other words, if the one who is jointly liable for the act causing harm to the animal kingdom, committed by several people, does so on the basis of objective responsibility – regardless of fault, then in recourse, the joint perpetrators will be liable to this defendant based on principles of subjective responsibility, grounded in fault.

It should be mentioned that in recourse, the court will examine not the issue of the harm caused to the animal kingdom, but rather the issue concerning the manner of executing the monetary obligation in relation to the harm caused to the animal kingdom.

5. Proof of the right to compensation and the subject of the action for damage repair through monetary equivalent caused to the animal kingdom

Evidence plays a crucial role in civil proceedings. In order to issue a judgment, the judge must know all the details related to the relationships between the parties, the facts that gave rise to the conflict of interest brought before the court, and then apply the corresponding legal norm to these facts. Since the dispute cannot be resolved solely based on the statements of the parties, which are usually contradictory, it follows that evidence is indispensable for establishing the factual situation, representing the means by which the competent court can become aware of the material legal relationships under judgment.

Therefore, the parties must support the claims they make regarding the claims filed and the defenses against these claims, and the judge will form their conviction and issue the judgment based on the evidence presented in the case – *da mihi factum, dabo tibi ius* ("give me the facts, I will give you the law" – a maxim meaning that the parties to a dispute must present evidence to the court, which will make a legal decision based solely on the evidence provided by the parties).

In the examination of the case regarding the compensation for damage caused to the animal kingdom, the plaintiff must prove the presence of the conditions established by law in order for the defendant's liability for the damage caused to the animal kingdom to be invoked.

Here, in the absence of a separate regulation, we conclude that both regarding the burden of proof and the means of evidence, the general rules applicable to the civil process of examining civil cases shall apply (Trofimov I. Gugulan E. (2023). p. 43-54).

Thus, Article 117 of the Civil Procedure Code of the Republic of Moldova stipulates that: "...evidence in civil cases consists of factual elements, obtained in the manner prescribed by law, that serve to establish the circumstances justifying the claims and objections of the parties, as well as other circumstances important for the fair resolution of the case." (Civil Procedure Code of the Republic of Moldova.art.117). As evidence in civil cases, elements of fact are admissible, such as explanations from the parties and other persons interested in the resolution of the case, testimonies from witnesses, documents, material evidence, audio-video recordings, and expert opinions. The legislator mentions that data obtained in violation of the law do not have probative value and cannot be used by the court based on its ruling (Civil Procedure Code of the Republic of Moldova. art.117).

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As mentioned, in terms of evidence, in the regular civil procedure, the burden of proof lies with the plaintiff. This means the plaintiff must prove the illicit nature of the act, the presence of damage to the animal kingdom, must demonstrate the value and extent of the damage caused to the animal kingdom, as well as the causal link between the damage and the defendant's (perpetrator's) act (Trofimov I. Gugulan E. (2023). p.43-54).

We further clarify that proving guilt is not an issue for examination in the process of liability for damage caused to the animal kingdom, and therefore, the plaintiff is not required to prove (evidence) this matter.

At the same time, such a general approach makes it difficult for individuals who invoke harm caused to the environment during the legal process. The difficulty arises from the fact that the defendant would have a more favourable position, including due to the fact that time 'works' in favour of the wrongdoer.

Thus, in our opinion, regarding the damage caused to the animal kingdom, the legislator's stance should be revised, and as a result, these cases should be treated distinctly, where the claimant should not be placed in a more unfavourable situation.

We believe this could be achieved by establishing the principle of reversing the burden of proof for cases related to the repair of damage caused to the animal kingdom.

Therefore, we believe that the claimant should prove the existence and extent of the damage caused to the animal kingdom, the causal link between the damage and the defendant's (wrongdoer's) action, while proving the legality of the action should fall on the defendant.

When the law, in order to facilitate the victim's situation, establishes a legal presumption in their favour, there is either a shift in the object of evidence or a breakdown of the object of evidence.

In accordance with the principle of objective liability established in *Article 3 of the Law on Environmental Protection (8)*, a person harmed by the actions of a minor child, a student, or an apprentice does not have to prove their fault, just as the illegality of their actions is not required. The finality of patrimonial liability for damage caused to the animal kingdom, presumptively, should be conditioned by the present financial capacity.

Here, we are not addressing the issue of parents' liability for the damage caused by their minor child, because, otherwise, the injured person would have to prove the general conditions of civil liability, namely the damage, the unlawful act of the minor child, and the causal relationship between the minor's act and the damage suffered, as well as two special conditions: the child must be a minor and must live with their parents, as well as the parents' fault in not properly educating the child (Trofimov I. Gugulan E. (2023). p. 43-54). Also, in the case of liability of the principals for the acts of the subordinate, the legislator has removed fault from the set of actions that give rise to the right to compensation, this liability being, alongside that for things and animals under guard, an objective liability. Regarding the categories of evidence admitted to confirm the damage caused to the animal kingdom, we believe that there are no restrictions in this area, where the injured party has the possibility to appeal to any means of proof not prohibited by law.

6. The Court Ruling on Compensation and Its Effects

Article 243 of the Civil Procedure Code of the Republic of Moldova stipulates that when the court issues a ruling to collect a sum of money, it must specify in the judgment the amount and currency in which it is to be paid, as well as any late payment interest that the debtor must pay (Civil Procedure Code of the Republic of Moldova. art.243).

Article 246 of the Civil Procedure Code of the Republic of Moldova regulates the effects of the ruling, stating that when the asset is awarded in kind, the court specifies its equivalent value in the judgment. In the legal literature, the role and importance of the court ruling are discussed in detail. It represents the court's dispositive act regarding the claims that the parties have brought before the court, thus being the final act of the trial (Boroi G. Stancu M. (2017). p. 616).

In the case of a decision on a request for compensation for damage caused to the animal kingdom, the court may order at least three basic types of actions through which it will oblige the perpetrator to repair the damage (Trofimov I. Gugulan E. (2023). p. 43-54):

1. The first refers to compensating the damages caused.
2. The second refers to covering the expenses related to the treatment of the animal or another representative of the animal kingdom.
3. The third refers to taking concrete actions to restore the living environment of the fauna elements.

The specificity of the judicial decision granting compensation, as a result of holding responsibility for the damage caused to the animal kingdom, is relevant to our topic through some of its effects.

The first effect is related to the value of the act as the authority of *res judicata* or "*the power of the judged thing*." This reflects a principle that governs the administration of justice. Moreover, the power of *res judicata* is attributed not only to judicial decisions but also to transactions in which the parties in the dispute agree on a solution regarding the way and conditions for resolving the dispute.

Regarding the court decision, once it resolves a dispute, the dispute, within its limits, forms, and content, can no longer be the subject of a new trial. The legislator clearly establishes the rule according to which: "*...(the) case having the same subject, the same cause, and the same parties cannot be examined by the court, constituting the basis for the cessation of the initiated civil process.*" (Lupan E. (2003). p. 265). Similarly, the scope of *res judicata* is limited only to those contentious issues that were the subject of the dispute and which were resolved by the final decision. Thus, in another case, the decision that resolves the same issues raised by one of the parties will be opposable to the person, as a matter of *res judicata*, and also to those with identical effects as the disputed object requested.

Regarding the court decision obliging compensation for damages caused to the animal kingdom, it should be noted that the claimant can also request additional compensation for costs or damages that have become noticeable after the finality of the decision.

Although the requirements regarding future damages can be modified throughout the entire trial, including due to their later occurrence, namely the fact that even after the moment when the decision became final, such claims can also constitute the subject of repair claims. And, although these damages occurred later, with a beginning in the matter already ruled by

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the court, in our opinion, the court will rule on these new circumstances based on the already pronounced final decision.

These changes in the scope of the damage can be, for example, the death of the animal, which occurred due to the harmful act of the defendant, and which had not yet occurred at the time the court decision became final. This is because, in this case, the relationship between the damage and the obligation to compensate is no longer maintained by the effect of the irrevocable decision. Therefore, since the resulting damage is no longer covered by the compensation provided by the irrevocable decision, pronouncing a different solution in the case becomes a pressing necessity.

However, the important issue is whether such an examination should be carried out through a new procedure or only through a revision procedure.

In our opinion, conducting this operation is not rational to be exercised through the perspective of a new procedure, since there are new circumstances that have occurred entirely in relation to the circumstances already examined, but which appeared afterward and could not have been known to the parties until the moment the decision became final.

This situation fits perfectly within the conditions outlined by Article 449 of the Civil Procedure Code of Republic of Moldova, according to which: "... (r)evision is declared when certain essential circumstances or facts of the case become known, which were not known and could not have been known to the party seeking revision, provided that they prove they have taken all measures to discover the essential circumstances and facts during the previous trial of the case."

In such a case, the plaintiff may request either an increase in the amount of monetary compensation, as the irrevocable decision only refers to that part of the damage known at the time of the decision, and which the court acknowledged at that moment, or a modification of the method of repairing the damage (Cernomoreț S. Nastas A. (2023). p. 303).

For example, a case might be where the plaintiff only requested the reimbursement of the animal's treatment costs, while the animal was undergoing such treatment; however, as the animal perished, the plaintiff would be entitled to request not only the costs related to the animal's treatment but also the amount of compensation for the unlawful exclusion of the animal from its natural environment.

Although, in essence, the procedural route for additional requests could be approached as a new civil action, even if previous compensation has been granted by the court, we must still understand that repairing the damages caused to the animal kingdom must be faster, as nature cannot "wait." In the specialized literature, the issue of justifying a revision of irrevocable decisions, which awarded global compensation, has been addressed to the extent that these solutions also cover future damages (Nastas A. Cernomoreț S. (2024). p. 11).

In our opinion, such an approach, which is characteristic of solutions concerning civil actions within a criminal process, would be one of the options that, at first glance, would be very advantageous. At the same time, offering a solution that does not state the exact amounts of the compensation obligation creates new obstacles in the realization of the compensation process. In this way, the claimant will be forced to provide additional evidence to confirm the amount of the damages, evidence that can be challenged by the debtor, even though the creditor (the claimant) holds an irrevocable court decision. At best, the claimant will resort to

a new trial, aimed at determining the amount of the damages. However, such an exercise would undermine the applicability of the principle of expedience, and the claimant would be forced to engage in another trial, with all the steps required by law, just to obtain a decision on this matter.

In our opinion, we should return to the procedure of examining cases related to environmental damage in just two stages – the merits and the appeal. At the same time, procedural deadlines should be significantly shortened, so that a procedure would not last about 30 days. Only under such conditions can we truly speak about a process aimed at protecting the environment, and especially the animal kingdom.

The issue of changes in the extent of damage is not always limited to the case of new circumstances related to the actual expansion of the damage, which consists of new consequences for the animal kingdom. Sometimes, the increase in the extent of the damage is determined by the subsequent occurrence of other consequences, excluding those directly affecting the animal kingdom. We specifically refer to inflationary processes, to which the law often links the possibility for the parties to request a revision of the monetary amount of compensation.

It has been argued in doctrine that the requirements for damage compensation in monetary equivalent can be modified if changes occur that are dictated by the decrease in the purchasing power of currency. Here, it should be noted that the amount of damage does not increase, nor does it decrease, but rather, there is a fluctuation in the value of the currency in which the compensation is made.

Thus, because the legislator is aware that, from the moment the damage occurs to the moment the compensation is made, inflationary phenomena can arise that will significantly affect the equivalence and completeness of the reparation.

This is because, in doctrine, inflation is regarded as the over-saturation of the circulation arteries with a quantity of paper money that exceeds the real needs of the economy, leading to the devaluation of money (Didier M. (1994). p. 285). Therefore, inflation does not imply the expansion of the value of the damage, but only the reflection of this damage value in the currency amount. Moreover, in the judicial practice of the Republic of Moldova, the concept of admitting a claim for damage repair is fully adopted according to the evaluations at the time of the ruling, even if, at the time the damage occurred, such damage had a different monetary evaluation.

7. Conclusions and Recommendations

As a result of the analysis of the regulatory framework regarding certain legal aspects of compensating damages caused to the animal kingdom, we deduced the following conclusions:

- The clarification and updating of regulations concerning the compensation for damages caused to the animal kingdom is commendable, as it would allow for a more efficient and coherent application of legal norms.
- The proposal to allow lawsuits to be filed at the court located where the damage occurred would facilitate access to justice and discourage harmful actions.

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- It must be acknowledged that both private and public entities can be held accountable for damages caused to the animal kingdom, which necessitates the establishment of a transparent legal framework for liability.
- In the case of disputes concerning compensation for damages caused to the animal kingdom, the perpetrator must demonstrate the legality of their actions in order to balance the procedural position with that of the claimant.
- Reducing the duration of procedures and establishing flexible review mechanisms would facilitate a quicker and more appropriate compensation process for damages.

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THE PATRIMONY IN THE LIGHT OF CURRENT LEGAL REGULATIONS

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Abstract: Patrimony is one of the fundamental concepts of civil law, continuously evolving under the influence of economic, technological, and social transformations. From the classical conception of patrimony as a single legal universality, contemporary law has come to recognize autonomous patrimonial masses, the patrimony of affectation, as well as new forms of digital, cultural, and ecological patrimony. This article aims to analyze the concept of patrimony in the light of current legal regulations, focusing on the provisions of the New Civil Code, recent doctrinal developments, and the challenges generated by the digital economy and globalization.

Keywords: patrimony, patrimony of affectation, patrimonial masses, digital patrimony, cultural patrimony

Introduction

The concept of patrimony represents one of the cornerstones of civil law, functioning as an essential instrument for understanding legal relationships with economic content. From its earliest doctrinal formulations, patrimony has been conceived as the legal expression of a person's economic existence, encompassing the totality of rights and obligations capable of pecuniary evaluation (Hamangiu et al., 1996:12-14), (Maurie et al., 2020:15-18). Far from being a purely theoretical construct, patrimony plays a decisive role in everyday legal practice, particularly in matters concerning obligations, liability, enforcement, insolvency, and succession.

Traditionally, civil law systems have approached patrimony through a classical and relatively rigid perspective, closely linked to the notion of legal personality. According to this view, each person is necessarily the holder of a single patrimony, conceived as a legal universality, independent from the individual assets that compose it. This classical theory, strongly influenced by French doctrine and jurisprudence, emphasized the unity and indivisibility of patrimony, assigning to it primarily the function of a general guarantee for creditors. For a long period of time, this conception proved sufficient, reflecting the economic realities of a society in which wealth was predominantly material and easily identifiable.

However, the profound transformations of contemporary society have progressively challenged this traditional understanding. The diversification of economic activities, the rise of professional and entrepreneurial autonomy, the development of complex financial instruments, and, more recently, the expansion of the digital economy has all contributed to a

reconfiguration of the patrimonial landscape. In this context, patrimony can no longer be perceived merely as a static and homogeneous legal construct, but rather as a dynamic structure, capable of internal organization and functional differentiation.

Romanian civil law has not remained isolated from these evolutions. The adoption of the New Civil Code marked a significant step (Baiaș et al., 2012:31-33) in the modernization of patrimonial theory, expressly defining patrimony and, at the same time, allowing for a more flexible internal structuring through the recognition of autonomous patrimonial masses, such as the patrimony of affectation. This legislative innovation reflects a broader European trend aimed at reconciling the classical principle of the unity of patrimony with the practical necessity of separating assets according to their economic destination and associated risks.

At the same time, the contemporary understanding of patrimony must also take into account the emergence of new categories of assets that challenge traditional legal classifications. Digital assets, including cryptocurrencies, non-fungible tokens, online accounts, databases, and other intangible resources, have acquired undeniable economic value and increasingly form part of individuals' and legal entities' patrimonial structures. European regulations such as the GDPR and the MiCA Regulation confirm this evolution, compelling legal systems to adapt patrimonial concepts to technological realities.

Beyond its individual dimension, patrimony also acquires a collective significance, particularly in relation to cultural and ecological values. Cultural heritage and natural resources are no longer viewed solely as objects of ownership or economic exploitation, but as shared assets whose protection serves the interests of present and future generations. This broader conception of patrimony reflects a shift from a purely individualistic approach toward one that integrates social responsibility and sustainable development.

In light of these considerations, the present article aims to examine the concept of patrimony in the context of current legal regulations, with a particular focus on Romanian civil law and its alignment with European legal developments. By analyzing the evolution of patrimonial theory, the institution of the patrimony of affectation, intra-patrimonial transfers, and the emergence of digital, cultural, and ecological patrimony, this study seeks to highlight the adaptability of civil law to contemporary challenges. Ultimately, the article argues that patrimony remains a fundamental legal concept, but one whose relevance depends on its capacity to evolve in response to economic, technological, and social change.

I. The notion of patrimony and its doctrinal evolution

In classical civil law theory, patrimony was conceived as a legal universality comprising the totality of rights and obligations with economic value belonging to a person. This conception was deeply rooted in the idea of legal personality, patrimony being regarded as an inherent attribute of the person, inseparable from its legal existence. As a consequence, patrimony was understood not as a mere aggregation of assets, but as an abstract legal construct, designed to reflect the economic dimension (Hamangiu et al., 1996:20-22) of the individual or legal entity.

A fundamental element of this classical approach was the principle of the unity of patrimony (Stoica, 2009:45-47). According to this principle, each person could be the holder of only one patrimony, regardless of the diversity of assets owned or obligations assumed. This unity was considered both necessary and logical, as patrimony served primarily as a general

guarantee for creditors. From this perspective, all the debtor's assets, present and future, formed a single pool against which creditors could enforce their claims, unless the law expressly provided otherwise. The indivisibility of patrimony thus ensured legal certainty and predictability in civil and commercial transactions.

The Romanian Civil Code of 1864 did not contain an express legal definition (Hamangiu, 1996:25-27) of patrimony. Nevertheless, Romanian doctrine succeeded in developing a coherent and robust theoretical framework, largely inspired by French legal thought and by the classical doctrine associated with the Napoleonic Code. Patrimony was described as a legal universality distinct from the individual goods composing it, a notion that allowed jurists to explain phenomena such as universal succession, subrogation, and the continuity of obligations irrespective of changes in the concrete composition of assets.

Within this classical framework, patrimony fulfilled a predominantly protective function in favor of creditors. Its role as a general guarantee justified the strict adherence to the principle of unity, as any fragmentation of patrimony was perceived as a potential threat to the security of legal relations. Consequently, traditional doctrine was reluctant to accept the idea that a person could dispose of several autonomous patrimonies, even when economic realities suggested the necessity of separating assets according to their destination or the risks associated with different activities.

However, over time, the rigidity of the classical conception began to reveal its limitations. The increasing complexity of economic life, the expansion of professional and entrepreneurial activities carried out by individuals, and the emergence of new forms of wealth called into question the adequacy of a strictly unitary view of patrimony. These developments highlighted the need for a more flexible legal approach, capable of accommodating differentiated economic functions within the same patrimonial framework.

The entry into force of the New Romanian Civil Code marked a decisive moment in the evolution of patrimonial theory. For the first time, the legislator expressly enshrined the notion of patrimony, defining it as the totality of rights and obligations that can be evaluated in money and belong to a person. This explicit definition did not merely codify a doctrinal concept, but also reflected a modern understanding of patrimony as a dynamic legal structure.

Moreover, by recognizing the possibility of organizing patrimony into distinct patrimonial masses, the New Civil Code opened the door to more flexible arrangements, adapted to the realities of the modern economy. While maintaining the fundamental principle that patrimony remains linked to the legal personality of its holder, the legislator acknowledged that internal differentiation is sometimes necessary in order to balance the interests of the patrimonial holder with those of creditors and third parties. This evolution illustrates a shift from a purely abstract and rigid conception of patrimony toward a functional and pragmatic approach, better suited to contemporary legal and economic challenges.

II. The patrimony of affectation

The patrimony of affectation represents one of the most significant and conceptually innovative (Pop, 2015:210-215), (Baiaș et al., 2012) developments in contemporary civil law. By departing from the rigid classical understanding of patrimony as an indivisible legal universality, this institution introduces a functional approach, allowing certain assets and liabilities to be allocated to a specific purpose within the broader patrimonial framework of a

single holder. Rather than creating a completely separate patrimony, the patrimony of affectation operates as an autonomous patrimonial mass, internally differentiated but still legally connected to the same person.

The theoretical foundations of the patrimony of affectation can be traced to comparative law, particularly to doctrines that recognized the possibility of allocating assets to a specific purpose (Zweckvermögen), as well as to modern developments in French law related to fiduciary arrangements. These influences demonstrate a broader European tendency to reconcile the principle of the unity of patrimony with the practical necessity of organizing assets according to their economic destination and associated risks. Romanian civil law has embraced this evolution by formally recognizing the patrimony of affectation as a legal instrument adapted to contemporary economic realities.

The necessity of the patrimony of affectation becomes particularly evident in the context of liberal professions and independent economic activities. Professionals such as lawyers, doctors, notaries, or independent consultants often engage in activities that involve significant economic risks. Subjecting their entire personal patrimony to professional liabilities would not only be disproportionate, but also socially undesirable, as it could deter individuals from engaging in such activities. The patrimony of affectation allows for a clear delimitation between assets used for professional purposes and those destined for personal or family life, thus ensuring a more equitable distribution of risks.

At the same time, the patrimony of affectation does not operate solely in favor of the patrimonial holder. On the contrary, it also serves an essential protective function for creditors. By clearly identifying the assets allocated to a specific activity, creditors are provided with transparency and legal certainty regarding the extent of the guarantee available to satisfy their claims. This balance between the protection of the holder and the safeguarding of creditors' interests reflects the underlying rationale of the institution, which seeks to harmonize individual economic freedom with the requirements of legal security.

Furthermore, the patrimony of affectation proves particularly relevant in the context of the modern economy, characterized by diversification of activities and the growing importance of intangible assets. Independent professionals may allocate intellectual property rights, digital assets, or specific financial resources to their professional patrimony, thereby adapting the institution to new forms of economic value. In this sense, the patrimony of affectation emerges not merely as a technical legal construction, but as a flexible tool capable of evolving alongside economic and technological developments.

In conclusion, the patrimony of affectation reflects a fundamental shift in the understanding of patrimonial structures within civil law. While preserving the conceptual link between patrimony and legal personality, it introduces a pragmatic mechanism that allows for internal differentiation based on purpose and risk. This institution exemplifies the capacity of contemporary civil law to adapt classical concepts to modern economic realities, ensuring both efficiency and fairness in patrimonial relations.

III. Intra-patrimonial transfer

Intra-patrimonial transfer, expressly regulated by Article 32 of the New Romanian Civil Code (Baiaș et al., 2012), refers to the movement of rights and obligations between distinct patrimonial masses belonging to the same holder. This mechanism operates exclusively within

the framework of a single patrimony and must be clearly distinguished from inter-patrimonial transfers, which involve the alienation of assets to a different legal subject. By clarifying this distinction, the legislator has provided an essential conceptual and practical tool for the internal organization of patrimonial structures.

A key aspect of Article 32 lies in the express stipulation that intra-patrimonial transfer does not constitute an alienation. This clarification has significant legal consequences, as it excludes the application of rules governing translative acts, such as sale, donation, or exchange. Prior to the entry into force of the New Civil Code, the absence of an explicit regulation often led to the assimilation of internal patrimonial reorganizations to acts of alienation, resulting in unnecessary formal requirements, increased transaction costs, and, in some cases, unjustified fiscal burdens. The current regulation remedies these shortcomings by recognizing the purely internal character of such transfers.

From a functional perspective, intra-patrimonial transfer serves as a mechanism of patrimonial mobility, enabling the holder to adapt the internal structure of his patrimony to changing economic and professional needs. For instance, assets initially belonging to the general patrimony may be allocated to a patrimony of affectation dedicated to a professional activity, or conversely, may be reintegrated into the general patrimony following the cessation of that activity. In all such cases, ownership remains unchanged, the transfer reflecting only a modification in the economic destination of the assets.

At the same time, the regulation of intra-patrimonial transfer is carefully balanced by safeguards designed to protect the rights of creditors. Article 32 expressly provides that such transfers may not prejudice creditors, who retain their guarantees over the patrimonial mass corresponding to the obligations incurred. Consequently, intra-patrimonial transfer cannot be used as an instrument for fraud or for the artificial shielding of assets from enforcement. Where such abuse occurs, creditors may rely on general legal remedies, including actions aimed at challenging fraudulent acts.

The importance of intra-patrimonial transfer is further accentuated in the context of the contemporary economy, characterized by the diversification of assets and the increasing relevance of intangible goods. Digital assets, intellectual property rights, and financial instruments may be internally reallocated between patrimonial masses in order to reflect their actual economic function. In this sense, Article 32 provides the necessary legal flexibility to accommodate modern forms of wealth management without undermining the stability of patrimonial relations.

In conclusion, the regulation of intra-patrimonial transfer represents a significant step in the modernization of Romanian civil law. By acknowledging the legitimacy of internal patrimonial reorganizations and by excluding their qualification as alienations, the legislator has reduced formalism and enhanced legal certainty. At the same time, by maintaining robust protections for creditors, this institution achieves a fair balance between patrimonial autonomy and the requirements of legal security, illustrating the adaptive capacity of civil law to contemporary economic realities.

IV. Digital patrimony

The rapid development of the digital economy has profoundly transformed the traditional understanding of wealth and, implicitly, the legal concept of patrimony. Unlike classical assets, which are typically corporeal, geographically located, and easily identifiable, digital assets exist in an immaterial environment, often detached from any specific physical medium. Nevertheless, despite their intangible nature, such assets have acquired undeniable economic value and play an increasingly important role in the patrimonial structures of both individuals and legal entities.

Digital patrimony may be broadly defined as the totality of rights and assets of an economic nature existing in digital or electronic form, over which a person holds legally recognized powers of use, control, or disposition. This category encompasses a wide range of elements, including cryptocurrencies, non-fungible tokens (NFTs), digital wallets, online trading accounts, databases, domain names, cloud-stored content, and social media accounts with monetizable value. In many cases, these assets represent a substantial, if not predominant, component of a person's overall patrimony.

Cryptocurrencies constitute one of the most visible and controversial manifestations of digital patrimony. Initially perceived as speculative instruments operating outside traditional legal frameworks, cryptocurrencies have gradually gained recognition as assets capable of economic valuation and legal relevance. The adoption of Regulation (EU) 2023/1114 on Markets in Crypto-Assets (MiCA) marks a decisive step toward the formal integration of crypto-assets into the European legal order. By establishing rules on issuance, trading, and supervision, MiCA implicitly confirms the patrimonial character of crypto-assets, treating them as elements capable of being held, transferred, and administered within a legal framework.

Similarly, non-fungible tokens introduce a new dimension to digital patrimony by enabling the individualization of digital assets through blockchain technology. NFTs allow the attribution of exclusivity and traceability to digital creations, such as artworks, music, or virtual real estate, thereby transforming digital scarcity into economic value. From a patrimonial perspective, NFTs challenge traditional categories of property law, yet their economic function aligns closely with classical patrimonial assets, justifying their inclusion within the patrimony of their holder.

Beyond crypto-assets, digital patrimony also includes rights over digital platforms and online accounts. A social media account with a large audience, a monetized video channel, or an e-commerce platform can generate significant income and may be transferred, inherited, or even pledged as security. Although contractual terms imposed by platform providers may limit certain forms of transfer, the economic reality remains that such accounts function as valuable patrimonial assets. Their legal qualification raises complex issues concerning ownership, contractual freedom, and the limits imposed by private digital governance.

Another essential component of digital patrimony is represented by data. In contemporary society, data has become a strategic economic resource, often described as the "new oil" of the digital economy. Personal data, business data, and aggregated datasets possess significant commercial value, being exploited for advertising, analytics, and technological development. While the General Data Protection Regulation (GDPR) primarily aims to protect fundamental rights and freedoms, its regulatory framework implicitly acknowledges the economic value of data. The recognition of data subjects' rights over their personal data

contributes to the emerging view that data, although not property in the classical sense, forms part of a person's digital patrimony.

The inclusion of digital assets within patrimony also raises important questions regarding succession and enforcement. Upon the death of an individual, digital assets such as cryptocurrencies, online accounts, or digital libraries do not automatically follow the traditional paths of succession unless specific measures have been taken. Access credentials, encryption, and platform policies may effectively prevent heirs from exercising their rights, leading to practical obstacles that classical patrimonial theory was not designed to address. As a result, contemporary doctrine increasingly emphasizes the need to integrate digital patrimony into succession planning and inheritance law.

Moreover, digital patrimony presents unique challenges in terms of protection and administration. Unlike physical assets, digital assets are particularly vulnerable to cyberattacks, data loss, and unauthorized access. The absence of centralized registries, the reliance on private keys, and the cross-border nature of digital platforms complicate both legal protection and enforcement mechanisms. In response, legal scholarship and practice have begun exploring technological solutions such as blockchain-based registries, smart contracts, and digital escrow mechanisms as tools for securing and managing digital patrimony.

In conclusion, digital patrimony represents a fundamental extension of the classical concept of patrimony, reflecting the deep structural changes brought about by technological innovation. While traditional civil law categories provide a useful foundation, they require reinterpretation and adaptation in order to accommodate the specific characteristics of digital assets. European regulatory initiatives such as MiCA and GDPR illustrate an emerging consensus that digital assets possess genuine patrimonial value and must be integrated into the legal order accordingly. As digitalization continues to reshape economic relations, the recognition and regulation of digital patrimony will remain a central challenge for contemporary civil law.

V. Cultural and ecological patrimony

Beyond its individual and economic dimension, patrimony (Law no. 422/2001) also has a collective component that reflects the shared identity, memory, and long-term interests of a community. Cultural and ecological patrimony represent forms of collective wealth whose value exceeds the strictly patrimonial logic of private ownership. They embody the continuity between past, present, and future generations, and they raise complex legal questions related to the relationship between private rights and public interests, the role of the state as custodian, and the emergence of intergenerational responsibilities.

V.1. Cultural patrimony: identity, continuity, and public interest

Cultural patrimony includes both tangible and intangible elements (UNESCO, 2005) that constitute the historical and symbolic capital of a community. Tangible heritage may comprise monuments, archaeological sites, historical buildings, works of art, archives, and museum collections, while intangible heritage involves languages, traditions, rituals, craftsmanship, and forms of artistic expression transmitted from generation to generation. The legal recognition of intangible cultural heritage is particularly significant, as it confirms that

patrimonial value is not necessarily linked to materiality, but may also arise from social meaning, cultural continuity, and collective recognition.

The legal regime of cultural patrimony is characterized by a strong public-interest component. Even when heritage assets are privately owned, their cultural significance may justify substantial limitations on the owner's powers of use and disposition. Such limitations—ranging from conservation obligations to restrictions on alteration, demolition, or export—reflect the idea that cultural patrimony cannot be fully assimilated to ordinary assets. In this sense, cultural heritage constitutes a paradigmatic example of the transformation of property law from an absolute right into a functionally oriented institution, shaped by social and constitutional values.

Internationally, the protection of cultural patrimony is supported by a complex network of conventions that recognize the universal value of heritage and encourage cooperation between states. These instruments promote standards for conservation, prevent illicit trafficking of cultural goods, and provide frameworks for safeguarding both tangible and intangible heritage. At the national level, domestic legislation typically establishes procedures for classification, protection, and restoration, while also defining institutional competencies and sanctions for heritage-related violations. In many jurisdictions, including Romania, the protection of cultural patrimony is increasingly reinforced by judicial practice, particularly in disputes involving urban development, unauthorized interventions, or neglect of historically protected buildings.

V.2. Ecological patrimony: from resource exploitation to intergenerational responsibility

Ecological patrimony refers to natural assets and environmental values—such as biodiversity, forests, water resources, protected habitats, landscapes, and ecosystems—that form the natural foundation of collective life. Unlike traditional patrimonial assets, ecological patrimony is often not easily commodified, since its value cannot be fully captured through market mechanisms. Ecological patrimony therefore requires a legal framework capable of integrating economic development with the preservation of environmental integrity¹.

In contemporary legal thought, the emergence of ecological patrimony reflects a shift from viewing nature as a mere resource for exploitation toward recognizing it as a shared heritage that must be preserved for future generations. This perspective is closely linked to the principles of sustainable development, prevention, and precaution. It also supports the increasing tendency of courts and legislatures to impose stricter obligations on both public authorities and private actors in matters of environmental protection, especially in cases involving deforestation, pollution, habitat destruction, or unsustainable exploitation.

The collective character of ecological patrimony becomes particularly evident in the transboundary dimension of environmental harm. Pollution, climate change, and biodiversity loss do not stop at national borders, making environmental protection a matter of international cooperation and shared responsibility. In this context, ecological patrimony is not merely a national concern but a global one, supported by international agreements and regional frameworks. Within the European Union, environmental directives and regulatory instruments

¹ Environmental Protection Law no. 137/1995, republished.

establish binding standards for conservation, assessment of environmental impact, and the protection of habitats and species, thereby reinforcing the juridical status of ecological patrimony.

V.3. The tension between private rights and collective patrimony

Both cultural and ecological patrimony illustrate a structural tension between private autonomy and collective interests. Owners of heritage buildings may seek to develop or monetize their assets, while environmental regulations may restrict land use or impose costly compliance requirements. Yet these restrictions are not arbitrary; they are justified by the exceptional nature of patrimonial goods whose value is collective and whose degradation generates irreversible harm.

From a civil-law perspective, this tension challenges the classical dichotomy between public and private law. Cultural and ecological patrimony require hybrid legal solutions, combining property rules with administrative constraints, criminal sanctions, and civil liability mechanisms. Increasingly, doctrinal analysis emphasizes that patrimony, in its collective form, must be understood not only as a set of rights but also as a sphere of duties—duties to protect, conserve, and transmit. This approach contributes to the conceptual evolution of patrimony from a purely individualistic category to one that integrates social solidarity and intergenerational justice.

V.4. Digitalization as a tool for conservation and promotion

Digitalization provides new instruments for the conservation, documentation, and dissemination of cultural and ecological patrimony. In the cultural sphere, digitized archives, virtual museums, 3D scanning of monuments, and digital catalogues enable the preservation of heritage even when physical assets are endangered by degradation, natural disasters, or armed conflict. These tools enhance accessibility and democratize cultural participation, allowing heritage to be experienced beyond geographical and social limitations.

In the ecological sphere, digital technologies enable advanced monitoring and enforcement mechanisms. Satellite imagery, drones, sensors, and AI-based analytics can detect deforestation, illegal construction, and pollution in real time, supporting both preventive measures and accountability. Moreover, digital platforms facilitate public participation, enabling communities to report environmental harm and to engage in heritage protection initiatives. However, digitalization also raises new legal questions related to data governance, authenticity, cybersecurity, and the ownership of digital reproductions of heritage assets.

V.5. Concluding remarks

Cultural and ecological patrimony represent essential dimensions of collective patrimony, grounded in identity, continuity, and shared responsibility. Their legal protection reflects a broader transformation of patrimonial theory, in which patrimony is no longer understood solely as an individual economic universality, but also as a category encompassing collective values and intergenerational obligations. In the contemporary context, legal systems must continue to refine the balance between private rights and public interest, while also integrating technological instruments that can strengthen conservation and promote sustainable management of collective patrimony.

Conclusions

Patrimony remains one of the foundational concepts of civil law, serving as a central analytical tool for understanding legal relationships with economic content. However, as demonstrated throughout this study, patrimony can no longer be approached as a static or purely abstract legal universality. From its classical formulation as a single and indivisible entity linked to legal personality, the concept of patrimony has undergone a process of continuous adaptation, reflecting the profound transformations of contemporary society.

The evolution of patrimonial theory illustrates a gradual shift from rigidity to functional flexibility. While the classical conception emphasized unity, indivisibility, and the role of patrimony as a general guarantee for creditors, modern civil law increasingly acknowledges the legitimacy of internal differentiation. Institutions such as the patrimony of affectation and intra-patrimonial transfer exemplify this evolution, allowing assets and liabilities to be organized according to their economic purpose without severing the fundamental link between patrimony and legal personality. This functional approach enhances economic efficiency while preserving legal certainty and creditor protection.

At the same time, the emergence of digital patrimony challenges traditional legal categories and compels a reassessment of the boundaries of patrimonial law. Digital assets, data, and platform-based economic activities demonstrate that patrimonial value is no longer dependent on materiality or territorial localization. European regulatory frameworks, particularly in the fields of data protection and crypto-assets, confirm that digital elements have acquired full patrimonial relevance and must be integrated into the civil-law order. This development underscores the need for doctrinal reinterpretation and legislative responsiveness in order to ensure effective protection, transmission, and enforcement of digital patrimonial rights. Beyond the individual sphere, the analysis of cultural and ecological patrimony reveals a further expansion of the patrimonial concept toward collective and intergenerational dimensions. Cultural heritage and environmental assets embody values that transcend individual ownership and economic exploitation, justifying legal regimes centered on public interest, sustainability, and shared responsibility. In this context, patrimony evolves from a mere collection of rights into a framework of rights and duties, reflecting broader constitutional and societal values. Digitalization, while introducing new legal challenges, also offers powerful tools for the conservation, monitoring, and promotion of collective patrimony.

In 2025, addressing patrimony requires a comprehensive and integrative vision capable of reconciling legal tradition with contemporary realities. Civil law must continue to preserve the conceptual coherence of patrimony as a fundamental institution, while simultaneously embracing flexibility, technological innovation, and social responsibility. The ongoing transformation of patrimonial structures demonstrates that patrimony is not an outdated concept, but rather a dynamic and adaptable legal category, essential for responding to the economic, technological, and ecological challenges of modern society (Maurice et al., 2020:15-18), Zimmermann, 1996:60-62).

Ultimately, the relevance of patrimony in contemporary civil law lies precisely in its capacity to evolve without losing its core function. As both an individual and collective construct, patrimony remains a reflection of societal change and a measure of the law's ability to adapt to new forms of value, risk, and responsibility. This adaptability will continue to define the role of patrimony in civil law theory and practice in the years to come.

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IS THERE A REDUNDANT OVERLAP OF LEGAL PROVISION OF THE ROMANIAN CRIMINAL CODE IN THE CASES OF VIOLENT ACTS PERPETRATED IN PUBLIC SPACES?

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Abstract: *The article aims to analyze the impact of the enforcement of the Law no. 248 of July 20, 2023 on the situations involving the use of violence in public spaces, in the presence of non-participating persons. Specifically, the law introduces aggravating variants for both the offense of assault and other violence when committed in public spaces and for the offense of disturbing public order and peace, when committed through acts of violence. Therefore, the concurrent application of the aggravating variants of the two offenses raises an analysis that constitutes the subject of this article and it has a significant practical significance because there is a certain and very high probability that this type of case will be the subject of criminal cases.*

Keywords: *Violence in public spaces, assault or other violence, disturbing public order and peace, complaint of the injured person, criminal action initiated ex officio, formal contest between the offenses, the aggravation of criminal liability for perpetrating acts of violence in public spaces.*

1. Introductory aspects

This article aims to clarify the correct legal qualification of the acts of violence committed against one or more persons, given that they were seen by several uninvolved persons and occurred in a public space. The need for an analysis regarding the legal qualification of an act of this kind arose as a result of the amendment of the Romanian Criminal Code by Law no. 248 of July 20, 2023. This law introduced a new aggravated form of the crime of *assault or other violence*, previewed by the Article 193 of the Criminal Code, namely, paragraph 2¹ letter c) where it is specified that the special limits of the crime are increased by one third if the act was perpetrated in public spaces. On the other hand, the law, mentioned above, also modifies the content of the crime of *disturbing public order and peace* provided for in Article 371 of the Criminal Code by adding to paragraph (2) an aggravated form which, apparently, overlaps with the content of the aggravated form of the crime of *assault and other violence*.

2. Legislative amendments that introduced aggravating circumstances for the analyzed crimes

Specifically, the content of the crime of *assault and other violence*, provided for in Article 193 of the Criminal Code, has the following content:

(1) Assault or any acts of violence causing physical suffering are punishable by imprisonment from 6 months to 3 years or by a fine.

(2) The act by which traumatic injuries are caused or the health of a person is affected, the seriousness of which is assessed by days of medical care of no more than 90 days, is punishable by imprisonment from 1 year to 5 years or by a fine.

Law no. 248 of July 20, 2023 introduces the following paragraph:

(2¹) The special limits of the punishment provided for in paragraphs (1) and (2) are increased by one third when:

a) the victim is in the care, protection, education, guard or treatment of the perpetrator;

b) the victim is a minor;

c) the act is committed in public;

d) the perpetrator has on him a firearm, an object, a device, a substance or an animal that may endanger the life, health or bodily integrity of persons.

Other important clarifications from a procedural point of view are those in paragraphs (3) and (4) of this article, which refer to the aspects regarding the option of the injured person to request or not, the criminal liability of the author of the acts of violence or the possibility of the judicial bodies to undertake criminal investigations ex officio, even in the absence of a complaint from the injured person. Thus:

(3) The criminal action is initiated upon the prior complaint of the injured person.

(4) In the case of acts committed under the conditions of paragraph 2¹, the criminal action may also be initiated ex officio.

The other offense referred to in this article is the disturbance of public order and peace, which has the following content provided for in Article 371 of the Criminal Code:

(1) The act of a person who, in public, by threats or serious attacks on the dignity of persons, disturbs public order and peace is punishable by imprisonment from 3 months to 2 years or by a fine.

By the Law No. 248 of July 20, 2023, two new paragraphs were introduced, adding to the basic form of the offense two situations of aggravating criminal liability, as follows:

(2) The act of a person who, in public, by violence perpetrated against persons or property, disturbs public order and peace is punishable by imprisonment from one to 5 years.

(3) If the act provided for in paragraph (2) is perpetrated by a person who has on him a firearm, an object, a device, a substance or an animal that may endanger the life, health or bodily integrity of persons, the special limits of the punishment are increased by one third.

3. Dilemmatic aspects in the situations of concurrent application of the legal provisions of incrimination

After studying the content of the two crimes, as they were modified by adding some situations of aggravating criminal liability, we note that there is an apparent overlap of situations, when an act of violence is perpetrated in a public place, in the presence of some uninvolved persons: the act can be legally classified as the crime of *assault and other violence* in the aggravated form provided for by Article 193 paragraph (2¹) letter c) of the Criminal Code, when *it is perpetrated in public*; the act can also be considered as a *disturbance of public*

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peace and order, perpetrated through violence, which makes it possible to classify the act in the aggravated form of this crime, provided for by Article 371 paragraph (2) of the Criminal Code. Therefore, in the event that such an act is perpetrated, the question arises as to which of the respective crimes will be incidental or whether both are attributable to the perpetrator.

The variants could be:

a) retaining a formal (ideal) contest between the offense of *assault or other violence* provided for by Article 193 paragraph (2¹), letter c) of the Penal Code and the *disturbance of public order and peace*, provided for by Article 371 paragraph (2) of the Penal Code, i.e. the two aggravated forms. In this situation, the question arises as to whether the perpetrator must be held liable for both aggravated forms, respectively for violence exercised in public but also for disturbing public order and peace through acts of violence, at the same time, as long as each aggravation involves the perpetration of the basic content of the other offense;

b) retaining a contest between the basic form of the offense of *assault or other violence* provided for by Article 193 paragraph (2) of the Criminal Code and the aggravated form of the *crime of disturbing public order and peace*, provided for by Article 371 paragraph (2) of the Criminal Code, considering that both aggravating factors cannot be retained because the perpetrator would be held liable twice for the same act;

c) retaining a single aggravated crime of *assault or other violent acts* provided for by Article 193 paragraph 2¹, letter c) of the Criminal Code, considering that by retaining this aggravated form of committing the act in public, the crime of *disturbing public order and peace* is also absorbed.

The question is legitimate but also of practical interest, in light of the fact that the legislator clearly intended, by adopting Law no. 248 of July 20, 2023, to more severely sanction acts of assaulting or other violence perpetrated in public, in order to discourage aggressors who do not hesitate to act on victims, despite the fact that there is a public exposure of the aggression, which causes the state of peace and safety of other people who, randomly, are at the scene, to be strongly affected. The application of the two legal provisions is complicated precisely because each of the basic content of one of the crimes represents the aggravated form for the other crime. It is clear that the hypotheses of perpetrating these crimes are multiple and not all of them assume an overlap from the perspective of the content of their aggravated forms. However, there is an appreciable margin of possibilities for same criminal acts to claim the incidence of both legal texts.

In the first hypothesis, that is, in the case of retaining an ideal competition between the offense of assault or other violence provided for by Article 193 paragraph (2¹), letter c) of the Criminal Code and the *disturbance of public order and peace*, provided for by Article 371 paragraph (2) of the Criminal Code, both incriminations representing aggravated forms of the basic offense, it could be interpreted that a double legal valence is given in attracting criminal liability for the same element, the commission of the offense in public. This element would constitute both an offense in itself and an aggravating factor for another offense.

The other two variants of legal classification could raise criticism because each of them leaves without effect certain legal provisions expressly provided for such situations. Thus, the application of the aggravating factor from Article 193 paragraph (2¹) letter c) of the Criminal

Code, in the case of applying the second study variant and in the case of the third variant, the incidence of the provisions of Article 371 paragraph (2) of the Criminal Code, regarding the *disturbance of public order and peace*, would be omitted entirely.

4. The legislator's explanation for the aggravation of criminal liability for committing acts of violence in public space

In order to find the answer to the dilemma of applying this competition of incrimination norms, a starting point could be the *Explanatory memorandum for the adoption of the draft law amending the Penal Code, materialized in Law no. 248 of July 20, 2023*, where some of the below mentioned ideas were shown.

The impact of violent acts is even more grave when they are perpetrated in public space, a space that must be characterized by a climate of peaceful and dignified coexistence, based on mutual respect and consideration between members of the community. Moreover, by Decision no. 705/2019, the Romanian Constitutional Court (RCC), held that: "*in order to ensure the climate of public order and tranquility necessary for the normal conduct of daily life, with all the economic and socio-cultural activities that this implies, as well as for the promotion of civilized relations within society, citizens are obliged to have a civic, moral and responsible behavior, in the spirit of the laws of the country and the norms of social coexistence. Peaceful coexistence between the members of a society is an essential element for its evolution, and people, forming society, have given up part of their freedoms in order to be able to coexist. This peaceful coexistence needs norms that ensure it, norms that without sanctions would be absolutely ineffective.*"

The frequency of cases of beatings and other violence in public space, the seriousness of the consequences of such acts (infirmities, deaths of some people), as well as the escalation of acts of disturbing public order and peace that have occurred recently, have highlighted the existence of a specific pattern characterized by the participation of a significant number of people, the existence of older conflict situations, the exercise of acts of violence and a refractory attitude, including towards the police, ostentatiously manifested through violence.

In some cases, the acts perpetrated in public were preceded by acts of public incitement through the use of social platforms, both through messages, but especially through images and video clips, live, aspects that increased the violence and the intimidating nature of the community. Therefore, it is necessary for this type of events to receive a firm, adequate and harsher response from the authorities, since such situations can degenerate, leading to the perpetration of much more serious antisocial acts. In this regard, the perpetration of the act in public must be criminalized distinctly, as an aggravating form of the basic offense, in the case of the following offences: i) *Hitting or other violence (Article 193 of the Criminal Code)*; ii) *Bodily injury (Article 194 of the Criminal Code)*; iii) *Hitting or injuries causing death (Article 195 of the Criminal Code)*.

Even if in certain situations there is a competition between *crimes involving violence* and others, such as *disturbing public order and peace*, may be observed, this aspect should not be such as to prevent the existence of such an aggravating factor for the first category. It should be borne in mind that we are in the hypothesis of the existence of the crime provided for by Article 371 of the Criminal Code when the result occurs and is proven, namely "*disturbing public order and peace*", the passive subject of the crime being the community. The

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aggravating factor proposed for the three above mentioned crimes targets the victim of violence and not the community (as is the case of the act provided for in Article 371 of the Criminal Code). The commission of the act in public causes additional harm to the victim, in that:

- the act occurs in an environment uncontrolled by the victim, unlike the act committed in the private environment (where the victim has the possibility and means to refuse contact with possible aggressors;
- the access to the victim's home without consent or refusal to leave it constitutes a distinct offense (*Trespassing*, previewed by Article 224 of the Criminal Code);
- by bringing the act to the public's attention, the victim's right to dignity is prejudiced;
- the commission of the act in public also affects the level of safety felt by the victim and shapes their behavior, in the sense of their fear of exercising their rights in public space.

Taking in consideration the above mentioned, a firmer reaction from the state is necessary to discourage public violence, which is increasingly mediatized, technological progress facilitating the dissemination and bringing these actions to the public's attention. For example, we are increasingly becoming aware of people being hit in public spaces due to a traffic misunderstanding.

5 Theoretical and doctrinal aspects

5.1. The contest of legal qualifications

The so-called *contest of legal qualifications* occurs when a single act perpetrated by a person appears, at first glance, to fall within the content of two or more different offenses, but, in reality, a single offense will be retained. The contest of legal qualifications, also called *the apparent contest of norms* or *apparent plurality*, represents the situation in which, there is an essential opposition between the legal contents of the offenses susceptible to be retained, such that the choice of one qualification necessarily excludes the other.

In this case, there is only an apparent contest of qualifications, because upon careful analysis, only one of the qualifications has the vocation to apply in the case of the perpetrated act. Therefore, in the doctrine, this hypothesis is also called the apparent contest of qualifications. In practical terms, resolving this type of contest should not raise any particular problems, because the opposition of the two qualifications means that, in reality, the constitutive elements of the crime are met only in the case of one of the two incriminations.

For example, the problem of the legal qualification of the act of the person who, through violence, maintains a sexual relationship with a person who is his direct relative, brother or sister, more precisely, whether, in addition to the crime of *aggravated rape*, the crime of *incest* will also be considered. In reality, the two qualifications are mutually exclusive, since incest presupposes a consensual sexual relationship, while rape, by definition, excludes the idea of a valid consent. Therefore, the act will be classified only according to the text that incriminates *aggravated rape*.

On the other hand, the concept of *apparent competition* of qualifications is distinct from the formal (ideal) competition of offenses, when a single action/inaction committed by a

person, due to the circumstances in which it occurred or the consequences it produced, realizes the content of several offenses.

The problem of apparent competition of qualifications arises when the legislator incriminates acts that may overlap. The challenge is to establish the correct legal qualification, eliminating norms that are redundant or secondary.

5.2. Resolving the apparent competition of norms

In order to resolve the conflict between two laws that appear to apply simultaneously, three fundamental logical rules are mainly used:

5.2.1. Priority of the special norm (*specialia generalibus derogant*)

This is the most common situation. The special norm has priority, and the general norm is removed. Example: the unlawful theft of correspondence addressed to another person, generates an apparent conflict between the norm that incriminates the crime of *theft* (Article 228, paragraph (1) of the Criminal Code) and the one that incriminates the crime of *violating the secrecy of correspondence* (Article 302, paragraph (1) of the Criminal Code). In this situation, although the act of theft has identical content to that which constitutes the material element of the crime of theft, the difference between the two crimes is confined to the sphere of the legal object and the material object.

Only the offense of *violating the secrecy* of correspondence will be retained, because it describes the act more precisely, encompassing both the legal object and the material object typical of this offense.

5.2.2. Legal absorption in the case of a complex offense or natural absorption.

In the case of a *complex offense*, the rule is that the complex offense "swallows" the absorbed offense. The absorbing offense cannot in any case be consumed without the perpetration of the absorbed offense (Streteanu et al., 2014:22). It is, also, necessary for the absorbing offense to have a special maximum of the penalty, greater than the special maximum of the penalty provided by law for the sanctioning of the absorbed offense, the latter becoming a simple constitutive element or an aggravating circumstance. In the event that the apparently complex offense (Udroiu, 2022:428-435) is sanctioned with a penalty lower than or equal to that provided by law for the absorbed offense, the two offenses will be retained in competition.

Example: *the threat of committing a harmful act* which is perpetrated in order to unjustly obtain a patrimonial benefit generates an apparent conflict between the norm that incriminates the offense of *threat* (Article 206 of the Criminal Code) and that one which incriminates the offense of *blackmail* (Article 208 paragraph (3) of the Criminal Code). In this situation, only the act of *blackmail* will be incident in case.

We, also, encounter natural absorption in a situation such as the one in which the offense of *rape* always necessarily involves *deprivation of liberty*, or *bodily harm* that absorbs the offense of *assault or other violence*.

5.2.3. Subsidiarity

The situation in which we encounter a norm that is the main one and another, competing, which has a subsidiary character. The subsidiary norm applies only if the act is not circumscribed by the content of the main norm. Example: The crime of *abuse in office* is incriminated by a rule of subsidiary character in relation to the crime of *intellectual forgery*.

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In the Romanian doctrine of Criminal Law, it has been shown that the element of differentiation between the formal contest and the contest of criminal laws is represented by the ability of one of the applicable legal texts to cover the entire anti-legal significance of the committed act. To the extent that the action, together with all its consequences, is found in a single norm, there will be a contest of criminal laws, and that norm will be the only applicable one, to the detriment of the other incident texts. However, if none of the applicable norms fully covers the state of affairs, the existence of a formal contest will be retained.

6. Finding the right solution

Considering the theoretical considerations set out above, it is necessary to analyze the situation in order to determine exactly which of the two criminalization norms should be applied to the specific situation or, if both apply, to determine whether the basic or the aggravated version of each of the two criminalization norms will be applied in the competition.

A first observation is the one that entitles us to appreciate that the state of affairs that involves an act of violence perpetrated in a public space and is seen by other people who are not involved, may attract the incidence of two criminalization norms: *assault and other violence* and *disturbance of public order and peace*.

Until the entry into force of the Law no. 248 of July 20, 2023, such a hypothesis would have meant the concurrent application of both criminalization norms, in their basic version, because the act of violence meets the conditions of objective typicality of the crime of *assault and other violence* and the commission of an antisocial act in a public space, in the presence of other persons, meets the conditions of objective typicality of the crime of *disturbing public order and peace*. The fact that the legislator modified the two criminalization norms is a natural and well-justified approach in the statement of reasons, in the sense that the exercise of violence in public space and, at the same time, the popularization of acts of violence in virtual space, represent a very dangerous trend, with a major emotional impact on people, especially the sensitive and vulnerable, and which requires a harsher punishment by the criminalization norms. Therefore, for each of the two offenses, if analyzed separately, there is a legal justification for applying them in their aggravated form. However, their application, in competition, in their aggravated forms, is a matter of debate.

To have an even clearer picture of the circumstances of application of the incrimination norms, we must also refer to the prerequisites for holding the perpetrator criminally liable. Both crimes can be investigated *ex officio* by the judicial body, but, if they wish, the injured person can reconcile with the perpetrator and will not be held criminally liable for the crime of *assault and other violence*, even if it is held in the aggravated version because it is committed in public.

Therefore, under these conditions, it is natural to conclude that in the case of an act of violence committed in public, only the norm of aggravated incrimination of the crime of hitting and other violence cannot be applied, because a *reconciliation agreement* of the victim with the perpetrator would mean that the latter can no longer be punished for the antisocial act committed in public which is obvious and which must be penalized regardless of the victim's attitude. Therefore, the victim cannot be granted the privilege of escaping the criminal liability of the perpetrator for committing an antisocial act that affects the public climate. No person

can have the discretion to decide on the sanctioning or non-sanctioning of acts that affect the public interest. For this reason, we consider that in these situations, only the norm of incrimination of the crime of *assaulting and other violence*, in the aggravated version, cannot be applied alone.

In the hypothesis that the crimes are applied concurrently, the question arises, in what manner, namely whether the aggravated variant can be retained only for one of them, or, the aggravated variant will have to be applied for both. To answer this dilemma, we start from the analysis of the same aspect of the discretionary nature that the law leaves to the victim, in relation to holding the perpetrator accountable. Therefore, if the aggravated variant of the crime of *assaulting and other violence* were applied, in competition with the basic variant of the crime of *disturbing public order and peace* and the victim reconciled with the perpetrator, the latter would be liable only for the basic variant.

It is undeniable that the legislator did not pursue this outcome but, on the contrary, that acts of violence committed in public be punished more severely. Applying the contest rule in this manner, we would again be in the position where the reconciliation of the victim with the perpetrator for the crime of *assault and other violence* would make the legislator's will to sanction acts of violence committed in public space, inapplicable.

Therefore, eliminating the two hypotheses, it results that the only applicable variant is the one that involves the concurrent application of the aggravated variants for both offenses. In this hypothesis, regardless of the victim's intention to reconcile or not with the perpetrator, the act of violence committed in public will be punished, which corresponds to the legislator's intention, as appears in the explanatory memorandum of the draft Law no. 248 of July 20, 2023.

7. Conclusions

Although in appearance, the perpetrator would bear double responsibility for each of the two components of his act, violence and the commission of an antisocial act in public, which would constitute a reason for criticism by virtue of the *ne bis in idem* principle, we consider that this aspect is only at the level of superficial perception because each of the incrimination norms has autonomous content. The judicial body must apply the incrimination rules in such a way that the purpose of the criminal law is fulfilled, regardless of the procedural attitude of the victim, and this can only be achieved under the conditions of concurrent application of both offenses, in their aggravated version.

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PRACTICAL ISSUES REGARDING THE INTERPRETATION OF CRIMINAL AND CIVIL RULES

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Abstract: *The authors, after presenting a set of contradictory opposing judicial practices as an indisputable judicial and social reality, attempt to substantiate the types, principles, forms, techniques and methods of interpretation of the law, presented - usually - through general formulations, on realistic criteria and by critically distancing themselves from positivist clichés. From such a perspective, it seeks and sketches a conceptual model through which to describe the law (norm) subject to interpretation, the legal professions that indicate the subjects with competence to interpret, as well as jurisprudence starting from their social foundation: the set of values, interests, principles and laws structured in a confused hierarchy and in continuous movement, evolution. Interpretation in situations of uncertainty can only be achieved by searching for the real foundations of the legal institution in which the norm is located. The judge, the protagonist of the interpretation, as well as his professional will, is given preferential space: his will is sovereign – his independence is the effect of his sovereign will – because he has the fundamentally statutory mission of ruling on atypical situations, in which no one can know in advance how to proceed nor can he offer uncontestable interpretations.*

Keywords: *interpretation of the norm, legal professions, status of the judge, opposing jurisprudence, legal construction, evidentiary system*

I. Explanatory notes

a) It is generally accepted as an indisputable fact that "the primary source of law becomes the law" and then the doctrine or jurisprudence. However, it has been observed that "the formal sources of positive law are not exhaustive and, therefore, cannot claim in any way to solve all the legal problems that arise in a society". It would be "important to establish **a truly scientific method** that would allow them to be solved - these problems - "independently of the law" so as to avoid abuses of logic and abstraction of additional methods in its interpretation (Chazal, 2010:85-133). Practices related to the interpretation of legal norms highlight types (of the legislature, the executive, the judge, the doctrine), principles, forms, techniques and methods of interpretation (Dogaru et al., 2015). Branches of law admit more or less each of these formulas of interpretation.

It is also admitted that the interpretation of the penal norm is done restrictively; this, as a result of the specificity of criminal law, a model that captures the effects of the legality of criminalization. **The restrictive method**, specific to criminal law, shows that **a)** if the text of the law goes further than the reason for the law itself, the reason for the law is taken into account

- cessante ratione, cessat lex ipsa; **b)** if the law does not distinguish, neither will the interpreter distinguish - ubi lex non distinguit, nec nos distinguere debemus; **c)** if the legislator makes a limiting enumeration then, a contrario, all unstated cases are excluded from the provision of the law - qui dicit de uno negat de altero (Dogaru et al., 2015:277).

The idea that criminal law has a strict interpretation and application is even insisted on. "The field of criminal law (a matter with the maximum restrictive potential for the fundamental rights and freedoms of the human being) must function with precise and punctual regulations, the interpretation and application of which will be as exact as possible, in order to leave no room for interpretative arbitration, since so many (and important) legal issues are at stake". However, there are situations when "an extended interpretation is justified, although this practice tends to contradict exactly the principle of pre-indicated interpretation. What is even more surprising is the fact that, in such cases, doctrine and practice admit the extended interpretation as a natural fact, seeming not to notice the apparent incongruity of the respective solution to a general interpretative rule unanimously accepted as a premise" (Dunea, 2019:107-122). The doctrine emphasizes that "the problem of legal interpretation is central today, given that it constitutes the central point in the evolution of contemporary law"; that "the law, of imperfect essence, cannot simply be applied, that it must be interpreted and even, sometimes, corrected"; that "the notion of law ceases to be identified in the legislative act"; that "the requirement of respecting superior inviolable principles is imperative"; that "these principles do not originate in the text of the law"; and "that the judge cannot limit his work to a syllogistic application of the texts" (Rabault, 1997:8).

b) The civil domain also goes through the same debate doctrinally and uses the same concepts: we interpret according to the result obtained; or, as the case may be, methods of interpretation (grammatical, logical, systemic, teleological, or historical) are indicated (Cojocaru, 1989:148-156). Finally, a text that contains a norm and sets a standard must be understood, its meanings are sought, the meanings found are publicly affirmed and, then, applied to a subject or to a specific legal or factual situation. The need to observe the purpose of interpretation is emphasized: the search for the will of the issuer, the legislator or the current social need, at the time of application of the text; or, why not, the meaning and application must be sought even in the autonomous existence of the law with all its imperfections (Dănișor et al., 2008:459-464).

c) Practically, any subject interested in interpreting the norm finds itself - whether it wants to or not - between its general expression, between the abstractions found by the doctrine, on the one hand, and the concrete reality for which the interpretation is made, on the other hand. The civil law records the same reality: "the formal sources of positive law are not exhaustive"; therefore, too often constructions must be sought so that, "without the support of law or custom", you can produce "a legal solution for a certain problem, while ensuring the scientificity and rigor of the approach". That is, in interpretation you must affirm "the primary concern to discover, in the absence of the help of formal sources, the objective elements that will determine any solution imposed by positive law" (Chazal, 2010:85-133).

d) So, such formulations distance the interpreter from the positive norm and, inevitably, bring him closer to reality. That is, the norm does not always produce certainty; on the contrary, it usually offers equivocation. And the abstractions of interpretation concepts, although useful, are insufficient. And the realistic formula allows for creative legal constructions.

Are such situations verified in court practice?

II. Criminal practice and its problems

a) The criminal norm is supported by an essential principle, very current and undisputed by its formulation: the principle of the legality of incrimination. In schematic terms, it is stated that the repressive effects sought by incriminating a crime cannot be recognized unless it - the crime - is defined as such and with reference only to acts committed prior to the suspected act. Then, there are references to concepts, detailed legal expressions and jurisprudential applications, more or less motivated.

We are created with a general framework in which legal practitioners operate: they observe and present the practical consequences, all affirming a noble goal: the defense of the state and the rule of law (Dongoroz, 1969:27), a defense that is carried out through specific, repressive, yet coercive and re-educational means (Fodor, 1970:8).

Although such approaches consistently and overwhelmingly provide clarity, unambiguousness and effectiveness, practice highlights - even if only occasionally, accidentally - atypical situations in which a clear conflict occurs between the clear literal expression of the incriminating criminal norm and the social effect affirmed by stating the purpose of the incrimination. Given the limits of the presentation, I exemplify with a single case law - out of many possible others - contained in its entirety in decision no. 374/2021 of 16.06.2021 of the Alba Iulia Court of Appeal, final, unpublished - The following decision - by which - among other things - the defendant's appeal against the criminal sentence no. 30/01.02.2021 of the Alba Iulia Court - The Sentence - was admitted, and by which the defendant appellant was acquitted - based on art. 396 paragraph 5 Criminal Procedure Code reported to art. 16 paragraph 1 letter d Criminal Procedure Code - for committing the crime of sexual intercourse with a minor, provided for by art. 220 paragraph 1 Criminal Code.

b) The adult defendant, coming from a social environment with particularities, maintained - in a cohabitation fully consented by the woman, specific to the notorious culture, accepted and cultivated by the community - intimate relations with a minor; this from the moment when she - the concubine - was 12.6 years old. The cohabitation resulted in two minors who were cared for by the parents in very good conditions - the references of all the authorities related to minors were excellent. The judicial bodies took action ex officio, the concubine was sent to trial and, in essence, was sentenced to detention. The convict had to revoke the remainder of the sentence for crimes that were not related to intimate or family relations. Since the victim - the concubine - still a minor - did not want to become a civil party, the prosecutor correlatively carried out the specific necessary steps. In the appeal, the victim had a very clear position: she has no pretensions, she wants a good father for her children - as he always has - and a man in her domestic life on a daily basis. All this, in a context in which the defendant was the only one who had a job and earned a good income that he spent only at home.

c) The problems of applying the criminalization norm produced a lively debate at all levels: lawyer, prosecutor, judges. It was certain that a sentence with detention - there was no alternative - would destroy the couple's domestic life and destabilize the comfortable life of the minors. On the other hand, in the immediate future, the budget assumed patrimonial tasks

whose necessity and effects were questionable: the subsistence of the convict in the place of detention and the maintenance of the minors that the mother, lacking income, could not provide.

d) First, the prosecutor raised the issue of the defendant's acquittal, developing - explicitly and, obviously, provocatively - in his written conclusions (No. 274/III/2/2021 of 7. 06. 2021 of the Prosecutor's Office attached to the Alba Iulia Court of Appeal), an eminently civil thesis (Thierry, 2004). He supported, as a theoretical premise, the idea that the civil is - of course by exception, and insisted on the exceptional situation - common law and for criminal law. Then, contextually, he affirmed the need for a free interpretation of the definition of the offense. That is: the interpretation should also be made in relation to the purpose for which the incriminating norm was issued. More precisely, it was observed that the literal interpretation of the norm gives exactly the undesirable social effects of incrimination.

Thus, in detail, he said that the concrete application of the criminal norm must not produce a greater social harm than the very harm evoked by the criminal norm: the potential situation of the minors after the father's conviction indicates precisely the undesirable effect. They will be deprived of the father's affection and income. Even if the criminal norm protects the mother's sexual freedom, the protection of this value - conjuncturally and by exception - cannot be separated from the subsequent, inevitable and obvious effects, regarding children produced through sexual acts that the father and obviously the mother, with civil discernment, should not have initiated and committed.

In legal terms, it has been argued that in criminal law too - along with the interpretation of the law - the one who offers a solution must also focus **on the foundations** of legal liability and, then, on those of criminal liability, which cannot function outside the general framework of liability.

More precisely, it was said that the essence of retaining legal responsibility lies precisely in the weighing of interests that clash in a subjective legal situation - here, exceptional - and that the judge - sovereign in his decision - has exactly the social mission that defines him: to carry out such weighing (necessary, within the meaning of art. 53 par. 3 of the Constitution). The weighing is done by comparing the values and principles in competition and in a hierarchy.

As a result of this comparison, we would be in a position to choose between applying a punishment pursuing, on the one hand, some general interests - expressed in an abstract way - through the incriminating definition and, on the other hand, the defense of the family - even if there is only one family in fact. In such a framework, the option towards the concrete interests of minors and domestic privacy would be pragmatic and justified.

From here, the consequence would be gathered: "sexual intercourse with a minor" cannot constitute, in this case and by exception, the typicality of inappropriate behavior that would then justify the application of the punishment; we would therefore be in a situation of blocking the criminal action as indicated by art. 16 para. 1 letter b, sentence I, C. criminal procedure.

e) the appeal judge took note of the atypical situation and – through his methodology – simplified the approach: he shifted the debate from the interpretation of principles to the interpretation of evidence. In other words, he moved away from the doctrinal nuances, from the principles set out and located himself only in the immediate area, the concrete. He avoided the sensitive area of a creative but exceptional interpretation, he respected his established,

indisputable competences, he formulated his reasoning on the facts and, then, he located himself strictly on the literal meaning of the positive regulation.

It held that, at the time of the commission of the acts – contextually – the defendant was not aware of the existence of a “state, situation, or circumstance on which the criminal nature of the act depends”. More precisely, through a judicial presumption, questionable but uncontested – and it is the sovereign attribute of the judge to do this – it held that there was no indubitable evidence from which it could emerge that the defendant truly knew the age of the victim. The situation fell within a model of non-imputation: art. 30 par. 1 of the Criminal Code.

g) the decisions and arguments in the appeal have produced criticisms, observations and questions of a professional and, above all, **methodological nature**: how broadly can the criminal incriminating norm be interpreted? What does a teleological interpretation mean, in practical terms, from the perspective of the principle of the legality of incrimination? How creative could the judge be in making legal classifications? According to what criteria does the judge select the methodology for resolving a case and what would be the benchmarks according to which he opts for or not for a certain method of interpreting the norm?

In the technique of teleological interpretation, the legal norm is seen in a framework that contains two indisputable and unavoidable elements: the purpose of issuing the norm and its logic. Only the purpose of the norm directs its meaning and ensures its rational coherence.

Practically, in the appeal – even if the decision was not upheld, the prosecutor's interpretation was not denied, nor was the idea of interpretation through an exceptional methodology, necessary contextually. Practically, it was explicitly stated that sometimes, even if less frequently, there is a need to understand the definition of the crime in a particularizing sense so as to achieve the concrete – and not abstract – purpose for which the incrimination was made; this is in order to avoid other subsequent effects that would ultimately distort the very effect desired in the incrimination.

However, the prosecutor opted for precisely such a model of understanding the incriminating norm; the judge, however, modified the methodology of analyzing the case by placing the support of his solution only in the area of the unfolding of the facts – and, obviously, on the analysis of the evidence – thus avoiding engaging in the interpretation of the incriminating text.

We therefore note two types of problems: **x)** in the sense of the prosecutor's expression, how do you identify the purpose of issuing such general norms as those of the criminal code; and **xx)** in relation to the judge's motivation, within what limits can the methodology for establishing the basic elements of the criminal process be modified to credibly justify the solution.

III. Civil practice and its meanings

a) The following examples come from the field of civil nullities and call into question the application of art. 4 par. 4 of Law no. 422 of 18 July 2001, an application that provides us with a rich amount of contradictory jurisprudence. The law captures the legal regime for the protection of historical monument buildings (Luha et al., 2025), (Luha. 2024:465-475).

Among other protective and general interest rules, the norm obliges the owners of such properties – individuals – to respect the pre-emptive right to purchase of the State and local

communities when selling. That is, before any sale is completed, the pre-emptors have preference in the acquisition. Failure to comply with this imperative rule makes **the non-compliant act null and void**. The trial of such cases is placed under the civil regime of nullities: failure to respect a general interest renders an act null and void.

Although the text, in its letter, is unequivocal – failure to comply with the preemption leads to nullity – there are judges who go beyond the abstraction of notions and particularize the interests of the pre-emptors by contextually placing them in the context of the set of interests at stake and, especially, in the set of civil principles. Other courts do not depart from the letter of the law. Different interpretations, as well as methodologies for analyzing different cases, inevitably give rise to opposing practices.

b) in one case (Sentence no. 718 of November 2, 2010, Caraș Severin Court, Commercial and Administrative Litigation Section), the judge rejected the request for the nullity of the contract based on the failure to carry out the pre-emption procedures because the pre-emptor did not pay the sale price; the contractual behavior of the pre-emptor was in opposition to the third-party buyer who had already paid the price. The solution was also given against the explicit statement of the law: the lack of the pre-emption procedure produces the nullity of the sale deed.

In another case (Tomescu, 2021), the contract was declared null and void, against the interests of the third party who had fulfilled the tasks assumed even though the buyer had not paid the price nor outlined any possibility of obtaining financing for it. The court considered that the statement of the law was sufficient by itself to record the absolute sanction of the contract.

In civil trials too, we find moments when the judge transfers the task of interpreting the norm to the field of understanding the facts, the administration and interpretation of evidence. Thus:

In a case in which a declaration of nullity of the non-compliant sale was requested - for omitting the pre-emption procedure - the court decided that - in relation to the well-known fact that the building was a monument - the pre-emption procedure should have been followed. Omission of this procedure would be sufficient to hold that the sale deed is null (Civil decision no. 85/2017 of May 11, 2017 of the Timișoara Court of Appeal, Civil Section). In other words, the well-known fact - an element of evidence, a state of affairs - that the building is in a district with an ancient history removes the duty of the monuments agency to make public its classifications for buildings of historical interest.

Such a solution is in complete contradiction with other practices according to which preemption would be mandatory only when the classification of the building as a monument is undisputedly public, through notation and in the land register (Decision no. 402/2008 of 17. 04. 2008, irrevocable, of the Timișoara Court of Appeal).

IV. The reality of interpretation

a) I did not select these contradictory, opposing jurisprudences – for identical situations – by chance. I described an almost everyday reality that affects social, private or public relations: the same norm – criminal or civil – gives different meanings in the hands of subjects who are forced to understand it, to apply it through interpretation.

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Reality makes us understand more nuanced the positivist cliché according to which everything is done in the name of the law and by respecting the law (the norm).

We take the first part of the speech without reservation as a postulate. After all, the law constitutes the resistance structure of any social organization. There is no human relationship without a norming of conduct and without observing their social consequences (of behavior) in relation to the requirements imposed by the norm, by the law: human subjects are responsible for their actions.

We have reservations about how any subject can behave according to the law. And the presented jurisprudence demonstrates it exemplarily, abundantly.

As long as the law is presented - in principle - through broad general expressions, as long as the law is issued in an interested, incomplete, confusing, or - why not - wrong or in bad faith, we must accept as inevitable the fact that the law itself, its interpretation, can produce insecurity, uncertainty.

In other words, the interpretation of norms, the gathering of the consequences of this interpretation is a much more voluminous and complex phenomenon than the textbook currently presents to us. Although the presentation of the methods of interpretation is very laborious, no one tells the subjects of interpretation when they must select one method or another, when they submit to a certain principle or another.

b) In practical terms, any norms produce standards of a broader or narrower generality and rules.

It is not the rules that pose problems. What concerns us now is the way in which subjects – professionals or not – understand, interpret the standards and, above all, the way in which the subject in need and faced with the abstraction of the law deduces his own rules.

From here we remember another reality: any realistic analysis of the phenomenon rests on two methodological premises. What matters is who interprets and, only then, how they interpret (Tomuleț, 2018:64-105), (Chazal, 2010:85-133).

When we stop at the realistic interpretation model – its broad meaning –, we notice something else: the interpretative intellectual activity practically goes through two stages; on the one hand, understanding the meaning of the texts – interpretation in a narrow sense – and on the other hand, achieving a logical construction, applied through which the text interpreted and understood in a certain way is placed on a situation (Tomuleț, 2019:89-122). A certain factual situation is also made by mentally comprehending it: the judge through the evaluation of evidence, legal professionals through prior professional investigation and the others – if they know about the existence of the norm and want to apply it – in an intuitive manner (Tomuleț, 2019:72-74).

When interpretation comes from an authority – and especially from a judge – its product (of interpretation) is presented to us as rules (Tomuleț, 2019:93). It is therefore necessary to investigate against whom such rules are opposable and, why not, whether they are valid and for how long.

The model would like to present – even if only at the level of a sketch – the interpretation process in all its realistic complexity and, separately, would like to emphasize the inefficiency of the clichés much appreciated today according to which the notions used by

the law – the letter of the law – can fully and satisfactorily encompass any situation, fact or relationship. All in a context in which reality presents itself to us as infinite in diversity.

We admit that in most of them the laws give satisfaction and do not produce uncertainty. Methodologically we are not interested in such situations. We are concerned with atypical, exceptional realities for the simple reason that only exceptions can verify the validity of the legal statement produced by the interpretation.

V. Subjects who interpret

a) Each person subject to the state order – willingly or not, consciously or not – reaps the beneficial effects of the standards contained in the law or, as the case may be, bears the consequence of non-compliance. Indirectly, people interpret the norm, either when adapting their behaviors or when they are subject to the repression of responsibility. If the interpretation is adapted, the subject benefits; the error in interpretation is assumed by the one with non-compliant behavior as a risk in relationships or as a business risk.

The recognition of any person as a subject of the interpretation of the law results unequivocally from the provisions of art. 1349 par. (1) Civil Code: "*every person **has the duty to respect the rules of conduct that the law or local custom imposes and not to harm, through his actions or inactions, the legitimate rights or interests of other persons***". That is, a subjective behavior will always be evaluated in relation to **the observance of the rules** deduced by each person - through personal interpretation - from the standards set forth by the law.

b) The executive power that constitutionally implements the laws - that is, the administration, the institutions, through their agents, organized hierarchically and by fields - that is, the administration officials - is obliged to interpret the law through its acts. Interpretation is therefore done, first of all, according to the Constitution, through government decisions. An inevitable question follows: does the administration, from the top down to the operative agent, implement - therefore interpret - through individual acts - the law?

We argue that yes. We base our argument on what is generally accepted in administrative doctrine through the concepts of administration, public power, administrative function, central and local administrative bodies, and administrative subordination (Clipa, 2021), (Podaru, 2022:8-13).

Is an individual act – i.e. with an indicated recipient – also enforceable against third parties? The law (Art. 7 of Law No. 554/2004 on administrative litigation) and doctrine (Podaru, 2022:10) answer in the affirmative: an individual administrative act "is enforceable - against third parties - from the moment the third party becomes aware of the act in question..." (Podaru, 2022:11).

We deduce, from this, that an administrative correspondence – that is, the response to a request for interpretation of a standard – being issued by a higher-ranking administrative agent who interprets the law and is intended for the person asking becomes opposable to all those who would be in an identical situation; the act will remain valid for all until it is explicitly withdrawn by the administration or until it is annulled by the judge.

c) legal professionals, in interpreting it, produce an uncomfortable, not very recognized interpretative paradox.

Although everyone is qualified to interpret, although - in positivist terms - everyone must respect the same law, not everyone is obliged to interpret it in the same way. Their

professional mission, their social function obliges them to produce that interpretation that will lead precisely to the achievement of this function. The lawyer, the legal consultant are someone's representatives and will be deontologically obliged to interpret in relation to the interests of the person who mandated them. The administrative official aims to operationalize the interpretation that his superior provides him.

From such a perspective, the notary public has a special and difficult situation: he is, first and foremost, a representative of his clients (Popa et al., 2013:26); separately, as a bearer of state authority (Art. 3 par. (1) of Law no. 36/1995), he is forced not to deviate from an interpretation of civil law, accepted and acceptable by the one who delegated (Olaru, 2021) the authority service to him. Thus, he is placed between the free civil will of his clients and the demands imposed on him by the government authority, directly - the relevant minister - or through their professional implementation entity (Olaru, 2021).

d) **the judge** – as an authority and as a professional of interpretation – has a special, completely unique situation in society, in the state organization, as well as in the definition or exercise of his profession: the status, prerogatives and the product of his work define the very essence of the judicial power. Although he does not fulfill his mission individually but systemically, within a broader jurisdictional framework, the way in which he exercises power and is obliged to interpret the law defines him as a true protagonist of interpretation. This, both from the perspective of the foundation of his existence and functioning and from a practical point of view.

More precisely, the judge - the magistrate - is the only one who can definitively and operationally rule on atypical, exceptional situations, regulating the unknown unforeseen by the norm.

Although the fundamental law presents him as functioning independently and operating only in the name of the law (Art. 124 of the Constitution; para. (1)), this characteristic – in ruling on unknown, exceptional situations – constitutes him as a sovereign operator on his professional will: his professional will is produced by his personality, by his interiority, not by others, whoever they may be. Hence the consequence: his independence – underlined by the fundamental law itself – is the effect of his power to be truly sovereign statutory on the decision produced.

Such an understanding of reality will be able to explain the difference between the independence of the civil servant, the prosecutor, the notary, the lawyer, on the one hand, and the independence of the judge: although all are indicated by law as being independent in interpreting the law, each has a professional obligation to interpret it differently.

And the judge, regardless of the presentations of others, rules on what is atypical, unknown, exceptional, directing the course of society - solely through his will - in a certain direction.

In other words, the law - which establishes rules or standards - rules on the usual situations that it can foresee at the time of its issuance, and the judge rules - only by his will - on what was not foreseen, what could not be foreseen by the law, on something that is not normal but which, nevertheless, recognized or not, in reality appears and exists at a given time.

VI. The reality of the law

a) The presentations so far seem contradictory: on the one hand we praise the will of the judge, on the other hand we describe the jurisprudential chaos, also as reality. We have at least one dysfunction. Where do we locate it? In the vision of the judge's position or in the defects of the law?

b) each of the summarized jurisprudences shows that the judges, in order to motivate their decisions - through interpretation, construction and analysis of the evidence - resorted to something additional that does not explicitly result from the text of the law that had to be applied.

The model shows us that behind the law, closer or deeper, there is something else than the writing of the norm: another law in a normative hierarchy, a principle, a general interest - seen abstractly or in particular, a particular interest placed in a hierarchy, a value - ethical, ideological, artistic -, all situated in a society in continuous evolution. Moreover, the issuance of the law is not always free from arbitrariness or undeclared hidden interests.

The legislative power has only one limit when issuing a law: the constitutional principle - naturally abstract - and the judgment of constitutionality. In practical terms, not all inaccuracies of the law clash with the constitutional norm. The adaptations, the corrections will be made by the one who applies the law and, finally, the judge, considering the interpretation of the parties in the process as exceptional situations.

The correction of the inconsistencies of the law by the judge through a broad interpretation, with the observation of what is real behind the law – through a teleological understanding in the sense of interpretation methodologies – involves finding, in a casuistic, adapted manner, something that would direct a relationship in a sense generally accepted by society. That is, in an exceptional situation, the judge would indicate something credible, would fulfill a kind of “general interest”, appropriate to the moment and acceptable to a sufficient mass of subjects of a collectivity. In pragmatic terms, the judge seeks and finds the foundation of the legal institution, a foundation linked to real life and offers a solution, through interpretation.

c) The recognition of the judge's decision-making sovereignty in exceptional situations thus explains the opposing jurisprudence on the same topic. In such a situation, the lack of law is evident: although different interpretations are predictable, the law does not provide institutional tools, neither to align jurisprudence nor to avoid possible ethical slippages by the judge (which are possible, by the way).

They still insist – even though some studies describe something else – on a rigid, positivist model according to which we all act according to the law in a realistic context that demonstrates that all laws provide unknowns, exceptional situations and in which no one knows how to proceed. The administration refuses – of course, there are exceptions – to answer – for fear of making a mistake – to questions from individuals or subordinates regarding the interpretation of the rules and the judiciary always pronounces its decisions post factum and expectedly contradictory.

This is instead of admitting the reality: the law is always flawed and, therefore, must be accompanied by a priori correction mechanisms for officials; and for the trial, mechanisms for unifying jurisprudence on the spot are necessary. More precisely, if a practice that has already been issued – for an identical situation – is submitted to the judge, **the fact** of its existence cannot be disregarded: the jurisprudence is accepted as a rule or is removed with justification.

VII. Instead of conclusions

a) I have presented here only a few practical ideas related to the interpretation of norms. More precisely, I have tried to present **the outline of an interpretation model** based on **realistic foundations** and less on positivist clichés of understanding the law and its application. In practical terms, I have tried to suggest realistic criteria according to which, from a set of typologies, principles, forms or techniques and methods of interpretation, we select the methodology that would have the closest chance of being credible and generally accepted.

In such logic, I observed and affirmed that the law does not exist by itself and that its production is too often based in an arbitrary manner but always on a set of pre-existing values, interests, principles, whether or not told to the public, all situated in a complex and, above all, confused, undefined hierarchy.

In turn, those who have the task of interpreting the law, the norm – professionals or not – an interpretation that allows the deduction – here and now – of an operational **rule** from an always vague standard are naturally hierarchical in relation to the interests that send them to such a task. That is, the interpreting subjects are not obliged to interpret the norm uniformly: their interpretation is always and necessarily made in relation to the interests that underpin their very functional existence as interpreters.

Their professional independence – too often asserted under the cover of the abstract principle of legality – is relative: behind their independence lies **the mission** for which they are recognized as professional interpreters who are based on group interests and which must be assumed and respected.

b) There is only one exception: the magistracy, with reference to the defining and unique status of the judge.

Although the fundamental law declares it independent, this independence is based - since the beginning of time - on its power to **decide sovereignly on atypical situations**, situations in which no one in society knows and cannot know with authority how to interpret the norm covering this situation.

So the judge is not defined by the situation – factual or legal – ordinary – when everyone knows or should know – but by **the exceptional situation**. Or it can be said that the independence of the judge, legally recorded as a fundamental principle, is different from the independence of other interpreters and, realistically, describes an effect of the substantiation that I have exposed.

c) Practical consequences can be drawn from this.

The sovereignty of the judge positions him in the essential mission of selecting - ultimately executively - and, of course, motivatedly - from the confused hierarchy of values, interests, principles, norms that criterion that would justify his decision in an exceptional situation.

The sovereignty of the judge refers only to the interpretative solution – the meaning of the law, the logical construction, the evidentiary description of the facts – and in no way to the organization of the process when he operates as an official. The model shows that the same interpreter of the law – in this case, the judge – can perform different functions with different legal substantiation regimes in the same activity.

The judge's legal liability will be special: he will be held liable only for serious intentional misconduct or based on serious, generally unacceptable fault. Otherwise, no one will judge anymore.

The status of the judge, once affirmed, also requires the redefinition of the legal regime of jurisprudence. This would imply the abandonment of the positivist dogma according to which the results of the judge's professional practices are not a source of law even if they can contribute to the development of law. Jurisprudence - through interpretation - produces casuistic rules that cannot be disregarded even by the subsequent judge.

Jurisprudence is presented to all of us – including the judge – as a real and - in a specific way - opposable fact. More precisely, if the judge is the only one who rules on atypical situations, he will inevitably - in the sense of the presented model - be deontologically obliged to ascertain and motivate the acceptance or rejection of the consequences of the existence - by way of exception, of course - of the very exception of pre-existence of a jurisprudence.

d) Beyond our concepts, regardless of the formulations presented, the topic is very current even for judges, for their status.

The question was raised whether a judge can be convicted of abuse of office - with indirect intent - for the reason that he interpreted the criminal procedure norm atypically.

The national courts ruled differently: on the merits, the court decided that the judges of a criminal case did not commit the crime (Art. 297 Criminal Code, the crime of abuse of office, para. (1): those who interpreted the norm atypically cannot be considered criminals because they did not violate any norm in bad faith: “ *their way of interpreting the evidence, of applying the law to the specific case represents judicial reasoning, and this reasoning can only be subject to censorship in legal appeals* ”. On appeal, they were convicted: “ *the magistrates – subject to the procedure – acted in violation of the principle of legality, **in bad faith** , namely when it was proven that they knew the manifestly illegal nature of their actions and that they pursued or accepted the harm to the legal interests of a person or showed serious negligence* ” (Case no. 22198/18, judgment of 15 April 2025, Bădescu and others v. Romania, European Court of Human Rights – Section IV)

The international court accepted the final conviction of the national court, holding - among other things - that in “ *interpretative jurisprudence* ” - so, exactly what interests us - the requesting judges had to “ ***discern to a reasonable extent** , in relation to the circumstances - of the case - that their actions **risk** bringing them a criminal conviction*”(point 148 of the reasoning of the ECHR decision of 15. 04. 2025).

This international jurisprudence is obviously instructive.

*Its application by judges in a rigid manner - following the literal application of the formula "to a reasonable extent" - without reaching the foundation of legal institutions - will transform judges - an effect of the operationalization of the principles of responsibility and above any abstract formulations of the Constitution - from sovereign subjects on their own decision, into officials with a regime of joint liability, who in the interpretation activity will have to assume - like natural persons - **the risks** of professional "business".*

Will such a subject of interpretation of the norm still be a judge?

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LEGISLATIVE MODELS REGARDING PROSTITUTION, PIMPING, AND HUMAN TRAFFICKING: INTERNATIONAL HUMAN RIGHTS LAW AND STATE OBLIGATIONS

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Abstract: *Prostitution, pimping, and human trafficking are global phenomena with profound social, economic, and legal implications. These issues are recognized as violations of human dignity and human rights within the international legal framework, which imposes binding obligations on states to combat exploitation and protect victims (CAP International, n.d.). This paper examines the international legal framework governing these phenomena, analyzes the main legislative models, and discusses the impacts and risks associated with legalization and decriminalization of prostitution.*

Keywords: *prostitution, pimping, human trafficking, social, economic, legal, implications.*

Introduction

International Legal Framework

International human rights law (HRL) clearly recognizes prostitution as a violation of human rights and specifically prohibits the exploitation of the prostitution of others, including pimping, procuring, and the operation of brothels. States and United Nations (UN) agencies are bound by direct obligations to oppose the trivialization of prostitution and to work towards the elimination of its exploitation (CAP International, n.d., p. 10).

The foundation for this approach was laid by the United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949), which states that prostitution is “incompatible with the dignity and worth of the human person” (United Nations, 1949, preamble). The convention obliges states to combat pimping in all its forms and to provide assistance to victims of exploitation.

In the early 2000s, the UN supplemented existing instruments with the Palermo Protocol (2000), which includes “the exploitation of the prostitution of others or other forms of sexual exploitation” within the definition of human trafficking (United Nations, 2000). Additionally, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979) reinforces the obligation to eliminate sexual exploitation and discrimination (United Nations, 1979).

CAP International, a coalition of NGOs supporting victims of prostitution and trafficking, emphasizes that the only way for states to fulfill their obligations is through the implementation of abolitionist policies (CAP International, n.d., p. 6).

These policies include the elimination of exploitation, protection of victims, and prohibition of the purchase of sexual acts, which is considered a form of sexual abuse (CAP International, n.d., p. 16).

Legislative Models

Globally, three main legislative models have been adopted in response to prostitution:

Legalization: In countries such as the Netherlands and Germany, prostitution, pimping, and brothels are legal and regulated. The state collects taxes (which makes it the biggest pimp), and imposes health and safety regulations.

However, research shows that legalization has not eliminated violence or exploitation and has contributed to increased trafficking and organized crime (CAP International, n.d.). Prostitution and trafficking are interlinked, where there is legalized prostitution, human trafficking can hide in plain sight as traffickers operate as business owners.

The idea that legalizing prostitution would improve conditions by enabling sex workers to pay taxes, access health insurance, and receive social benefits overlooks the reality in countries where prostitution is already legal. In Germany, where prostitution was legalized in 2001, a study conducted five years later found that only 1% of prostituted women had an official employment contract as 'sex workers.' When asked why, most explained that prostitution was a temporary escape from an impossible situation they didn't know how to leave — and that they wanted out.

Having a formal contract would restrict their ability to make personal choices, such as refusing certain clients and their demands. (Ekberg, G., & Jakobsson, P., 2013 pg 17)

Decriminalization: In New Zealand, prostitution is decriminalized, meaning there are no criminal penalties for prostituted persons or clients. However, violence and coercion persist, and the law has done little to protect those in the industry (CAP International, n.d.).

Romania's legislative approach to prostitution is characterized by decriminalization of the act itself, while maintaining stringent penalties for related activities such as procuring and solicitation.

Romania's Legal Framework on Prostitution Aspect

		Legal Status
Selling Sex (Prostitution)		Decriminalized as of 2014; no longer a criminal offense under the Penal Code
Solicitation		Classified as a contravention (administrative offense); punishable by fines ranging from 500 to 1,500 lei
Buying Sex		Not criminalized
Pimping / Procuring		Criminal offense; punishable by 2 to 7 years imprisonment and a ban on certain rights
Trafficking & Exploitation		Strictly prohibited; penalties range from 3 to 10 years imprisonment

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Abolitionist/Nordic Model: criminalizes the purchase of sexual acts while decriminalizing those who are prostituted. This approach has led to a significant reduction in street prostitution and trafficking, with no evidence that prostitution has simply moved indoors (CAP International, n.d.).

Countries that have adopted the Nordic Model: Sweden, Norway, Iceland, Canada, Northern Ireland, part of UK, France, Israel, South Korea.

The intimate relationship between prostitution and trafficking is highlighted when buyers are criminalized. Sweden now has the fewest trafficked women in the EU. (Farley, M, 2010).

The following comparison table showing the key differences between **Decriminalization**, **Legalization**, and the **Nordic Model** regarding prostitution laws:

Feature	Decriminalization	Legalization	Nordic Model
Selling sex (by sex workers)	Legal	Legal (under regulated conditions)	Legal
Buying sex (by clients)	Legal	Legal (under regulated conditions)	Illegal (often
Third-party involvement	Legal if consensual (e.g., managers, brothel owners)	Legal with license or regulation	or criminalized as pimping or exploitation)
Brothels	Legal if consensual and safe	Legal but heavily regulated (e.g., zoning, health checks)	Often illegal
Street-based sex work	Legal	Legal if within designated zones or with permits	Illegal for clients , often criminalized indirectly
Worker rights & labor protections	Full access (treated like any other job)	Limited or conditional access	Limited; seen more as victims needing exit support
Criminal record for sex work	No	Possibly, if outside the regulated system	No for workers; yes
Main goal for buyers		Reduce demand and treat sex workers as victims Sweden, Norway, France, Ireland, Canada (partial)	
Examples of countries		Regulate and control the industry Netherlands, Germany, Switzerland, parts of Australia	
		Protect workers' rights and safety	

New Zealand, NSW & NT (Australia), Belgium

Negative Effects of Legalization and Decriminalization

Contrary to arguments that legalization or decriminalization protects sex workers, empirical evidence demonstrates that these models fail to address the inherent violence and exploitation of prostitution. Studies show that in countries where prostitution is legal, approximately 60% of women have been physically assaulted, 40% have suffered sexual violence, and 40% were coerced into the commercial sex trade. Women involved in street prostitution are 60 to 100 times more likely to be murdered than non-prostituted women (Farley, 2004, as cited in CAP International, n.d.).

In countries where prostitution is legalized, the sex industry has expanded significantly—often with large parts operating underground. Human trafficking has also increased. Pimps tend to profit more from illegal activities in these environments. In contrast, in countries where all forms of buying sex are prohibited, it becomes more difficult, costly, and risky for traffickers to operate. (Ekberg, G., & Jakobsson, P., 2013)

Legalization and decriminalization have not eliminated stigmatization or improved the social integration of those in prostitution. Instead, they have normalized the industry and perpetuated the perception of pimps and clients as “business people,” while women remain marginalized (CAP International, n.d.). In the Netherlands, for example, up to 80% of women in prostitution have been trafficked, and the industry has become a magnet for organized crime (CAP International, n.d.).

Conclusions from legalizing prostitution (Ekberg, G., & Jakobsson, P., 2013): when prostitution is seen as “work” it is harder to get out of it. The buyers/ men are the basis for the existence of prostitution. Prostitution increases when it is accepted

The following table summarizes the countries with the highest number of registered victims of human trafficking in 2022, based on the latest available data from Eurostat and the United Nations Office on Drugs and Crime (UNODC):

Country	Number of Registered Victims
Netherlands	1,200+
United Kingdom	757
Romania	710
Germany	583
Bulgaria	401
Italy	426
Poland	355
Hungary	283
Portugal	161
France	Not specified

Note: The numbers represent the total number of registered victims of human trafficking in each country for the year 2022

Push-Pull Factors and the Economic Theory of Trafficking

The dynamics of human trafficking are shaped by both push and pull factors. Push factors—such as war, natural disasters, poverty, homelessness, and unemployment—compel individuals to migrate and accept risky situations, increasing their vulnerability to exploitation. Conversely, pull factors—including demand for cheap labor, the allure of a better quality of life, and legal environments that permit prostitution—attract individuals to destination countries. Traffickers exploit these vulnerabilities by luring victims with false promises and isolating them from support networks (Busch-Armendariz et al., 2018b, p. 26).

From an economic perspective, human trafficking is driven by the interplay of supply and demand, with traffickers weighing the potential profits against the risks of detection and punishment. The low start-up costs, high profits, and strong demand make trafficking an attractive enterprise for organized crime. Interventions aimed at increasing the risks and reducing the profitability for traffickers are essential for effective anti-trafficking strategies (Shelley, 2010, p. 3).

Kellison & Kammer-Kerwick (2018, p. 29) highlight the importance of developing anti-trafficking interventions based on understanding traffickers' cost-benefit thinking—measures intended to increase risks for traffickers and reduce their profitability.

Social and Psychological Impact

The majority of individuals in prostitution come from backgrounds marked by poverty, childhood trauma, domestic violence and sexual abuse (CAP International, n.d.).

Several international studies have shown that most of women working in prostitution have been victims of sexual abuse as children. A Swedish study among teenagers has shown that those who had experienced having “sex with recompense” 89% had suffered other kinds of sexual abuse before prostitution. (Ekberg, G., & Jakobsson, P., 2013)

Entry into prostitution often occurs before the age of cognitive and emotional maturity, with “maturation” occurring in circumstances that affect their concepts of life (relationships, intimacy, money, love, family, etc.) and make socio-economic reintegration difficult (for example, it is difficult for a person who ‘earned’ a lot of money in one night to work for a month for a normal salary).

“Women who prostitute have described it as “paid rape” and “voluntary slavery”. Prostitution is sexual harassment, sexual exploitation, often worse. His payment does not erase what we know about sexual violence, domestic violence and rape.” (Farley, 2010).

High rates of post-traumatic stress disorder (PTSD) are reported among those in prostitution, with prevalence rates comparable to those of survivors of torture or domestic violence (Farley et al., 2003, as cited in CAP International, n.d.).

Solutions for regaining freedom

According to data provided by Eurostat, over 124 million people in the European Union, almost a quarter of EU citizens, are at risk of poverty or social exclusion. This precarious socio-economic context increases the vulnerability of individuals to abuse, exploitation and violence. Statistics show that, under these conditions, the phenomenon of modern slavery is experiencing an alarming increase on the European continent. The number of identified victims of various forms of human trafficking, from labour exploitation to sexual

exploitation, is constantly expanding. Immigrant workers are particularly exposed to this type of exploitation, especially in the context of a growing trend of recruitment via the internet and social networks. At the same time, the persistence of specific forms of trafficking in minors is observed, such as the exploitation of children through begging, their involvement in petty thefts such as "pick-pocketing" and sexual exploitation.

According to a 2023 Global Slavery Index report, over two million people are estimated to be exploited across Europe, with the continent simultaneously serving as a source, transit and destination for vulnerable victims of human trafficking, either for sexual exploitation or forced labour (Global Slavery Index, 2023). Romania consistently ranks among the top three European countries with the highest number of victims identified annually (Eurostat, US TIP Report, UNHCR). Worryingly, between 2016 and 2018 alone, the number of victims of human trafficking in Europe increased by over 45% (Global Slavery Index, Eurostat). Almost 150,000 of these victims come from Romania (Global Slavery Index, 2023), underscoring the country's role as a major source for human trafficking, both for sexual exploitation and for labour exploitation (US TIP Report, 2023). However, less than 40% of identified victims benefit from assistance services provided by the Romanian state (US TIP Report, 2023).

Romania is among the Member States with the highest levels of poverty in the European Union. Rural populations are significantly more exposed to the risk of poverty and social exclusion compared to urban populations, representing two thirds of all people in poverty at national level. In addition, certain social groups face much more severe conditions, such as marginalized Roma communities. The majority of Roma in

Romania, faced with persistent societal stigma, avoids assuming and expressing its ethnic identity. According to the Global Slavery Index, approximately 86,000 people are victims of human trafficking in Romania, with experts reporting a significant overrepresentation of Roma children among victims of trafficking for begging and petty theft.

The gaps identified in combating human trafficking highlight the need for strategic and innovative interventions. First, current mechanisms for early identification of victims are insufficient, especially in the informal or hidden sectors, leading to the invisibility of those affected. Second, there is an acute lack of specialized services, adapted to the age and gender of victims, such as safe shelters, psychosocial support and legal assistance, which limits real chances of recovery and reintegration.

Another challenge is the weak transnational coordination, manifested in inconsistent referral systems and insufficient collaboration between countries, which affects the support provided to victims and their reintegration. Also, the low level of awareness among third-country nationals about the risks of trafficking, as well as the absence of effective measures to address the online dimension of trafficking, amplifies vulnerabilities. However, the legislative and policy framework of the European Union offers opportunities to strengthen the response. By building on partnerships with civil society, local authorities and international organisations, this project aligns with the European call for comprehensive, victim-centred and human rights-based interventions.

Bucharest has consolidated in recent years as a key transit hub and temporary destination for young Romanian women who, often under the illusion of a job, later end up being captured in exploitation circuits in Western capitals, especially in the Netherlands. This

phenomenon has been exacerbated by recent economic crises and the effects of the COVID-19 pandemic, which have intensified the vulnerabilities of young women from rural areas, most of whom face a lack of economic and social prospects. On the streets of Bucharest and in peripheral areas, the number of young women at risk of sexual exploitation has increased, many of whom are manipulated and forced to accept degrading situations in order to ensure their survival.

Therefore, raising public awareness about human trafficking and sexual exploitation is essential to prevent these tragedies. It is also essential to educate the population about risky situations, especially when it comes to migration or seemingly advantageous job offers abroad.

Trafficking in human beings constitutes one of the most serious violations of fundamental human rights, deeply rooted in the complexity of contemporary migratory flows. Within the European Union, this scourge disproportionately affects vulnerable groups, in particular people from marginalized social groups and third-country nationals, who often become targets of exploitation in high-risk sectors such as agriculture, domestic work, construction and the sex industry. From a theological perspective, the recognition of the image of God in every human being imposes a prophetic and pastoral responsibility on the Church to denounce and combat all forms of modern slavery, advocating for the restoration of the dignity and freedom of the oppressed.

The revision of the Anti-Trafficking Directive and the EU Strategy on Combating Trafficking in Human Beings for the period 2021-2025 underline the need for complex transnational cooperation, involving a multitude of institutional and non-governmental actors, to effectively address this cross-border crime. However, these efforts face significant obstacles, which perpetuate the vulnerability of victims. Among the most pressing challenges are insufficient mechanisms for identifying and referring victims, which leads to the invisibility of many of those affected and the perpetuation of trauma without adequate intervention. Also, the limited capacity of law enforcement authorities and labour inspectors to detect cases, in particular those of labour exploitation, undermines efforts to prevent and punish offenders.

Conclusions and Recommendations

International human rights law requires states to adopt policies that eliminate the exploitation of prostitution and protect victims. Legalization and decriminalization have proven ineffective in achieving these goals, as they do not address the root causes of exploitation and often exacerbate trafficking and violence. The Nordic model, which criminalizes buyers and supports victims, has demonstrated greater success in reducing prostitution and trafficking.

States should implement abolitionist policies that prioritize the protection of victims, provide exit options, and prohibit the purchase of sexual acts. Addressing the underlying factors of poverty, discrimination, and gender inequality is essential for preventing exploitation and promoting human dignity. A solution to the problem of trafficking arising out of this consensus would be to implement programs that promote sex, race, and economic equality, offering women alternatives to prostitution.

Solutions for regaining freedom

According to data provided by Eurostat, over 124 million people in the European Union, almost a quarter of EU citizens, are at risk of poverty or social exclusion. This precarious socio-economic context increases the vulnerability of individuals to abuse, exploitation and violence. Statistics show that, under these conditions, the phenomenon of modern slavery is experiencing an alarming increase on the European continent. The number of identified victims of various forms of human trafficking, from labour exploitation to sexual exploitation, is constantly expanding. Immigrant workers are particularly exposed to this type of exploitation, especially in the context of a growing trend of recruitment via the internet and social networks. At the same time, the persistence of specific forms of trafficking in minors is observed, such as the exploitation of children through begging, their involvement in petty thefts such as "pick-pocketing" and sexual exploitation.

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BLOCKCHAIN AND DATA PRIVACY IN NIGERIA: RECONCILING INNOVATION WITH THE NIGERIA DATA PROTECTION ACT 2023

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Abstract: *The rapid adoption of digital technologies has amplified concerns over privacy and data protection, particularly in developing regions such as Africa. Nigeria's Data Protection Act (NDPA) 2023 provides a comprehensive framework for safeguarding personal data by stipulating lawful bases for processing, ensuring security, and establishing rights of data subjects. Meanwhile, blockchain technology has emerged as a prominent privacy-enhancing technology (PET), valued for its decentralization, immutability, and cryptographic security. However, blockchain's transparency and permanent storage of records raise tensions with confidentiality principles and rights such as erasure, central to both the NDPA and the EU General Data Protection Regulation (GDPR). This paper critically examines blockchain's compatibility with Nigeria's NDPA, assessing how features such as pseudonymization, decentralization, and replication align—or conflict—with statutory principles including lawfulness, fairness, data minimization, storage limitation, and accuracy. The study highlights blockchain's potential to reinforce data integrity and security while underscoring legal and practical challenges in reconciling its technical features with privacy rights.*

Keywords: Data Protection, Blockchain, Privacy Regulation

Introduction

The threat to the right to privacy is a universal one that transcends borders and regions, and as such, it will be erroneous to assume that some regions are immune to the effects of infringement of the right to privacy. Even in regions like Africa, where there is a misconception that the right to privacy is irrelevant, it must be noted that Africa, just like the rest of the world, encounters security and privacy challenges even if they differ in magnitude (Makulilo, 2024). Therefore, it is crucial to explore innovative solutions that prioritize privacy while harnessing the benefits of these technologies. The primary data protection regulation that governs every organization, person, or technology in Nigeria is the Nigeria Data Protection Act 2023 (NDPA). The Act provides the lawful basis for which personal data may be processed, states essential security measures and safeguards for the protection of personal data. The Act also defines the roles and obligations of data controllers and processors in ensuring adequate protection and privacy of data. Additionally, it establishes rights of data subjects which must be respected and upheld, amongst other provisions tailored towards the protection and privacy of personal data (Section 2, NDPA 2023). The growing reliance on the Internet in day-to-day activities has necessitated the development of privacy-enhancing technologies (PETs) such as

blockchain-based technology to ensure the integrity and confidentiality of personal data (Melzi et al., 2024). Privacy-enhancing technologies refer to technologies that help implement fundamental principles of data protection and privacy. However, PETs are not completely foolproof, nor can they completely and effectively address all data privacy risks and threats. Blockchain helps to ensure data integrity; however, data confidentiality continues to be a primary concern (Henry et al., 2018). One of the features of blockchain technology is pseudonymization — a means by which personal identifiers of data are removed and replaced with random characters or artificial identifiers (pseudonyms), thus making the owner of the data unidentifiable. Meanwhile, as a result of the transparency of data and records, it becomes easy to trace transactions to a particular pseudonym and thereafter unmask the identity behind the pseudonym (Froomkin, 1999). This article examines the extent of blockchain's compliance with confidentiality and privacy rules as stipulated by data privacy regulations such as the Nigeria Data Protection Act (Section 2, NDPA 2023) and the EU General Data Protection Regulations (GDPR, 2016/679).

1. Primary Regulatory Frameworks on Data Protection in Nigeria

1.1. The Nigeria Data Protection Act (NDPA) 2023

The Nigeria Data Protection Act (NDPA) 2023 is the current and primary regulatory framework that governs the protection and privacy of data in Nigeria. The Act does not only apply where processing of data occurs in Nigeria, but it shall also apply where the data controller or data processor is domiciled in, resident in, or operating in Nigeria and where the data controller or data processor is not domiciled, resident, or operating in Nigeria but is processing data of a Nigerian data subject (Section 2, NDPA 2023; Article 1(4), NDPA GAID 2025). The Nigeria Data Protection Act, General Application and Implementation Directive (GAID) 2025 provides further explanation on the status of a data subject. The Directive states that the NDPA shall apply to any data subject within the territory of Nigeria, a data subject whose data has been transferred to or is in transit through Nigeria, and a Nigerian citizen not residing within the country (Article 4(4), NDPA GAID 2025). This position represents an advancement over the previous data protection law, the Nigeria Data Protection Regulation (NDPR) 2019, which provided that the regulation shall apply to Nigerians residents and non-residents. The Nigeria Data Protection Regulation (NDPR) 2019 and its Implementation Framework in 2020 were the first attempt at a comprehensive data protection and privacy law in Nigeria. In 2023, the Nigeria Data Protection Act (NDPA) was enacted, and it effectively repealed every provision of the NDPR that contradicted the Act, whilst making some additions to the provisions of the Regulation. However, upon the issuance of the Nigeria Data Protection Act, General Application, and Implementation Directive (GAID) 2025, the Nigeria Data Protection (NDPR) 2019, and by extension its Implementation Framework, ceased to be a data protection instrument in Nigeria (Article 4(2), NDPA GAID 2025). Therefore, the Nigeria Data Protection Act (NDPA) 2023 is the only primary legal instrument in Nigeria that regulates the protection and privacy of personal data. The Act was promulgated with the objective of promoting data processing practices that safeguard the security of personal data and the privacy of data subjects. Some other objectives include ensuring fair, lawful, and accountable processing of personal data, protecting the rights of data subjects as well as providing means of recourse and remedies in the event of the breach of the data subject's rights, amongst other

objectives. In line with these objectives, the Act provides for lawful bases and data processing principles in that every data controller or processor must adhere to while processing data (Section 1, NDPA 2023). The Act also establishes the need to put in place adequate measures to ensure the security and confidentiality of data whilst outlining a number of security measures that can serve as guidelines (Sections 30–31, NDPA 2023). Moreover, the Act provides and protects the rights of data subjects whilst outlining compulsory guidelines for cross-border transfer of data, processing of sensitive data, and children’s data, making it a comprehensive and encompassing data protection regulation (Section 49, NDPA 2023).

2. Secondary Regulatory Frameworks on Data Protection in Nigeria

2.1. The Cybercrimes Act 2015

The Cybercrimes (Prohibition, Prevention, etc.) Act is a statutory legislation enacted with the objective of prohibiting, preventing, detecting, and punishing cybercrimes. One of its other objectives includes the promotion of cybersecurity, protection of computer systems and networks, electronic communications, and privacy rights. This is evidenced in its penalization of offences that consist of elements of data privacy breaches, such as identity theft, impersonation, and breach of confidence by service providers (Section 1(c), Cybercrimes Act 2015; Sections 22(1–3), Cybercrimes Act 2015; Section 29, Cybercrimes Act 2015).

The Central Bank of Nigeria (CBN) Consumer Protection Regulations (2019)

The CBN Consumer Protection Regulations provide standards required of banks and other institutions offering financial services on the fair treatment of customers, business conduct, disclosure and transparency, protection of consumer rights, and accountability of the institutions. The purpose of this enactment is to enhance consumer confidence in the financial service sector and promote financial stability and growth (Introduction, CBN Consumer Protection Regulations, 2019; CBN Circular, 2019).

2.2. The Freedom of Information Act 2011

The Freedom of Information Act was enacted with the purpose of ensuring that public documents and records are protected, available, and freely accessible by the public. The Act was enacted in response to the growing demand for easy accessibility to public records and documents and accountability in Nigerian public institutions, and as such is not regarded as a data protection and privacy legal framework.

2.3. The National Health Act 2014

The National Health Act was enacted to create a framework to regulate, develop, and manage the national health system and set standards for rendering health services within the federation. Relevant provisions in the Act include the concept of informed consent, which obliges the healthcare provider to provide relevant and appropriate information to the client, in the language he understands and taking into consideration his level of literacy. The provisions of the Act also include the obligation on the healthcare provider to ensure confidentiality and protect against unauthorized access to patient records (Preamble, National Health Act 2014; Sections 23, 26, & 27, National Health Act 2014).

A blockchain is a permanent digital record (or ledger) that creates and stores transactions that are time-stamped and grouped in blocks linked to each other, as you would find in a chain. Each transaction entered into the blockchain database is authenticated by the consensus of every computer across the network collaborating in this verification process (Yaga et al., 2018; Dong et al., 2023). In other words, it is a chain of blocks that stores and enables the transmission of information. Each block contains a set of information and specific metadata of the block, known as the block header. The blocks are linked and protected through cryptography, validated, and maintained by a distributed network of peers, eliminating the need for a centralized intermediary. The metadata associated with each block includes its unique hash function and the hash function of the preceding block, establishing a sequential, secure and tamper-resistant arrangement of blocks. This process also ensures the authenticity and tamper-resistance of the information contained in the block. Thus, blockchain may be regarded as an endlessly growing chain of blocks that are interconnected and protected by cryptography (Cirone, 2021).

The underlying principle that guides the operation of blockchain technology is that once a transaction has been recorded by a network of distributed peers, it cannot be altered by anyone. When a transaction is made on the blockchain, it is authorized cryptographically through the verification of the digital signature of the person that initiated the transaction, which is based on asymmetric encryption, that is, a pair of public and private key unique to the person. A public-private key comprises two uniquely linked keys: a private key held securely by the owner and used to sign and verify transactions initiated, and the public key, which is openly accessible to identify the pseudonymous owner and authenticate transactions received by the nodes. The authorized transactions are validated and authenticated by the decentralized network of nodes that verify that the users have correctly cryptographically signed the transactions. Thereafter, a block that contains a record of the validated transaction is added to the chain of blocks and the newly created block is time-stamped and published on the blockchain network. The process of authentication and validation by the decentralized network is carried out through a consensus mechanism, which may be reached through various methods such as Proof-of-Work (Zheng et al., 2017), Proof-of-Stake (Yaga et al., 2018) or Proof-of-Authority (Yaga et al., 2018). In conjunction with its decentralized and consensus-based approach to validation and verification of transactions, blockchain technology also employs Merkle trees to ensure the integrity and tamper-resistance of the records of transactions. A Merkle tree is a cryptographic mechanism named after Ralph Merkle, utilized in blockchain technology to store records of blockchain data securely and efficiently (Merkle, 1988; Sáez, 2022). It is a tree-like data structure where each blockchain transaction is hashed in pairs and repeatedly recorded together until there is only one transaction hash left that has a record of all pairs that have been hashed together, known as the Merkle root or root hash. Similar to an actual tree, a Merkle tree consists of leaf nodes at the lowest level of the structure that represent the cryptographic hash of a single record or transaction, known as a child node (Bosamia, 2018). When two child nodes are paired together, they form a parent node that stores the combined hashes of the paired child nodes (Ayyalasomayajula & Ramkumar, 2023). The parent nodes are also paired repeatedly to form other parent nodes until only the Merkle root or root hash is left. An attempt to change any transactions affects the root hash signaling tampering of data. Thus, the Merkle tree plays an important role in verifying and ensuring the

integrity of records of transactions on the blockchain (Peng et al., 2021; Chhabra et al., 2024). However, once data is committed to the Merkle tree, removing it without disrupting the structure becomes nearly impossible, conflicting with privacy principles such as the right to be forgotten.

3. Types of Blockchain

3.1. Public Blockchain

This is the earliest and the most common type of blockchain. It is a type of blockchain where anyone can participate in the network, and the records of the blockchain are made open for public verification. To participate in a public blockchain as a node or validator or as a user, no special permission or qualification is required, thus regarded as a permissionless blockchain. Similarly, in a public or permissionless blockchain, there is no central or single authority in charge of the persons that participate in the network. Every node in the network participates in the necessary computation to validate the block and a copy of this record is stored by every node with the end goal being the prevention of a single point of failure or arbitrary takeover of the network. Therefore, a public blockchain may be regarded as a decentralized blockchain that is open to anyone to participate, view and publish (Solat et al., 2021; Strehle, 2020). Public or permissionless blockchains promote transparency and openness, potentially conflicting with principles of data confidentiality. Nonetheless, public blockchains have become a popular choice in the financial sector, where transparency of actions and records are essential. However, in corporate establishments that require scalability, system responsiveness and ease of update, the implementation of public blockchain may not be adequate. For example, the most widely used public blockchain, Bitcoin, can handle only about 7–15 transactions per second and takes at least 10 minutes to confirm a block of transactions.

3.2. Private Blockchain

Private blockchain refers to a kind of blockchain where there are restrictions as to who can access and interact with the blockchain. To participate as a node in validating a transaction or as a user submitting a transaction, there is a need for permission and authorization. In a private blockchain, the blockchain systems are usually governed by an authority that grants access to interact with the blockchain to certain persons (Perera & Weinand, 2020). Just like in a typical blockchain, consensus must be reached before a transaction is validated in a private blockchain. Due to the restriction on the participating nodes, consensus requires less computational power or expensive resources; it is the identity of a node that is required to participate in the network and the authority given to the node may be revoked if it acts contrary to the authority granted. Moreover, it is only nodes that have been granted the authority to interact with the blockchain that can participate in the process of reaching a consensus. This is coupled with the authority to publish the records as well as the authority to view them. This implies that only nodes that have been authorized can record or publish a copy of the transactions and the published record can only be viewed by these selected nodes. However, in some other instances, a private blockchain may restrict access to use and interact with the blockchain, but not have restrictions as to who can view the record. Private blockchains are often employed in organizations and establishments, especially those that prioritize efficiency,

accountability and privacy. Additionally, private blockchains may be employed in sectors that deal with sensitive data and as such, require the privacy of data in conjunction with the “immutability” of data offered by blockchain. Some arguments against private blockchain is that it is a form of centralization, as only a selected few are involved in the participation and validation process. Some other arguments state that since a private blockchain may require some kind of authority in order to operate, it is in contradiction with the reason for the evolution of blockchain, which is the elimination of third-party interference or authority. A noteworthy feature of private blockchain is the lack of openness of the transactional records, which may hinder the transparency of the actions of the nodes. Nonetheless, private blockchains offer more privacy than public blockchains due to the confidentiality and authorized access that they offer.

3.3. Consortium Blockchain

A consortium blockchain may be defined as the union of public and private blockchains. In a consortium blockchain, participation and consensus processes are limited to a distributed network of organizations. This is carried out by distributed peers in various organizations and not peers within an organization, like in the case of private blockchains (Chen et al., 2024; Dib et al., 2018). A notable feature of consortium blockchain is the ability of validators to alter previous blocks once there is an agreement between validators (Oladeji et al., 2025). Although in comparison to public and private blockchains, consortium blockchain offers more scalability and efficiency. Nonetheless, consortium blockchain still remains well in use, especially by organizations that have co-partners and is an attempt at a balance between private and public blockchain (Yao et al., 2021).

4. Features of Blockchain

Blockchain technology has certain attributes that are intrinsic to its operation. This part of this work shall examine these features and the extent to which these features can ensure the protection and privacy of data stored on the blockchain. These features include:

4.1. The use of cryptography

Cryptography can be defined as a process of concealing data or information, known as encryption, in order to ensure the integrity and confidentiality of such data in a manner that unauthorized persons will not be able to understand the meaning. Blockchain technology utilizes cryptographic measures such as hash functions, digital signatures, Merkle trees, and asymmetric encryption to ensure the security and integrity of data on the blockchain (Abdelrahman, 2022; Tiwari & Asawa, 2012). A hash function is a cryptographic mechanism whereby an original message, which is an input, is converted to a fixed-length output, known as the hash value, which is different from the original message. A good property of a hash function is that the hash value must be so random that it will be hard to decipher the original message or input (Mahmoud et al., 2020). In blockchain, the hash function uses the hash value of the preceding block to calculate the hash value of the new block; as such, the verification and validation of blocks can be done by comparing the hash values of the blocks. The Merkle tree is a cryptographic mechanism that uses the hash values of blocks to efficiently store and secure transaction records on a blockchain in a tree-like data structure (Bosamia, 2018; Ayyalasomayajula & Ramkumar, 2023). Asymmetric encryption, also known as public-private

key, is a form of cryptography in which a user has access to a unique public key, which is public and used to verify transactions, and a unique private key, which is kept secret and used to authenticate transactions. Asymmetric encryption is relied upon by a user to create and authenticate a digital signature in order to release data to another party who verifies the hash value of the data received. Essentially, these cryptographic mechanisms are at the core of the operations of blockchain technology, which helps to ensure the security and integrity of data stored on the blockchain.

4.2. Decentralization

Blockchain technology emerged in order to remove the need for intermediaries or third parties, such as a central authority in the facilitation of transactions amongst parties. Instead of relying on a central authority, decision-making power is distributed across all network participants using consensus protocols. This implies that a new block can only be added to the existing chain of blocks after a consensus has been reached within the distributed network. The distributed nature of blockchain makes it harder for a singular bad actor to attempt to influence the consensus so as to take over the network. Thus, blockchain technology operates as a distributed structure where data is stored, shared and accessed in order to achieve decentralization. A decentralized technical structure reduces the risk of a single point attack or failure, data loss, data manipulation and other forms of data breach. Decentralization in blockchain technology is also reflected in the governance model (Mahmoud et al., 2019). Blockchains are governed through Decentralized Autonomous Organizations (DAOs), which comprise various entities that make decisions by voting through governance tokens. For a blockchain to be truly decentralized, the supply of governance tokens must not be concentrated in the hands of a few but must be distributed proportionally across all members of the DAO (Akram & Bross, 2018).

4.3. Transparency

The idea of blockchain is an open one, where transactions on the blockchain are made open and visible to everyone in the network. In the case of public blockchains, where anyone can join the network, the transactions carried out on the network are transparent, accessible and public. This helps to enhance the verifiability of transactions, as anyone can verify any transaction that took place on the blockchain and trace such a transaction to the public addresses that carried out the transaction. In the case of private blockchains, where there is a restriction on persons who can join and have access to the network, the transparency of transactions is limited to the persons who are in the network and have access to it (Zhang et al., 2019).

4.4. Pseudonymity

Pseudonymity is a state of being recognized by an identifier other than the real or actual name of the person. The users in a blockchain are not identified by their actual or original name; rather, they are identified by their unique public keys, which act as pseudonyms. Therefore, users on a blockchain can interact and carry out transactions without revealing their real identities. However, this is not to state that the real identity and activities of a user of a blockchain cannot be revealed. Although blockchain offers pseudonymity to users by way of public addresses, transactions may be linked to the public addresses since the transactions on

the blockchain, which include the public address of the user who initiated the transaction, are made open and public. Thus, pseudonymity does not equal or grant full anonymity (Jain, 2022; Rahardja et al., 2021).

4.5. Immutability

Immutability is one of the well-known features of blockchain. It connotes that once a block is added to the chain of pre-existing blocks by a consensus reached by the distributed network of nodes, the transactions on the block cannot be changed or altered (Tripathi et al., 2023; Taufick, 2020). As a result of the use of cryptography, once a new block is added to the chain of existing blocks, it is time-stamped and a hash value is generated for it. An attempt to tamper with a block in the blockchain will lead to a change in the hash value of the block and even where such an actor further attempts to disguise by altering the hash values of all other previous blocks, it will be inconsistent with the genesis block (the first block to be created), thus making any alteration in a blockchain easily detectable. The purpose of immutability is to ensure that data and transactions stored on the blockchain cannot be altered or falsified, thus achieving data integrity and trust. However, this does not prevent the addition of new blocks that contain updates to the existing blocks. On the other hand, there are views that blockchains are not completely immutable, as changes to the blockchain may occur due to occurrences such as a 51% attack or a hard fork, although a very complicated process, but not an impossible one. A 51% attack is when an attacker gains over 50% of the control of the network and as such, can make decisions on the operations of the blockchain, including rewriting the blockchain. This will require over 50% computation power or over 50% of the total stake in a POW and POS system, respectively. Another means through which a blockchain can undergo changes is through forking, where changes are made to a blockchain protocol, which results in a split in the blockchain. These changes may be a slight upgrade in the blockchain in which the former and new protocol will be compatible and the end result is a single blockchain; this is known as a soft fork. However, where the changes are such that the previous and new protocols are no longer compatible and the split results in two different blockchains, it is known as a hard fork (Nakamoto, 2008; Mehar et al., 2017). Taking the possibilities of a 51% attack and the process of forking into consideration, blockchain technology cannot be said to be completely immutable. However, the complexity behind amending the records of a blockchain poses a challenge to privacy principles such as the right of erasure.

5. The Applicability and Sufficiency of the NDPA to Blockchain-Based Platforms in Nigeria

The NDPA regulates the collection, processing, and storage of personal data in Nigeria by Data Controllers. Consequently, the stakeholders and custodians of blockchain platforms are obligated to abide by the rules and principles as defined by the Act (Nigerian Data Protection Act, 2023). Since the operation of blockchain platforms involves the collection and transfer of data, this section examines the extent and sufficiency of the NDPA to blockchain-based platforms. The primary principles defined by the act are as follows:

5.1. Lawful Basis, Fairness and Transparency

The NDPA states that data can only be processed where there is a lawful basis and in accordance with the principle of fairness and transparency (Nigerian Data Protection Act, 2023). The principle of fairness means that data is processed in a way that is free from prejudice and exploitation and it is generally consistent with civil liberties in a democratic society (Nigerian Data Protection Act, 2023). The lawful basis for processing personal data includes consent, contractual necessity and other legal bases laid out in the Act (Nigerian Data Protection Act, 2023). Transparency in processing personal data may mean that data controllers are fully, clearly and explicitly open with data subjects with regard to the data being collected from the data subjects and the purpose for which the data is being collected. This principle subsists even where consent or contractual obligation is not the lawful basis for which personal data is being processed. One of the key features of most blockchains is decentralization, where the power to carry out any action on the blockchain is not subject to a centralized authority but vested in a vast majority of people. Therefore, blockchain technology strongly practices democracy in its operations and accordingly aligns with the principle of fairness in data processing (Finck, 2019). Also, blockchain technology strongly complies with the principle of transparency in data processing (Mougayar, 2016). In reality, blockchain technology suffers from an overwhelming amount of transparency, especially in public blockchains, where every action carried out by a user is publicly available. Although blockchain does not present a technological limitation to the adherence with the transparency principle, inadequate governance of the blockchain network could result in a lack of communication among participants in the network who play active roles in validating and broadcasting transactions, leading to non-compliance with the principle of transparency.

The lawful basis for the processing of personal data refers to the instances in which such processing of personal data may be allowed and considered legally acceptable (Nigerian Data Protection Act, 2023). This implies that processing of personal data in any other instance not stated in the Act shall be considered unacceptable and unlawful. The essence of having a lawful basis for processing personal data is to ensure that personal data is processed in a manner that upholds and respects the rights, freedoms, and interests of data subjects. Therefore, if no lawful basis for processing personal data is identified, the use and appropriateness of such blockchain technology may be reconsidered.

5.2. Purpose-Specification and Limitation

The Act also establishes the requirement of transparency by data controllers on handling personal data. It states that personal data must be collected for specified, explicit, and legitimate purposes, and there shall be no further processing of personal data in a way incompatible with the purpose for which it was collected (Nigerian Data Protection Act, 2023). This implies that a data controller must expressly declare legitimate intentions of the specific purposes for which the data is being collected and processed and must not go further to process such personal data in a manner that will be incompatible with the specific purpose for which it was originally collected. Most times, processing of personal data (public keys and transactional details that contain personal data) is not just limited to the original transaction. This conflicts with the principle of purpose specification, especially where the users are not informed of the further processing of personal data that has taken place. The principle of purpose specification

is not completely incompatible with blockchain as users may be informed of the purposes for which the personal data is being processed (Finck, 2019). However, the principle of purpose limitation may be harder to comply with in the case of blockchains, where data may need to be continuously processed. In privacy-preserving blockchains where the data stored on the blockchain has either been anonymized or hashed and the personal data is stored offline in erasable ledgers, the principle of purpose limitation is significantly easier to comply with (Mougayar, 2016). This is due to the fact that the continuous processing that will occur on the blockchain does not include the processing of personal data.

5.3. Data Minimization

The Act provides that the processing of personal data must be adequate, relevant, and limited to the minimum necessary for the purposes for which the personal data was collected or further processed (Nigerian Data Protection Act, 2023). Adequacy means that the processing of personal data must be appropriate as to quality, quantity, and relevancy. This further implies that the processing of personal data must be materially useful in the fulfilment of the legitimate purpose for which the data was collected. The principle of data minimization provides that it is the least data necessary in fulfilment of the legitimate purpose for which the data was collected that should be collected or processed. Blockchain technology can be said to fulfil the principles of adequacy and relevance as the personal data collected are appropriate and materially useful in order to process personal data (Finck, 2019). On the other hand, the principle of data minimization may conflict with blockchain technology. As a decentralized structure, once a transaction is executed and a new block is added to the chain, a copy of the executed transaction is sent to all nodes in the network. This leads to a mass replication of personal data depending on how many nodes are in a particular blockchain network. This may conflict with the provisions of the Act, which states that only the least data necessary should be processed. The interpretation of the word “least” in this context may be used in terms of the quantity of data to be processed and as such, replication of personal data across many nodes may appear contrary to the provision. However, it should be noted that decentralization is a core aspect of blockchain technology, which is used to ensure the security and transparency of the network. Most users have regarded Bitcoin, a public blockchain with over 20,000 nodes, as the most secure blockchain ever as it has never been hacked and this has been largely attributed to the vast level of decentralization in the blockchain (Narayanan, Bonneau, Felten, Miller, & Goldfeder, 2016). Therefore, the replication of transactions across all nodes should not conflict with the principle of data minimization because such an amount of data processing is required to fulfil one of the specific and legitimate purposes for which personal data is collected and processed: security.

5.4. Storage Limitation

The principle of storage limitation provides that personal data shall not be retained for longer than is necessary to achieve the lawful bases for which the personal data was collected or further processed (Nigerian Data Protection Act, 2023). This implies that where the purpose for which personal data was collected or processed has been achieved, the data should be erased or deleted. This principle is in direct conflict with blockchain’s most favoured feature: immutability. Immutability on blockchain is to the effect that data stored on blockchain can never be erased or deleted. While this helps to ensure the transparency of transactions on the

blockchain, it poses a risk to personal data, which has been identified in the earlier parts of this work to be included in the transaction on a blockchain. The principle of storage limitation only conflicts with immutable or append-only blockchains. For blockchains that store personal data in offline databases, such personal data can easily be deleted, thus adhering to the principle of storage limitation (Finck, 2019).

5.5. Accuracy

The Act states that the processing of personal data must be accurate, complete, not misleading, and, where necessary, kept up to date, having regard to the purposes for which the personal data is collected or is further processed (Nigerian Data Protection Act, 2023). The effect of this principle is that the state of personal data must be constantly updated in order to ensure personal data about to be processed is error-free and accurate. As previously stated, blockchains are immutable in nature as such, they cannot be altered or changed. Although the immutability of blockchains is in direct conflict with the principle of storage limitation and the right to erasure, it does not completely conflict with the principle of accuracy. More blocks can be added to the blockchain to show the updated status of the personal data. Also, when new blocks are formed once a transaction has been executed, the new block is timestamped. The timestamps on the blocks help to distinguish between a previous block of information and a newer block of information. The immutability of the blocks ensures that the updates to the blocks are not erased or deleted, thereby ensuring the accuracy of the personal data stored in the new block.

5.6. Security

The Act mandates that the processing of personal data must be in a manner that ensures appropriate security of personal data, including protection against unauthorized or unlawful processing, access, loss, destruction, damage, or any form of data breach (Nigerian Data Protection Act, 2023). With the use of cryptography and distributed structures, blockchain technology ensures the security of personal data and prevents unauthorized access to it. Cryptographic measures such as the use of hash functions, Merkle trees, and asymmetric encryption enable blockchain to detect if a block has been tampered with or if unauthorized access has been granted. The distributed nodes across the network are responsible for checking whether the person who is initiating a transaction possesses the private and public keys to the data, which confirms if such a person is the original owner. The security principle is not incompatible with blockchain, as its architecture is built to ensure security and authorized access (Yaga, Mell, Roby, & Scarfone, 2018).

6. Rights of Data Subjects on Blockchain Platforms under the Nigerian Data Protection Act

The Nigeria Data Protection Act outlines the rights of data subjects regarding the collection, processing, and security of their personal data. These rights include the right to withdraw consent to process personal data, restrict data processing and portability, lodge a complaint with the commission, contest and terminate personal data processing, and to choose not to be subject to automated decision-making (Nigerian Data Protection Act, 2023).

Right to withdraw consent to process personal data

The NDPA provides a data subject with the right to withdraw their consent to the data controllers at any time to process personal data (Nigerian Data Protection Act, 2023). Additionally, consent given to the data controller to process personal data may not always be a sufficient basis for the processing of personal data, especially where the data controllers have not properly identified themselves on platforms like blockchain, where various actors can be involved in processing personal data.

6.1. Right to restrict data processing

A data subject has the right to restrict the processing of personal data by the data controller (Nigerian Data Protection Act, 2023). The right to restrict the processing of personal data is exercised where there is a pending resolution of a request, establishment of a legal claim, or objection to data processing by a data subject.

Right to lodge a complaint with the commission.

Under the NDPA, a data subject has the right to lodge a complaint with the Nigeria Data Protection Commission to seek redress of a violation of a right to privacy or a breach of personal data. The commission will acknowledge the receipt of the complaint within 7 days, after which the complaint shall be evaluated. Where an actual case of violation is discovered, an investigation will be launched, followed by a hearing to determine whether there has been a violation and the appropriate remedy for the data subject (Nigerian Data Protection Act, 2023).

6.2. Right to data portability

The right to data portability is the right of a data subject to request and receive personal data from a data controller in a machine-readable format and to have the personal data transferred from the data controller to another data controller, where possible. The right to data portability is qualified and can only be exercised where personal data is processed with a specific legal basis. The right will only be exercised where the legal basis for the processing of personal data is consent or for the performance of a contractual obligation. The right will not be applicable where personal data is processed with other legal bases such as public interest, legal obligation, vital interest, or legitimate interest (Nigerian Data Protection Act, 2023).

6.3. Right to contest and terminate personal data processing

A data subject has the right to object to the processing of personal data, in which the data controller must effectively discontinue the processing of personal data unless the data controller demonstrates a public interest or other legitimate grounds which override the fundamental rights and freedoms, and the interests of the data subject (Nigerian Data Protection Act, 2023). The consequence of this right is that unless a data controller can demonstrate grounds which override the rights of a data subject, the objection to data processing is a right guaranteed to a data subject which must be exercised.

6.4. Right to erasure of personal data

This is also known as the “Right to be forgotten.” A data subject may exercise the right to have their personal data erased, and the data controller must comply without undue delay (Nigerian Data Protection Act, 2023). A data subject may request the erasure of personal data

where such personal data is no longer necessary to fulfill the purpose for which it was collected. Also, a data subject can only exercise the right of erasure where the legal basis for processing personal data is consent or legitimate interest.

6.5. Right to choose not to be subject to automated decision-making

The NDPA grants a data subject the right not to be subject to a decision based solely on automated processing of personal data, which may include profiling or any other action with similar legal consequences (Nigerian Data Protection Act, 2023). This right shall not be exercised where such automated decision has been authorized by a written law or consent of the data subject. The right will also not apply where the decision is necessary for entering into or for the performance of a contract between the data subject and a data controller. Similarly, the directive provides that data controllers who intend to deploy emerging technologies such as Artificial Intelligence, Internet of Things and Blockchain must take into consideration, amongst others, the right of a data subject not to be subject to automated decision making, whilst designing such technologies (Finck, 2019).

7. Implementational Challenges of Blockchain-Based Platforms

Despite the numerous benefits of blockchain technology in ensuring the transparency and privacy of transactions, it has certain limitations that may challenge its widespread adoption. These include:

- **Scalability issues:** Blockchain technology struggles with the scalability of large-scale transactions. Blockchain is designed to record all transactions carried out on it, and as transactions continue to increase, the blockchain becomes heavy, leading to a delay in transaction processing time. This could hinder its mainstream adoption, especially in organizations that process large-scale transactions and require fast processing (Dong, Abbas, & Kamruzzaman, 2023).
- **Resource-intensive & Negative environmental impacts:** Blockchain technology, particularly blockchains that employ the Proof-of-Work (POW) mechanism, requires a lot of computational power. POW blockchains create new blocks and publish blockchain records through mining, consuming a lot of electricity. This has been considered as one of blockchain's most secure features, as the high cost of mining systems and the significant computational power required will deter malicious actors looking to take over the network. However, the substantial energy consumption during mining raises environmental concerns. Studies have revealed that blockchain mining has a negative impact on environmental sustainability (Stoll, Kllaßen, & Gellersdörfer, 2019).
- **Complexity:** Cryptography is one of the major components of blockchain technology, which is very unfamiliar to an average internet user. Users may encounter difficulty navigating complex cryptographic concepts like public-private key, smart contracts and managing a digital wallet, thereby enabling a wide knowledge gap which could hinder its widespread adoption (Narayanan et al., 2016).
- **Security risks:** Contrary to popular beliefs, blockchain technology is not completely free from cybersecurity attacks. While public blockchains allow for openness and transparency of transactions for the purpose of security, these may be exploited through cyberattacks like

Man-in-the-Middle (MITM) and Denial of Service (DoS) attacks. Blockchain technology is equally susceptible to malicious users (nodes) just like in centralized systems, especially in private or permissioned blockchains, which are less decentralized and transparent with transaction records (Zhang, Xue, & Liu, 2019).

- **Regulatory concerns:** The features of blockchain technology are distinct from existing traditional finance systems and, as such, have been stated to “challenge the boundaries of the legal orders in which they operate” (Cirone, 2021). Blockchain technology conflicts with existing regulations such as data protection laws, Know-Your-Customer (KYC) financial regulations, tax laws, and securities laws. Although attempts have been made to provide guidelines for the use of blockchain technology, there is yet to be a comprehensive legal framework. This poses complications for blockchain-based projects seeking widespread adoption.

Conclusions

The intersection of blockchain technology and Nigeria’s Data Protection Act (NDPA) 2023 reveals both opportunities for innovation and challenges for compliance. Blockchain’s immutability, decentralization, and cryptographic design provide strong safeguards for data security, integrity, and accountability, aligning with key NDPA objectives. Yet these same features generate tensions with data protection principles such as minimization, storage limitation, accuracy, and the right to erasure, raising difficult questions about how an immutable ledger can fully accommodate individual rights. To reconcile these tensions, Nigeria must adopt a balanced approach that neither stifles technological growth nor undermines privacy guarantees. This requires regulatory guidance from the Nigeria Data Protection Commission clarifying how NDPA provisions apply to blockchain use, as well as the development of technical solutions such as off-chain storage, encryption, and privacy-preserving cryptographic techniques. Permissioned or consortium blockchains may also offer more practical pathways for compliance in contexts involving sensitive personal data, while capacity building for regulators, legal practitioners, and developers is essential to ensure effective governance. In addition, aligning Nigeria’s approach with international standards like the GDPR will strengthen cross-border compatibility and attract investment. Ultimately, the NDPA provides a strong framework for guiding blockchain adoption, but its effectiveness will depend on adaptive regulation, responsible technological design, and sustained commitment to protecting data subjects’ rights in Nigeria’s digital economy.

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CRIME RELATED PHENOMENA - DRUG ADDICTION AND PROSTITUTION (EXPERIENCE OF THE REPUBLIC OF MOLDOVA)

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Abstract: Throughout history, societies have adopted diverse approaches to addressing phenomena such as drug addiction and prostitution, often conceptualized as interconnected “satellites” of criminality. Although the use of psychoactive substances and the practice of prostitution date back to antiquity, contemporary socio-economic transformations have significantly reshaped their forms and impact. In the Republic of Moldova, as well as in other states of the former Soviet Union, the transition to a market economy, coupled with rapid developments in information and communication technologies, has generated new dynamics, patterns of vulnerability, and modalities of engagement in both drug use and sex work. The drug addiction phenomenon has evolved into a critical public health challenge, marked by increasing morbidity, heightened mortality rates, and substantial burdens on healthcare systems. Simultaneously, its ramifications extend far beyond the medical sphere, constituting a complex social-legal issue that fuels criminal behaviour, undermines social cohesion, and perpetuates cycles of marginalization and alienation. Prostitution, likewise, continues to generate profound ethical, social, and legal debates regarding individual autonomy, exploitation, and public order. Together, these phenomena threaten not only the well-being and security of individuals directly involved but also the broader societal interest, as their persistence hinders social development, reduces collective resilience, and compromises efforts to consolidate democratic governance and the rule of law. Understanding the interconnected nature of drug addiction and prostitution is therefore essential for developing holistic, evidence-based policies aimed at prevention, harm reduction, and social reintegration. This necessitates interdisciplinary research and coordinated institutional action capable of addressing the structural, psychological, and economic factors driving these practices

Keywords: prostitution, drugs, sex work, drug addiction, alienation, commercialization.

1. News and national context

By generalising the concept of crime, we arrive at its essence, being approached as the totality of crimes (offences) related to a certain temporal-geographical space. However, crime also has certain 'satellites' - phenomena that accompany it, which essentially indicate the actual level and rate of crime. These include drug addiction and prostitution. It should be noted that both phenomena are illegal in the Republic of Moldova.

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Drug addiction and prostitution belong to the category of "fon" phenomena, which are all amoral manifestations that go against the generally accepted norms of society and are organically linked to crime, because they are mutually determined and lead to the social degradation of the individual and ultimately of society as a whole (Bîrgău, 2010, p. 357).

In the Republic of Moldova, public authorities, public associations and other non-governmental organisations are making sustained efforts to prevent drug addiction and prostitution, carrying out various actions to educate and train the population. The decisive role, however, is played by each of us, refusing the mirage of illusory pleasures or illegal services.

The current penal policy in the field of drug addiction prevention is in line with and strictly guided by the normative standards prescribed in the international conventions to which the Republic of Moldova is party. In this regard, we mention the Single Convention on Narcotic Drugs and the Protocol amending the Convention of 30.03.1961 (Cojocaru, 2009, p. 33); the Convention on Psychotropic Substances of 21.02.1971; the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20.12.1988. ¹The Republic of Moldova became a party to these conventions in 1995 and the implementation of the requirements stipulated in these conventions is supervised by the National Anti-Drug Commission.

As regards preventing and combating prostitution, the Republic of Moldova is party to the following conventions aimed at combating prostitution: the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations General Assembly by Resolution 34/180 of 18 December 1979 (Convention on the Elimination of All Forms of Discrimination against Wome, 1998, p.732); the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted on 25 March 2000 in New York; the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, adopted on 25 October 2007 in Lanzarote.²

Criminological studies carried out over the years have made a substantial contribution to improving the fight against and prevention of drug addiction and prostitution, both internationally and at the level of individual countries (Paraschiv G).

Many efforts have been made to define the concept of prostitution and drug addiction, which would include their essential features.

2. Issues of legislative definition and prevention of prostitution

To date, there is no unit of vision in the literature on the definition of prostitution and drug addiction. Thus, after the collapse of the Soviet Empire and the adoption on August 27, 1991 of the Declaration of Independence of the Republic of Moldova, little attention was paid to prostitution, although the contravention liability for prostitution was and is provided, but until 2018 the legislation of the Republic of Moldova, and the Contravention Code of the Republic of Moldova did not contain the definition of prostitution.

¹ <https://www.undp.org/moldova/about-us/legal-framework>.

² Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, of 25.10.2007. In: www.legestart.ro / Convention - 2007 - protection-children-against-sexual-exploitation-sexual-abuse-(MzY2NTIx).

The term "prostitution" is of Latin origin and translates as "exposure for sale". Prostitution refers to the provision of sexual services for financial or material reward. Prostitution, as a means of obtaining profit, accompanies the most diverse forms of crime (organised crime, crime involving the circulation of drugs and arms, etc.). Prostitution is at the heart of the so-called sex-business system with pimps, brothel owners, traffickers in human beings or children, and others.

The Palermo Protocol does not make a clear demarcation between trafficking in human beings and prostitution. It deliberately does not define the two concepts of "exploitation of the prostitution of others" and "sexual exploitation" in order to give States the possibility to ratify the Protocol regardless of the provisions of national law on prostitution. The Protocol does not impose a particular position on the State concerned with regard to the (exploitation of) prostitution freely entered into by adults, leaving it to their discretion how they wish to regulate prostitution in national law. In this way, it will be possible for states with different legislation, i.e. those that decriminalise, legalise, regulate or tolerate (consensual) prostitution of adults and those that criminalise (exploitation of) prostitution and prostitution or the use of prostitution services, to comply with the Protocol.³

In this context, the relevant legal basis of the Republic of Moldova will be analysed. Thus, until the content of Article 89 paragraph (1) of the Criminal Code of the Republic of Moldova, by adopting Law No. 159 of 12.10.2018 (M.O. 416-422 /09.11.2018, article 649), prostitution was not defined in national legislation. In the context in which, the legislator left the "door open" for the interpretation of that phrase, the arguments of the Constitutional Court of the Republic of Moldova were relevant, such as - "... *prostitution cannot imply the provision of sexual services online. This is because the provision of sexual services online does not imply the practice of sexual acts with the persons benefiting from the prostitute's services.*"⁴ The provision of such services does not imply direct contact of the person's body with the body of the person receiving the services..." In the same context, the arguments of the doctrinaires in the field were relevant and plausible (Brînză S.)⁵.

The situation changed radically with the entry into force of Law No. 159 of 12.10.2018, when the phrase "practicing prostitution" was given a legal interpretation - "... the satisfaction of a person's sexual desire by any method and/or means, against payment, *including by means of information technologies or electronic communications ...*" (Article 89 of the Criminal Code of the Republic of Moldova).

Unlike the Criminal Code of the Republic of Moldova, in the Romanian Criminal Code the definition of the notion of practicing prostitution differs from the local one and it is understood as "engaging in sexual acts with various persons for the purpose of obtaining financial gain for oneself or for another".⁶ *Thus, we observe a legal-criminal policy diametrically opposed to the autochthonous one as regards the definition of "practice of prostitution", limited to "physical/direct contact of the actors of this act.*

³ https://cnaigs.md/uploads/asset/file/ro/239/Ghid_AJGS_FINAL.pdf p.47.

⁴ Constitutional Court Decision No 36 of 19.04.2018. Retrieved from: <https://www.constcourt.md/public/ccdoc/decizii/ro-d362018173g201737g2018rob4b4f.pdf>.

⁵ Brînză S., "Again about the interpretation of the notion of prostitution in the judicial practice of the Republic of Moldova", Retrieved from: http://uam.md/media/files/files/dreptul_nr_21_616_9572974.pdf.

⁶ Criminal Code of Romania. Retrieved from <http://legislatie.just.ro/Public/DetaliiDocument/109855> - art. 213 para. (4).

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We consider that the Romanian wording corresponds more precisely to the principle of legality and excludes the possibility of an extensive interpretation of the criminal law by analogy. Moreover, the definition of prostitution in Article 89 of the Contravention Code of the Republic of Moldova creates confusion in the delimitation of "pornography" (which refers to "the material element of ... *images or other representations ... in a lewd or obscene manner, including in electronic form*") from "prostitution", placing the sign of equality between them, which is unacceptable in a democratic society.

Current public opinion boils down to the fact that prostitution is amoral behaviour. There are different opinions in different countries of the world on whether prostitution should be recognised as a crime, ranging from recognising it as a criminal offence (in Muslim countries) to making it a legal economic activity (in the Netherlands). In most Western countries, although prostitution is prohibited by law, the public authorities are tolerant of it, focusing their attention on those who exploit prostitutes for various purposes.

In the Republic of Moldova, prostitution falls under the category of misdemeanours, but there is criminal liability for procuring (Article 220 of the Criminal Code of the Republic of Moldova), i.e. inciting or inducing prostitution or facilitating the practice of prostitution or profiting from the practice of prostitution by another person, if the act does not meet the elements of trafficking in human beings.

The Romanian author Oancea I. mentions that prostitution represents as a social phenomenon a multitude of persons, who practice sexual relations with different persons in order to obtain material benefits, pimps, who carry out the activity of organizing and exploiting persons who practice prostitution, clients, who benefit from the activity of persons, who practice sexual relations in order to obtain material benefits, as well as other individuals, who promote the activity of the named persons. Pimping as a social phenomenon is an integral and inseparable part of prostitution, consisting of the activity of organising and exploiting it. Prostitution as a legal phenomenon is the systematic activity, which may have the status of a profession or illegal occupation, of practising sexual intercourse in exchange for material gain, characterised by emotional indifference and lack of individual choice or preference in relation to the client in the person practising the named activity. Pimping as a legal phenomenon is a set of illegal actions by the pimp aimed at enticing the person into prostitution, organising the practice of prostitution and obtaining profit from the practice of prostitution by another person. Prostitution is socially deviant behaviour because it represents a departure from existing social and normative norms, and as such is an object of study for criminology (Oancea Iu. 2012, p.190).

Prostitution lowers the social moral level, leads to intellectual degradation, which negatively influences the education of children and youth. Prostitution undermines the foundations of social life, destroys families and ultimately undermines public health. As a result, the level of female crime, mortality, sexually transmitted and incurable diseases, suicides and, what is more dangerous for society, the state of the nation's gene pool is affected.

At the same time, as the daily reality shows, after being fined for prostitution on the basis of the Contravention Code of the Republic of Moldova, prostitutes are once again taking to the streets and continuing to practice prostitution under the supervision of the pimp, often

being recruited by traffickers of 'living flesh', which shows us that effective measures to combat the phenomenon of prostitution are not being applied at national level.

Thus, only in the first three months of 2019, according to the operational information of the Ministry of Internal Affairs on the state of crime on the territory of the Republic of Moldova, 5 crimes of pimping⁷ were recorded, but the real state of this phenomenon is different from the official statistical data.

With reference to the personality of the person who practices prostitution, in most cases, it is characteristic: age between 16-29 years; not employed; incomplete or secondary education.

The main reasons for prostitution are: material needs, debts to banks or individuals, the example/encouragement of friends, curiosity. They had their first sexual relations with a friend or partner at the age of 16-18. Relationships with parents are spiteful or indifferent. First experience of alcohol consumption at the age of 14-17. At the same time, there are cases of drug use, which shows the close link between prostitution and drug addiction. Most of the people who practise or have practised prostitution come from socially vulnerable families who have not been able to provide them with an education that would correspond to the moral norms and rules of coexistence generally accepted in society. Abuse, domestic violence suffered during childhood, lack of professional prospects and, as a result, reduced chances of being employed in the labour market, lack of a family and permanent residence - these are just some of the particular features of a person's life that make prostitution necessary and promote it.

As for the personality of the individual involved in "promoting" prostitution, called pimps or "owners of sex business", these are the main people of the so-called "sex industry". They are the ones who implement in modern society the campaign to promote and recognize prostitution as a respectable profession. There is propaganda, through the media and information technology, through national social policies or movements, about the rights to sexual self-determination, about sexual liberalism - promoting the possibility of marketing sexual services.

The pimps are of different conditions, from the "poor" to the "greedy for profit", including "honorable" people (people of art, politicians, representatives of law enforcement). People who are socially maladapted, psycho-emotionally unstable, psycho-socially immature people are launched in the sex trading business.

Women often appear in the role of pimp, who in the literature are called "madam" or "matron". This function is usually performed by a former prostitute, relatively young, or by a woman characterized by a spirit of initiative and a particularly developed sense of business.⁸

In the Republic of Moldova, state bodies, foundations and other non-governmental organizations make sustained efforts to prevent prostitution, carrying out various actions to educate the population. Thus, in the fight against the phenomenon of prostitution, preventive-prophylactic operations are performed, which take place annually in the Republic of Moldova. They have coded names and are made on the basis of typical plans in order to detect and block pimp files.

⁷ <https://mai.gov.md/ro/date-statistice>

3. The phenomenon of drug addiction - doctrinal approaches, the normative and combat basis

Drug addiction is a dangerous social phenomenon, resulting from the intentional, illegal and systematic consumption of narcotic substances, over which international and national legal control measures are spreading, leading to periodic or chronic infection, with negative effects for the user and the whole society.

The origin of the term "narcotics addiction" is a combination of the Greek "narcosis" - sleep, numbness and "mania" - passion, insanity. Narcomania is addiction caused by drug abuse.

In another context, narcotic addiction is a well-pronounced sickly passion, the habit of taking one or more narcotic substances, which acts mainly on the nervous system, causing the user to feel euphoria - a false sense of well-being, joy, serenity, pleasant calmness or, on the contrary, excitement (Grosu V. 1998, p. 23).

Drug addiction is the pathological attraction of the individual to drugs. Alongside this, the non-medical and abusive use of psychotropic substances, narcotics that cause pathological dependence, called drug addiction, has recently become increasingly widespread.

We agree with the position that drug addiction is a psycho-pathological condition, conditioned by drug abuse, which creates a mental and physical dependence on drugs (Bîrgău M. 2010, p. 357).

Since the very beginning of human history, drug addiction has accompanied and 'enslaved' generations. There is no country today that is not affected by the negative consequences of drug addiction. In recent years, there has been a trend towards the 'globalisation' of the problem of the circulation and abuse of drugs.

Worldwide, hundreds of thousands of people die every year from drug overdoses, but drugs do not just affect drug users: they affect society as a whole.

The number of drug users in the Republic of Moldova increased with the economic crisis of the 1990s. The causes of the increase in drug use were: accessibility, poverty, weakening of social control, etc.

According to Article 134/1(1) of the Criminal Code of the Republic of Moldova, drugs are defined as narcotic or psychotropic plants or substances, or mixtures containing such plants or substances, established by the Government.

In the Republic of Moldova, based on international standards, in Chapter VII of the Special Part of the Criminal Code, the legislator has established several incriminations, capable of covering multiple forms of criminal activities involving illicit drug trafficking. The aim was, on the one hand, to protect social relations in the field of public health, which is conditioned by the fair circulation of drugs, and, on the other hand, to prevent the commission of such acts. In the legal definition of criminal liability, the legislator has placed the emphasis on the "purpose of alienation" in the context of the criminalisation of acts related to the illegal movement of drugs (Nastas A. 2020, p. 8).

According to the National Agency for Public Health, in 2016 more than 11.7 thousand patients were registered at the Republican Dispensary of Narcology, and in 2019 the number exceeded 13.2 thousand people. Most often in the Republic of Moldova are consumed

prohibited substances of plant origin, grown in the territory of the country. Apart from marijuana and opium, amphetamines are also widespread.⁹

In the Republic of Moldova, the number of cases of drug-related offences registered in 2006 was 2041, in 2007 - 2139, in 2008 - 2046, in 2009 - 1819, in 2010 (Brînză S. Stati, 2015, p. 1122) - 1737, in 2011¹⁰ - 1658, in 2012 - 1575, in 2013 - 1166, in 2014 - 1288, in 2015 - 1191, in 2016 - 1153¹¹.

In the period 2017 - 2020 the number of drug-related offences is decreasing, but this is also due to the decrease in "criminal" activity in the wake of the "SARS COV 19" pandemic. Thus, in 2017, 1269 crimes were registered; in 2018 - 1351; in 2019 - 1052 and in 2020 - 895 crimes related to the illegal circulation of drugs¹²."

From the above considerations, we note that preventing and combating drug addiction and prostitution is an extremely important issue on the agenda. Only by eradicating prostitution and drug addiction through joint efforts can we protect our children, families and community from these vices.

Sociological surveys show that a large proportion of students and schoolchildren have used and continue to use drugs; the proportion of serious forms of drug addiction is increasing; the market for hard drugs (heroin, cocaine) has emerged; new forms of drug addiction are emerging among minors and young people (group use of hard psychotropic substances, etc.). The majority of drug users and dealers are people who have given up socially useful work and are earning money from their drug use (Bîrgău, 2010, p. 357).

Despite the efforts made so far, the drug addiction phenomenon has not marked a significant change at global level, but on the contrary it has gained ground, especially in countries where public authorities' control is insufficient and tolerant.

In order to analyse in depth the personalities of those involved in the drug addiction phenomenon, five types of drug addict are highlighted in the literature (according to the degree of social danger): the novice drug user; the retail drug dealer; the wholesale drug dealer; the criminal drug business organizer (Cojocaru, 2009, p. 33). The main perpetrators of offences related to the illegal circulation and consumption of drugs are people aged up to 50, of whom about 90% are not formally employed. Drug users are people not employed - 80.9%; civil servants - 12.7%; pupils/students - 2.6%; other categories - 2.8% (Bîrgău, 2010, p. 357).

In the fight against drug addiction, preventive-prophylactic operations are carried out annually in the Republic of Moldova by the police. They have codified names and are carried out on the basis of standard plans with the aim of detecting and blocking drug trafficking networks. These include operations such as "Canal", "Mac" and "Narcoman".

For example, every year the General Inspectorate of Police of the Ministry of Interior of the Republic of Moldova launches throughout the country the special operation "MAC", which aims to combat the illicit consumption and trafficking of drugs, especially of plant

⁹ Should we expect drugs to be decriminalized in Moldova? Retrieved from: <https://noi.md/analitica/sa-ne-asteptam-oare-la-o-dezincriminare-a-drogurilor-in-moldova>.

¹⁰ Crime rate in the Republic of Moldova in 2015.

Retrieved from: <http://www.statistica.md/newsview.php?l=ro&idc=168&id=5098>.

¹¹ Crime rate in the Republic of Moldova in 2016.

Retrieved from: <http://www.statistica.md/newsview.php?l=ro&idc=168&id=5550>.

¹² https://statbank.statistica.md/PxWeb/pxweb/ro/30%20Statistica%20sociala/30%20Statistica%20sociala_12%20JUS_JU_S010/JUS010800reg.px/table/tableViewLayout1/?rxid=2345d98a-890b-4459-bb1f-9b565f99b3b9.

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origin, the destruction of plants with narcotic content, the detection of people who cultivate them illegally.¹³

Several strategic directions are currently being developed worldwide to combat drug addiction.

The first is the adoption of tough sanctions against those involved in drug addiction. In this case, the first is the criminal penalty, which provides not only for long terms of imprisonment but also the death penalty. Countries promoting such a policy in this area include Malaysia, Iran, China and Pakistan.

The second direction is characterised by the establishment of rigid control in the field of drug circulation. It is about control of all types of drugs and active opposition to drug use. At the same time, drastic legal and penal measures are not applied. This prevention approach is being implemented in the USA, the UK, France and other countries.

The third is the liberal approach. The first country to partially legalise 'soft' drugs was the Netherlands. In 2018, a number of states made decisions in favour of decriminalising the use and keeping of soft drugs on their territory. More and more states are considering abolishing criminal punishment for drug users and implementing various forms of decriminalization (Știrba, 2016, p. 17). The implementation of the Georgian scenario in the Republic of Moldova is not excluded, with the Constitutional Court playing a decisive role in initiating the process of partial legalisation of the illegal movement of drugs.

Historically, as in the case of drug addiction, there are several positions on preventing and combating prostitution, which can be defined as prohibitionist, regulatoryist and abolitionist. Approximately one third of the member states of the Council of Europe, including the Republic of Moldova, have adhered to the prohibitionist position, which bans prostitution and punishes prostitutes and pimps.

Germany, Austria, the Netherlands, Switzerland, Greece - have chosen the regulatory position, in other words they have legalised prostitution, but the legislation of these countries, with the exception of the Netherlands, punishes pimping. By legalising prostitution, the countries have sought to put a stop to clandestine and juvenile prostitution, to bring pimps and organised crime out of the shadows and out of their control, to exercise control over their activity and their state of health, and to protect them against violence from their clients. The Dutch experience has shown that legalising prostitution has both positive and negative effects. Thus, with the legalisation of prostitution and brothel activity in the Netherlands, additional revenue from taxes paid by legal prostitutes has been paid into the state budget. In addition to this, prostitutes have gained the right to social protection from the state, and the authorities, for their part, have gained the possibility of controlling the health of prostitutes and exercising supervision over their activity. At the same time, the negative consequences of the legalisation of prostitution can be attributed to the following: an increase in juvenile prostitution, an increase in organised crime activity and the number of cases of human trafficking, the development of illegal prostitution as a result of the unwillingness of more prostitutes to pay taxes, and the lack of police capacity to prevent and combat illegal prostitution.

In regulatory countries, the percentage of prostitutes taking the necessary steps to comply with social and tax legislation is relatively low. Sweden is the first country, which has

developed the neo-abolitionist position that buying sexual services and not offering them should be punished. In Sweden there is criminal liability for buying sex. In Sweden, prostitution is regarded as one of the forms of violence against women, and for these reasons the crime is the payment offered by the prostitute for sex, not the offering of sex by the prostitute.

The experience of countries which have chosen the abolitionist position, i.e. combating prostitution by punishing pimps and not prostitutes, as in the UK, for example, shows that this approach has not led to any positive results, but only contributes to the spread of prostitution and human trafficking.

The author, Bîrgău M. mentions that when talking about measures to prevent prostitution, it is necessary to take into consideration that they are closely related to the prevention of other violations of the law. The prevention in question will only be effective when the issue of family, women and children will become paramount in the state and society. Contemporary programmes are also needed to help the family and protect mothers and children, including by creating the appropriate material basis. In connection with the rising unemployment rate, special programmes should be developed to enable women with children and parents to work (Bîrgău, 2010, p. 357).

Following the analysis of the opinions of various scholars and the analysis of the current legislation of the Republic of Moldova, we find that in order not to allow an increase in cases of people being lured into prostitution, in the Republic of Moldova, well-paid jobs must be created, the state must take care and provide the necessary protection, including social protection, as well as material support to teenagers, young girls, who often due to lack of financial sources are forced to practice prostitution to support themselves. At the same time, it is necessary to educate the younger generation to respect the rules of moral conduct in society and social values.

4. CONCLUSIONS AND RECOMMENDATIONS

The current legal framework of the Republic of Moldova sanctions the practice of prostitution but does not extend penal liability to those who solicit or benefit from voluntary sexual services. This asymmetric approach creates a structural inconsistency within the regulatory system. By addressing only the supply side of prostitution, the law neglects the fundamental economic principle that demand inevitably sustains and perpetuates supply. Consequently, the criminalisation of individuals engaged in sex work—whether through stricter sanctions or increased penal measures—cannot be expected to yield substantial progress in preventing or combating prostitution if the state fails to hold accountable those who procure such services. Without a coherent policy that targets both sides of the transactional relationship, legal interventions risk remaining ineffective and may further stigmatize vulnerable individuals without addressing the root causes.

Similarly, the illegal circulation of narcotic substances continues to represent a serious challenge for public authorities in the Republic of Moldova. The legal framework governing the prevention and suppression of illicit drug trafficking relies heavily on the concept of the “alienation” of drugs as a determining element of criminal liability. However, the persistent rise in the number of drug users—combined with Moldova’s strategic geographic position as a transit corridor—underscores the limitations of a predominantly punitive or formalistic approach. The growing prevalence of drug use signals not only deficiencies in enforcement

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mechanisms but also the need for coordinated public health interventions, socio-economic support systems, and international cooperation.

In light of these considerations, a more comprehensive and balanced policy is required—one that integrates legal, social, and public health perspectives. Addressing both prostitution and drug trafficking demands a shift from punitive measures alone to strategies that reduce harm, diminish demand, and strengthen institutional capacities. Only through a multidimensional, evidence-based approach can the state effectively protect individuals, reduce criminality, and promote social stability.

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JURISPRUDENTIAL ANALYSIS OF ILLEGAL MARKET ACTIVITIES IN CONFLICT ZONES OF GEORGIA: THE CASES OF SOUTH OSSETIA AND ABKHAZIA

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Abstract: *This study examines illegal market activities in Abkhazia and South Ossetia through a jurisprudential lens, highlighting the interaction between contested sovereignty, hybrid governance, and normative law. Georgian domestic legislation, including the Law on Occupied Territories (2008), and international legal regimes; Hague Regulations, Geneva Convention IV, UN Charter, and ECHR provide a formal framework for regulating trade, protecting property, and safeguarding civilian rights. However, de facto authorities, supported by Russian control, operate parallel institutions that sustain shadow economies, smuggling networks, and hybrid governance structures. These informal systems persist because formal law cannot penetrate territories under external occupation or effective control, producing dual normative orders and reinforcing de facto political structures. By mapping empirical evidence of illicit trade flows alongside legal doctrines, the study demonstrates how law remains symbolic yet essential for post-conflict accountability and transitional mechanisms. The paper underscores the need for adaptive legal strategies that reconcile international obligations with on-the-ground realities without legitimizing illicit actors.*

Keywords: *Illicit trade, Occupied territories, Extraterritorial jurisdiction, South Caucasus, Conflict zones*

1. Introduction

The persistence of illegal market activities in Abkhazia and South Ossetia is not an accidental by-product of conflict but the predictable outcome of institutional collapse and the emergence of alternative power structures. When formal institutions lose the capacity to enforce rules, other actors – political elites, security groups, and local networks – step in to provide order, access, and opportunity (Muradov & Hajiyeva, 2020; 2024). As Acemoglu's institutional framework suggests, areas where the state is absent or contested do not become neutral spaces; they become environments where extractive institutions thrive, reallocating economic benefits to those with coercive or political power. The conflict zones of Georgia are a textbook example of such dynamics. This topic matters because illicit markets in these territories shape far more than local economic behavior. They reinforce de-facto political orders, generate revenue that sustains breakaway regimes, and embed incentives that make the return to legitimate governance increasingly difficult. Illegal markets become self-reinforcing

institutions: once in place, they create constituencies that benefit from weak law enforcement and resist attempts at legal integration (Ledeneva, 1998; Beckert, 2009). Law fails here not simply because borders are contested, but because the institutional architecture required for rule enforcement credible authority, monitoring capacity, and impartial adjudication is fundamentally absent (Muradov & Hajiyeve, 2020; 2024). Georgian law is unenforceable, international law lacks direct mechanisms, and de-facto authorities operate systems designed primarily for political survival, not legal accountability. The illegal markets that have crystallized in Georgia's conflict-affected territories, particularly Abkhazia and South Ossetia, are not merely marginal criminal phenomena but an institutionalized element of these regions' wartime and post-war political economies. Illicit trans-border cooperation in these zones encompasses systematic contraband of fuel, cigarettes and consumer goods, trafficking in wildlife products (notably Caspian caviar), arms and narcotics, as well as informal cross-border labour and property transactions that bypass Georgian state controls (Kukhianidze & Kupatadze, 2004; Kupatadze, 2010). These flows are sustained by a combination of porous or politicized crossing points, patronage networks that link local elites to external patrons, and the practical toleration or direct involvement of security actors; factors that together produce durable shadow economies with profound legal, social, and political consequences (Kupatadze, 2007; Global Initiative, 2025).

Understanding these markets demands a jurisprudential treatment that addresses two interlocking questions: (1) how positive law (national criminal, customs and international rules) is rendered ineffective, displaced or selectively applied in contested jurisdictions; and (2) how normative legitimation, narratives of survival, resistance to perceived marginalization, or claims of collective rights, redefines "illegality" in everyday practice (Ledeneva, 2006). Ledeneva's account of post-Soviet informal practices helps explain why illegal transactions can become normalized: shadow exchanges and systems of reciprocity function as de facto governance, offering social protections and resource access where formal institutions are absent or delegitimized (Ledeneva, 2006). Empirically oriented studies of the Caucasus by Kupatadze and colleagues map how smuggling corridors through Abkhazia and the Tskhinvali/South Ossetia region emerged from wartime ruptures and persisted as sources of livelihoods and rent for de-facto authorities and criminal networks alike (Kukhianidze & Kupatadze, 2004; Kupatadze, 2007). Relevant primary and policy data underline the scope and modalities of trans-border illicit cooperation. Detailed mappings identify principal trafficking commodities, illicit tobacco, sanctioned or restricted goods, caviar, weapons and drugs and major routes linking the Black Sea ports (e.g., Poti, Batumi) with inland trans-shipment points and onward markets in Russia, Türkiye and Europe (Global Initiative, 2025). Historical fieldwork indicates that the closure or sanctioning of legitimate trade often increased smuggling incentives: for example, sanctions and blockades in the 1990s pushed Abkhazia toward shadow trade that in some cases made low-priced timber and coal exports lucrative to foreign buyers (Kukhianidze & Kupatadze, 2004). Recent regional reporting documents continuing constraints on lawful movement and trade: the Council of Europe reported 2,157 average daily crossings at the Enguri bridge (and 103 at a smaller pedestrian point) during 2023 and recorded dozens of "borderisation" incidents and dozens of illegal detentions phenomena which interact with illicit markets by both constraining lawful commerce and empowering informal channels (Council of Europe, 2024).

Jurisprudentially, three analytic frames are helpful. A sovereignty/rule-of-law frame focuses on jurisdictional vacuums and enforcement gaps: Georgian criminal law is difficult to apply when investigators cannot access de-facto controlled territory, meaning that crimes that transit or originate in those zones go unprosecuted (Kukhianidze & Kupatadze, 2004). A legitimacy/normalization frame foregrounds how local actors re-interpret legal prohibitions as illegitimate constraints on survival or political autonomy (Ledeneva, 2006). A pluralism/embeddedness frame recognizes that transactions are governed by hybrid rules, a mixture of formal, customary and extra-legal norms and thus that legal remedies need to account for competing normative orders (Kupatadze, 2010). The literature nonetheless leaves important lacunae. Field access limitations and political sensitivities have produced episodic evidence rather than continuous legal case studies; doctrinal legal analyses (who bears responsibility under occupation/occupation-law doctrines, remedies for victims, procedures for cross-line prosecutions) are thin relative to rich descriptive accounts of smuggling patterns. Recent work (Global Initiative, 2025) begins to reconnect criminal mapping with state-responsibility questions, but doctrinal jurisprudence on how to re-legalize or transitionally regulate entrenched illicit markets, while protecting human rights and avoiding perverse legitimization of illicit actors remains underdeveloped. This paper therefore aims to bridge empirical mapping and legal theory: tracing concrete trans-border modalities (goods, routes, actors, enforcement data) while subjecting them to jurisprudential scrutiny about legal reach, legitimacy, and remedial options for restoring rule of law without deepening vulnerability or renewing conflict (Kukhianidze & Kupatadze, 2004; Kupatadze, 2007; Ledeneva, 2006; Global Initiative, 2025; Council of Europe, 2024).

2. From Post-Soviet Fragmentation to Informal Economies: Historical Context of Abkhazia and South Ossetia

In 1991, following the collapse of the Soviet Union, the newly independent Georgia faced the resurgence of separatist movements within its territory, most prominently in Abkhazia and South Ossetia. Both regions proclaimed breakaway status during the early 1990s. South Ossetia declared independence in 1992, and Abkhazia followed after the 1992–1993 war (Amnesty International, 2008). Despite constitutions and de-facto state institutions, these entities never secured wide international recognition (Discover Abkhazia, 2024). As a result, Abkhazia and South Ossetia operate in a state of ambiguous sovereignty: they exercise internal governance but lack full external legitimacy in the international system.

The demographic transformations in both regions have been dramatic. According to the 1989 Soviet census, Abkhazia's population was about 525,061, of which roughly 45.7% were ethnic Georgians and 17.8% were ethnic Abkhazians (ICJ, 2011). By 2011, local authorities in Abkhazia estimated the total population at around 240,000, with substantially fewer ethnic Georgians (EveryCRSReport, 2023). Similarly, South Ossetia's population declined from approximately 98,500 in 1989 (66% Ossetian, 29% Georgian) to roughly 54,000 by 2015, with most Georgians displaced (OSW, 2018; EveryCRSReport, 2023). These demographic upheavals reflect not only the human cost of conflict but also the socio-political transformation that shaped these territories into ethnically more homogeneous de-facto polities.

Because of their contested status, both Abkhazia and South Ossetia rely heavily on external patronage, principally from the Russian Federation. Moscow formally recognized both breakaway entities in 2008, following the brief war with Georgia; that recognition deepened their political and economic dependence on Russia (EADaily, 2025). In response, the Georgian government severed diplomatic ties with Russia and pursued policies to isolate the breakaway regions, including a sea blockade on Abkhazia (Discover Abkhazia, 2024). The blockade aimed to cut off direct trade links and assert Tbilisi's stance on territorial integrity but in practice, it contributed to the growth of informal trade networks operating outside formal channels (Discover Abkhazia, 2024). Since the blockade and official non-recognition, informal cross-border economic activity between Russia and the breakaway regions has increased. Despite official bans on trade or economic interaction between Georgia and these territories including prohibitions on customs declarations, certificates of origin, and other formal trade documents for goods produced in Abkhazia or South Ossetia smuggling and informal exchange have thrived. Georgian state controls attempt to prevent goods from these regions entering Georgian markets legally; for instance, products bearing Abkhaz or South Ossetian labels are often barred from Georgian shops, or penalized if they enter via unofficial routes (Discover Abkhazia, 2024).

This environment of legal prohibition coexists with economic necessity and political reality. In Abkhazia and South Ossetia, de-facto authorities backed by Russian support rely on informal trade, patronage, and external subsidies to sustain their institutions and provide limited public services. Given the lack of recognized sovereignty, formal legal and customs systems remain mostly inoperative. As a result, informal markets and smuggling become not only economic practices but structural elements of governance. The absence of enforceable law, combined with population displacement and demographic change, makes formal reintegration difficult and the informal economy persistent. The political and historical background thus has direct implications for trade, governance, and law. The combination of demographic disruption, contested sovereignty, external (Russian) protection, and official isolation by Georgia produces a context in which informal economic structures and shadow trade networks become both necessary and normalized.

3. Legal Governance and Informal Trade in Abkhazia and South Ossetia

The governance of trade in Abkhazia and South Ossetia exemplifies the complex challenges of enforcing law in partially recognized or unrecognized territories. Following the 2008 Russo-Georgian War, the Georgian Parliament adopted the “Law on Occupied Territories,” strengthening restrictions on economic activity in these regions. Under Article 5 of the law, Georgia asserted that “the right of intellectual property within the occupied territories shall be protected and shall be controlled within the legal regulation of Georgia” (Law of Georgia on Occupied Territories, 2008). While primarily targeting IP rights, the law reflects a broader attempt by Tbilisi to exercise jurisdiction over economic, trade, and administrative matters in territories outside its effective control. (*See Annex 1 below*)

The law establishes dual restrictions: foreign businesses must obtain authorization to operate in these regions, and all trade flows are subject to formal approval. Violations are treated as criminal offenses, reflecting Georgia's legal classification of unauthorized commercial activity as smuggling. Despite these restrictions, exceptions have been introduced

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for strategic commodities, notably Abkhazia's hazelnut exports. In 2015, the de facto authorities of Abkhazia authorized the collection and transport of hazelnuts across the Inguri Bridge, reflecting the tension between economic necessity and legal restrictions. By 2017, Abkhazia ranked sixth globally in hazelnut production, underscoring the socio-economic significance of informal trade (FAO, 2017). Enforcement however, remains limited due to territorial realities. The Inguri checkpoint, the primary land link between Georgia and Abkhazia, operates under a hybrid regime: Russian and Abkhaz guards verify documents, local customs levy tariffs, and informal bribery is widespread.

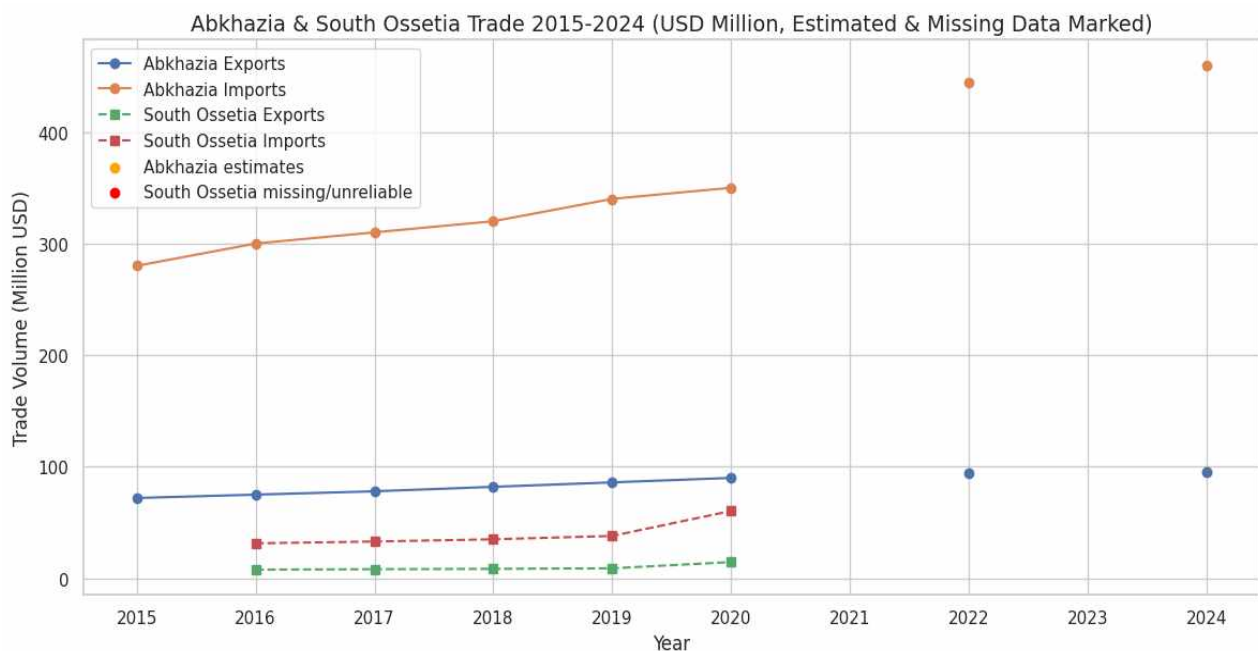
Table 1. *Legal Frameworks Governing Trade and Illegality in Abkhazia and South Ossetia*

Legal Instrument / Case	Year	Scope / Relevance	Application to Abkhazia & South Ossetia	Key Provisions / Implications
Law of Georgia on Occupied Territories	2008	National law regulating trade, IP, and foreign business in occupied regions	Regulates trade and IP rights; criminalizes unauthorized commerce; requires permits for foreign businesses	Article 5 protects IP rights; trade without authorization is illegal; strategic exemptions (hazelnut exports)
Hague Convention IV (Laws and Customs of War on Land)	1907	International law on occupation and administration of property	Provides basis for Georgia's normative claim over occupied territories	Article 55: Occupying power must preserve property and prevent unlawful seizure
Geneva Convention IV (Protection of Civilian Persons in War)	1949	International humanitarian law protecting civilians and property in occupied territories	Provides international obligation to protect property rights and civilian welfare	Article 147: Prohibits pillage; Article 27–28: Ensures protection of property and civilian rights
UN Charter	1945	International legal principle of state sovereignty and territorial integrity	Supports Georgia's claim over Abkhazia and South Ossetia; prohibits use of force by external powers	Article 2(4): Prohibition of aggression; Article 1: Respect for sovereignty
UN Security Council Resolutions	Various, 1992–present	Conflict resolution, protection of civilians, territorial integrity	Emphasizes Georgian sovereignty and obligations of external powers	Repeatedly affirms protection of civilians and legality of Georgian territorial claims
Case: Legal Status of Kosovo Advisory Opinion (ICJ)	2010	Advisory opinion on declaration of independence by unrecognized entities	Provides jurisprudential reference for legality of acts by de facto authorities vs. recognized states	Confirms that unilateral declarations do not violate international law if outside UN Security Council purview; relevance for assessing actions of Abkhazia/South Ossetia authorities
International Tribunal / Smuggling Cases	Various	Enforcement of trade and anti-smuggling laws in conflict areas	Illustrates practical enforcement challenges of illegal trade	Shows grey economy, corruption, and legal loopholes in unrecognized or occupied territories

Source: Compiled by author based on Georgian legislation, international law frameworks (Hague Convention IV, Geneva Convention IV, UN Charter), ICJ Kosovo Advisory Opinion, FAO trade data, and secondary literature on Abkhazia and South Ossetia trade governance.

From a jurisprudential and international law perspective, several frameworks are relevant. Under the 1907 Hague Regulations and 1949 Geneva Conventions, occupying powers are obligated to maintain public order, respect private property, and ensure civilian protection (Hague Convention IV, 1907; Geneva Convention IV, 1949). Article 55 of the Hague Regulations mandates that the administration of property during occupation should preserve its value and prevent unlawful seizure. Complementarily, Article 147 of the Geneva Convention IV prohibits pillage and exploitation of resources in occupied territories. These provisions collectively reinforce Georgia's normative claim to regulate trade and property, even in areas where practical enforcement is constrained. In addition, the UN Charter provides that all member states should refrain from the use of force against the territorial integrity or political independence of other states (Article 2(4), UN Charter, 1945), providing a legal basis for Georgia's opposition to Russian military and economic influence in Abkhazia and South Ossetia. The UN Security Council has repeatedly affirmed the importance of sovereignty, territorial integrity, and protection of civilians in conflict zones, emphasizing the legal obligations of both occupying and external powers to prevent exploitation and ensure security.

Chart 1. *Abkhazia and South Ossetia Trade 2015-2024 (USD Million, Estimated and Missing data Marked)*



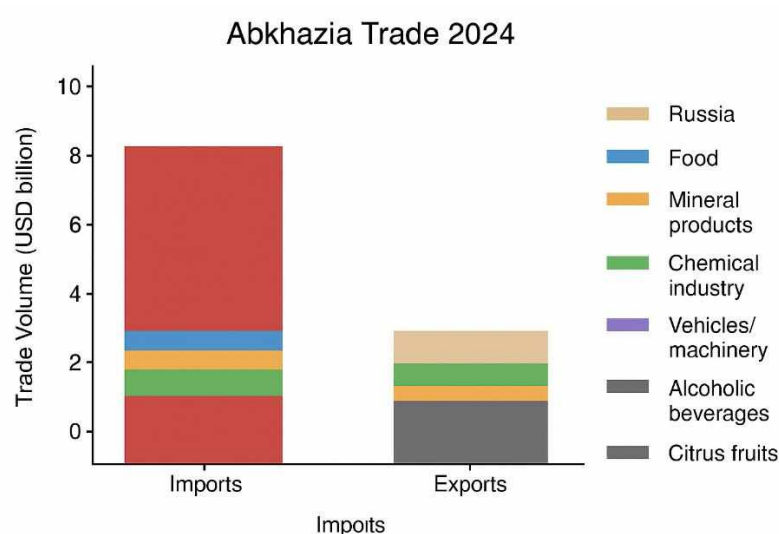
Source: AbkhazWorld 2022; Tadviser 2024 estimates; Sciendo 2022; Eurasianet 2020.

Note. Trade data for Abkhazia and South Ossetia illustrate the challenges of analyzing economic activity in partially recognized regions. For Abkhazia, 2022 figures, drawn from the *de facto* customs authority and Russian-language reporting, provide the most recent estimates of exports and imports, yet these data are subject to limited external auditing. Post-2022 values for 2023–2024 are not independently verified and should therefore be treated as indicative rather than definitive. In South Ossetia, empirical data are only publicly available up to 2020, while reports suggesting a doubling of trade turnover between 2013 and 2021 rely on Russian regional data and are not peer-reviewed. Such figures likely underrepresent informal trade, smuggling, and other unrecorded cross-border flows. Overall, there exists no comprehensive, internationally verified time series for either region covering 2021–2024, and detailed breakdowns by commodity, partner country (beyond Russia), or formal versus informal channels remain unavailable. These limitations highlight the need for cautious interpretation and contextualization when assessing trade trends in these territories.

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The chart illustrates the trade dynamics of Abkhazia and South Ossetia from 2015 to 2024, showing exports and imports in million USD. For Abkhazia, exports increased from 72 million USD in 2015 to 93.9 million USD in 2022, with an estimated 95 million USD in 2024, while imports rose from 280 million USD to 444.7 million USD, reaching an estimated 460 million USD in 2024. South Ossetia's trade data is reliable only up to 2020, with exports growing from 7.8 million USD to 14.6 million USD and imports from 31.4 million USD to 60.4 million USD. Post-2020 South Ossetia data and 2023–2024 Abkhazia data are estimates or unavailable, reflecting limited reporting, informal trade, and political constraints. The chart uses visual markers to distinguish verified data from estimates or missing values, allowing accurate interpretation of trade trends while highlighting data limitations.

Diagram 1. *Abkhazia Trade 2024.*



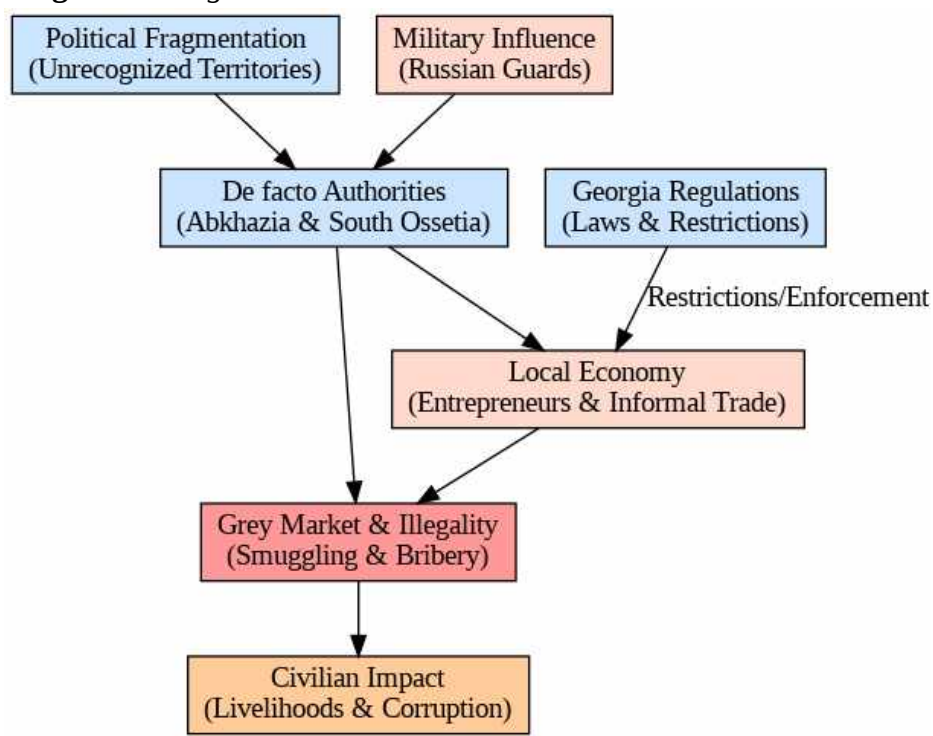
Source: AbkhazWorld, TAdviser 2024 estimates.

Note. Due to the absence of up-to-date and disaggregated trade data for South Ossetia post-2020, any detailed breakdown of main trade partners or commodity flows would be purely speculative; analyses therefore rely on aggregate trade figures and qualitative contextualization. It is important to note that, given Abkhazia's status as a conflict zone with a partially recognized government and reliance on Russian-supported authorities, data on trade and economic activity may be incomplete, manipulated, or selectively reported. As such, any interpretation of these figures should be treated with caution, as they may not fully reflect actual economic realities and could be speculative (TAdviser, 2025).

According to a 2025 report by the Russian-language website TAdviser, in 2024 approximately 72 % of Abkhazia's total trade turnover was with the Russian Federation, of which about 82 % was imports and 18 % exports (TAdviser, 2025). Among imports from Russia, the largest categories by value included food products (8.95 bn rubles), mineral products (7.31 bn), vehicles and machinery (4.57 bn), chemical-industry products (3.1 bn), metals (2.7 bn), and wood products (1.3 bn) (TAdviser, 2025). On the export side, Abkhazia's main goods shipped to Russia were alcoholic beverages ($\approx$ 3.08 bn rubles), citrus fruits ($\approx$ 2.18 bn), and textiles ($\approx$ 1.31 bn), with other products totaling approximately 714.3 mln rubles (TAdviser, 2025). Notably, alcoholic beverages alone accounted for roughly 42 % of all exports to Russia (TAdviser, 2025).

Military and security considerations further complicate legal enforcement. Russian presence and military deployments in Abkhazia and South Ossetia ensure de facto control, effectively neutralizing Georgian administrative authority. According to international humanitarian law (IHL), occupying powers must ensure the security and welfare of civilian populations while administering territories (Geneva Convention IV, 1949). The hybrid governance model involving informal markets, bribery, and parallel customs regimes demonstrates how legal frameworks are challenged by military realities and the dual authority of de facto regimes and external patrons. The paradox of legality in these regions is therefore twofold. Georgian law and international legal norms demand the protection of property and regulation of trade, while political fragmentation, lack of recognition, and Russian security control render enforcement partial and inconsistent. The widespread use of the Russian ruble and designation of Georgian products as Russian further exemplify the erosion of formal legal authority.

Diagram 2. Illegal Trade and Governance in Abkhazia & South Ossetia



Source: Compiled by Author from FAO (2017), Law of Georgia on Occupied Territories (2008), field reports, and academic analyses.

From a jurisprudential standpoint, this case illustrates the normative importance of law as both symbolic and practical. Even in territories where de facto authorities and external powers dominate, the existence of legal frameworks rooted in domestic legislation, the Hague and Geneva Conventions, UN norms, and IHL serves as a reference point for post-conflict governance, conflict resolution, and protection of civilian and commercial interests. It emphasizes the need for adaptive legal mechanisms capable of reconciling international obligations with on-the-ground realities in contested or vulnerable regions. In conclusion, the legal governance of trade in Abkhazia and South Ossetia highlights the tension between normative law and political reality. Georgian legislation, supported by international

legal standards, asserts jurisdiction over occupied territories and attempts to regulate trade, prevent smuggling, and protect property rights. However, practical enforcement is constrained by military realities, de facto governance, and informal economic networks, underscores the challenges of maintaining legal authority in unrecognized or partially recognized territories while demonstrating the enduring normative and institutional significance of law in conflict-affected regions.

4. Political, Economic, and Security Environment in the Occupied Territories

Since the 2008 Russian-Georgian war and the subsequent recognition of Abkhazia and South Ossetia by Moscow, Russia has established firm political, military, and economic control over these territories. Despite repeated warnings from Western powers, the Kremlin achieved de facto control, recognizing the so-called Republic of Abkhazia and Republic of South Ossetia as “sovereign states,” although the international community largely rejects this status due to ongoing Russian encroachment (Heritage Foundation, 2024). Economically, the territories were integrated into the Russian sphere with minimal internal development. Post-war corruption, destruction of infrastructure, and population decline severely constrained local economic activity (Beckert, 2016). Russia’s approach reflects a broader Eurasian geopolitical strategy, comparable to its interventions in Transnistria and Crimea, where Moscow employs military, political, and economic instruments to consolidate influence over post-Soviet regions (Ledenova, 2013).

Militarily, Russia maintains a substantial presence in both territories. As of 2025, Russian troops and equipment remain stationed in Abkhazia and South Ossetia, forming a permanent occupation infrastructure (Eurasianet, 2025). These forces, supported by armored vehicles, tactical missile systems, and anti-aircraft units, secure the regions and enable hybrid governance mechanisms (Ukrinform, 2025). Russia has also used cyber operations and soft power to shape local sentiment. Even before the 2008 conflict, cyberattacks targeted South Ossetia and Abkhazia, while Russian-language media, NGOs, and propaganda campaigns reinforced pro-Russian attitudes (Heritage Foundation, 2024). Local reactions to Russian influence vary. In South Ossetia, pro-Russian sentiment is strong, driven by historical and cultural ties to North Ossetia and aspirations for reunification with Russia (Beckert, 2016). In contrast, Abkhazia shows greater caution toward full integration with Russia. In 2024, the Abkhaz parliament rejected a Russian investment agreement, triggering mass protests and the resignation of the incumbent leader (Euronews, 2024). The subsequent snap election led to Moscow’s recognition of the new president, Badra Gunba, highlighting continued Russian involvement in political transitions (The Moscow Times, 2025a).

Economic dependence on Russia remains pronounced. In 2025, Russia resumed regular flights to Sukhumi, restoring critical transport and trade routes, and provided humanitarian electricity to mitigate energy shortages (KRRO, 2025; The Moscow Times, 2024b). South Ossetia similarly relies on the Russian ruble and cross-border trade with Russia, circumventing Georgian oversight. These developments demonstrate the consolidation of hybrid economic systems under Moscow’s influence (Ledenova, 2013).

5. Jurisprudence in the Shadows

The persistence of illegal market activities and hybrid governance in Abkhazia and South Ossetia raises a fundamental legal and normative dilemma: how can domestic and international law assert authority, protect rights, and regulate trade in territories where formal sovereignty is absent and effective control is exercised by external powers? Specifically, if Georgian law and international humanitarian norms are well-established, why do they fail to prevent smuggling, illicit economic practices, and informal governance structures, and what legal mechanisms could realistically restore normative order without inadvertently legitimizing *de facto* authorities? This question is not merely theoretical; it strikes at the heart of contemporary debates on extraterritoriality, occupation law, and the limits of legal reach in contested or partially recognized regions (HRW, 2008; ECtHR, 2021; ICRC, 2020).

The normative legal framework applicable to Abkhazia and South Ossetia combines Georgian domestic legislation (notably the Law on Occupied Territories, 2008) with international legal regimes, including the Hague Regulations of 1907, Geneva Convention IV (1949), and international human-rights instruments such as the European Convention on Human Rights (ECHR) (HRW, 2008; ICRC, 2020). Once a foreign armed force exerts effective control over a territory, even absent active hostilities, occupation law applies, and the occupying power assumes obligations to maintain public order, protect civilians, and preserve property (HRW, 2008). Georgian domestic law, while relevant in principle, faces a practical enforcement gap due to lack of territorial control. *De facto* authorities, supported by Russia, operate customs, security posts, and border crossings, leaving Georgia's regulations largely symbolic (RULAC, 2024). Under international law, the concept of *effective control* can establish extraterritorial jurisdiction; the European Court of Human Rights in *Georgia v. Russia (II)* found that Russia exercised effective control over Abkhazia and South Ossetia since August 2008, thereby bearing responsibility for human-rights obligations in these regions (ECtHR, 2021). This effective-control doctrine demonstrates two implications. First, international human-rights law applies extraterritorially, opening accountability pathways beyond domestic Georgian law (ECtHR, 2021). Second, it highlights that legal frameworks cannot legitimize *de facto* authorities or establish stable regulatory regimes where hybrid governance dominates. Occupation law is intended for temporary administration, not long-term frozen conflicts, making enforcement of property, trade, and business regulations extremely difficult (ICRC, 2020; RULAC, 2024).

Consequently, informal economies and shadow governance systems thrive. Residents and businesses operate under dual or conflicting normative orders, often relying on *de facto* rules enforced by local elites or foreign patrons. This situation undermines property rights, weakens legal predictability, and hinders reintegration or post-conflict recovery (HRW, 2008; ECtHR, 2021). The existence of a normative legal framework matters because it sets standards, guides transitional justice mechanisms, and forms a reference for conflict resolution, even when enforcement is limited (Strasbourg Observers, 2024). To conclude, Georgian law, international humanitarian law, and human-rights instruments provide a clear condemnation of illicit trade, exploitation, and abuse in Abkhazia and South Ossetia. However, without territorial access, credible enforcement, and transitional legal mechanisms, these laws remain largely symbolic. Their inability to legitimize local authorities or restore order demonstrates the central challenge of law in contested and hybrid governance environments (HRW, 2008; ECtHR, 2021; Strasbourg Observers, 2024).

6. Conclusions

In Abkhazia and South Ossetia, the interplay between contested sovereignty, de facto governance, and informal economic activity illustrates how weak institutions create persistent economic and legal distortions. Formal legal frameworks Georgian law, international humanitarian law, and human-rights instruments establish clear obligations to protect property, regulate trade, and safeguard civilian welfare. Yet, when authority is contested and external actors exercise effective control, these norms remain largely unenforceable. The extraterritorial reach of human-rights law highlights that accountability can extend beyond borders, but domestic legislation in the absence of enforcement becomes largely symbolic. Shadow economies emerge not as random criminal activity but as an adaptive response to institutional voids, providing livelihoods while reinforcing hybrid regimes. Without mechanisms that align legal authority with on-the-ground incentives, enforcement is ineffective, and informal networks entrench themselves. Transitional and hybrid legal frameworks grounded in occupation law, extraterritorial obligations, and adaptive regulatory mechanisms offer the most feasible path to restore normative order without legitimizing illicit actors. These cases demonstrate the broader lesson: when institutions fail, informal structures substitute for governance, and law as a normative ideal diverges sharply from law as an enforceable instrument.

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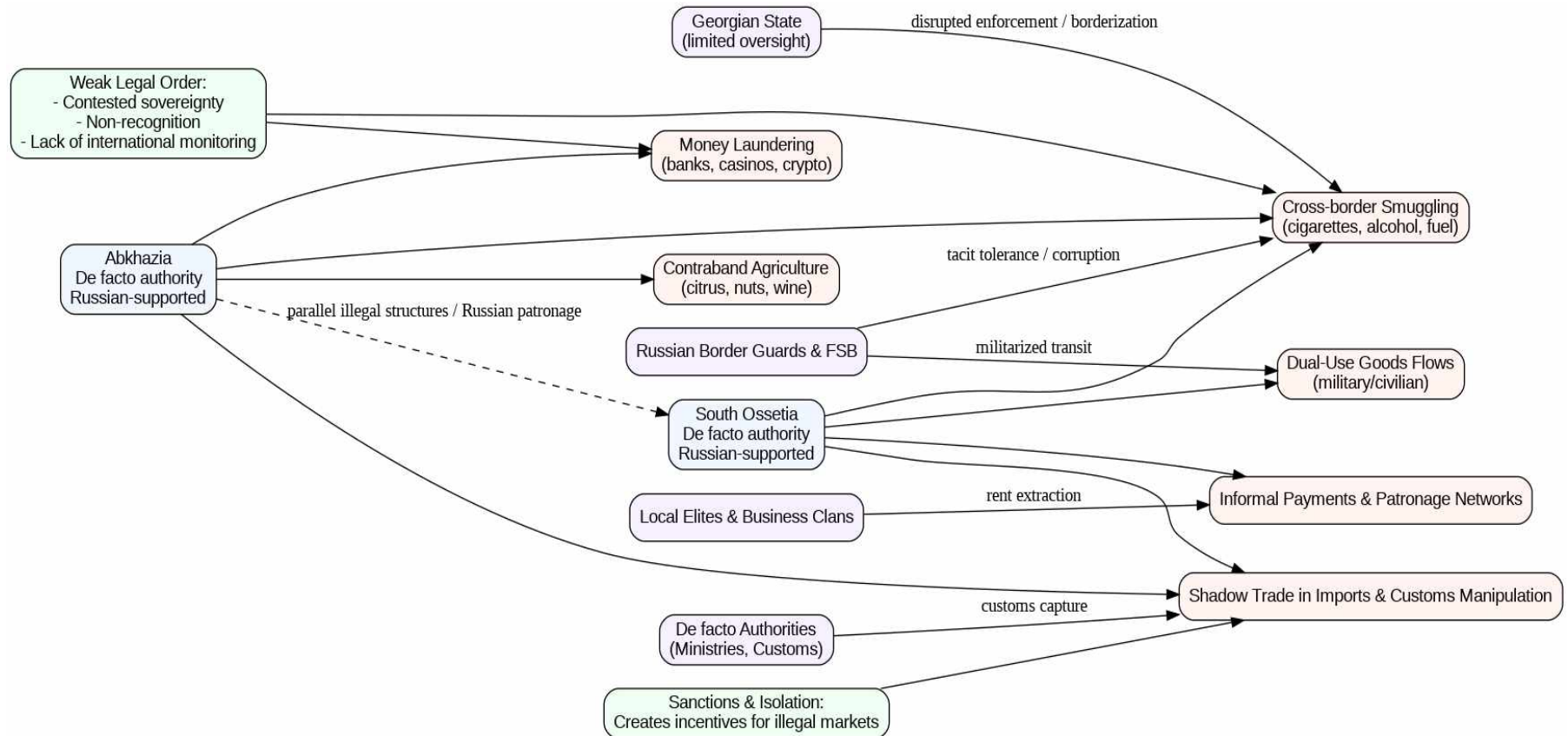
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Annex 1. The Graphviz code constructs a visual “illegality map” of Abkhazia and South Ossetia, illustrating key actors, illegal economic activities, and structural conditions. The diagram uses nodes to represent territories, illegal economy sectors (such as smuggling, shadow trade, contraband agriculture, dual-use goods flows, informal payments, and money laundering), and influencing actors (Russian border authorities, de facto local governments, local elites, and the Georgian state). Additional nodes depict structural factors like weak legal order and international sanctions, highlighting the systemic conditions that enable illegality. Directed edges indicate causal or supportive relationships, showing how actors influence illegal activities and how territories share parallel illicit structures under Russian patronage. Nodes are color-coded to differentiate categories, and line breaks in labels improve readability.



Source: Trained in ML/Google Collab, composed by the author.

A COMPARATIVE APPRAISAL OF TORTURE AS A PROCEDURAL CLOG TO THE ADMINISTRATION OF CRIMINAL JUSTICE IN NIGERIA AND RUSSIA

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Abstract: *The phenomenon of torture remains a serious concern to human rights scholars, activists and practitioners. The United Nations Convention against Torture, Inhuman or Degrading Treatment or Punishment, 1984 (UNCTIDTP, 1984) is a ratified Convention by Russia and Nigeria. While Russia is yet to domesticate the Convention, Nigeria has in accordance with section 12 of its Constitution albeit with some of the provisions of the Convention excised. This paper appraises the concept of torture in both Russia and Nigeria within the context of the administration of criminal justice and compares the countries legal regimes against the use of torture in criminal investigation. The paper found that torture delays criminal trials, occasionally occasions miscarriage of justice and Nigeria's domestication UNCTIDTP, 1984 remained a lesson for Russia. While Russia needs to domesticate the UNCTIDTS, 1984 like Nigeria has done, both countries should put in place strong enforcement mechanisms, criminalizing torture with stiff penalties like a life sentence or death penalty.*

Keywords: *Torture, clog, barrier, criminal justice, delay, miscarriage of justice, defendant*

1. Introduction

The law recognises and provides for a myriad of safeguards for a fair criminal trial in all the countries that are parties to international conventions that protect citizens' human rights (Universal Declaration of Human Rights 1948). This touches on the mandate of the United Nations. Indeed, the three pillars for which the United Nations stands are peace and security, development and human rights (Ornguga and Tijani, 2012). The United Nations, as demonstrated in its commitment to the provisions of the Universal Declaration on Human Rights venerates the observance of fundamental human rights of citizens of its member countries, particularly

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when such citizens are in vulnerable conditions. This has made the United Nations to set apart every December 10 of every year for the United Nations International Human Rights Day (Ayo-Ojo, 2024). The thrust of this paper is, therefore, temporally apposite as it seeks to discuss what affects not only the right to dignity of human person but also the right to the fair trial of an accused person. Critical to the administration of criminal justice are the various rights available for the accused person or criminal defendant in his trial such as rights to fair hearing generally, prompt intimation of the charge against the accused person, presumption of innocence, adequate time and facilities for his defence, defence by himself or a legal practitioner of his own choice cross examination of the prosecution's witnesses, assistance of an interpreter without payment of any money, entitlement to copies of the judgment conclusively determining his case, rule against retroactivity of an offence, defence or bar of *autre fois* acquit or *autre fois* convict, defence of pardon, freedom to give or not to give evidence and immunity from trial for an offence that is unknown to law (Constitution of the Federal Republic of Nigeria, 1999).

The menace of torture affects the right to dignity of human person and the right to fair hearing (Wolbert, 2007). Torture affects the admissibility of an accused person's extra-judicial confessional statement, being a product of coercion, oppression, force and violence (Nasiru, 2022). This paper will, therefore, appraise the phenomenon of torture as a procedural clog to the administration of criminal justice in Russia and Nigeria. The paper will demonstrate that entrenching a good legal framework against torture is not enough. The concerned stakeholders must ensure that the laws are enforced so that the delay that may be occasioned due to torture will be obviated. In order to achieve the objective of the paper, the paper is divided into seven parts. Part one is the introduction to the paper; part two examines the meaning and forms of torture; parts three and four discuss the existing legal framework against torture in Nigeria and Russia; part five interrogates why torture still continues in spite of the existing legal framework; part six discusses the effect of torture; and part seven concludes the paper while making some recommendations.

2. Explicating Meaning and Nuances of Forms of Torture

Torture is an acute and chronic violation of a person's right to dignity of person. "Acute" and "chronic" because it puts a person's life in imminent peril (Sharma, and Kelly, 2018). Nigeria's Anti-Torture Act elaborately defines what constitutes torture. Torture is an intentional infliction of pain or suffering- whether physical or mental – on a victim at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity, as long as it does not arise from lawful sanctions (Anti-Torture Act, 2017). This definition is restrictive in that it "officialises" torture. The Act limits the phenomenon of torture to official activities while closing its door to all other acts of torture that take place outside official circles. This is a great detraction from the social utility of the Act because the acts of torture that go on outside official quarters arising from citizens' acts of self-help are more than the official ones (Yahya, Hambali, Afolayan, Olorunyomi, and Chiroma, 2018).

Why torture a person? The purpose may be to (1) obtain information or confession from the victim or a third person; punish him for an act he or a third person has committed or is suspected of having committed; and intimidate or coerce him or a third person for any reason

based on discrimination of any kind. Torture impinges on a person's right to dignity of human person from which other human rights derive their essence and meaning (Tarhule, 2010).

By the provisions of the Nigeria Anti-Torture Act, 2017, the forms of torture include systematic beatings, head-banging, punching, kicking, striking with rifle butts, jumping on the stomach; food deprivation or forcible feeding with spoiled food, animal or human excreta or other food not normally eaten; electric shocks; cigarette burning, burning by electrically heated rods, hot oil, acid, by robbing of pepper or other chemical substances on mucous membranes, or acids or spices directly on the wounds; the submersion of the head in water or water polluted with excrement, urine, vomit or blood; being tied or forced to assume fixed and stressful bodily positions (Nigeria Anti-Torture Act, 2017). It also includes rape and sexual abuse, including the insertion of foreign bodies into the sex organs or rectum or electrical torture of the genitals; other forms of sexual abuse; mutilation such as amputation of the essential parts of the body such as the genitalia, ears, or tongue and any other part of the body; dental torture or the forced extraction of the teeth. Moreso, it takes the form of harmful exposure to the elements such as sunlight and extreme cold; the use of plastic bags and other materials placed over the head to the point of asphyxiation. Also, the use of psychoactive drugs to change the perception, memory, alertness or will of a person, such as administration of drugs to induce confession or reduce mental competency, or the use of drugs to induce pain or certain symptoms of disease; or any other forms of aggravated and deliberate cruel (Sahara Reporters, 2021).

Also, it entails inhuman or degrading physical or pharmacological treatment or punishment; and mental or psychological torture, which is understood as referring to such cruel, inhuman or degrading treatment calculated to affect or confuse the mind or undermine a person's dignity and morale such as blindfolding, threatening a person or such persons related or known to him with bodily harm, execution or other wrongful acts, confinement in solitary cells put up in public places, confinement in solitary cells against their will or without prejudice to their security (Nigeria Anti-Torture Act, 2017). Torture also takes the form of prolonged interrogation to deny normal length of sleep or rest, causing unscheduled transfer of a person from one place to another creating the belief that he shall be summarily executed, maltreating a member of the person's family, causing the torture sessions to be witnessed by the person's family relatives or any third party, inducing generalised fear among certain sections of the population, denial of sleep or rest (Nigeria Anti-Torture Act, 2017). As well as inflicting shame by stripping a person naked, parading him in a public place, shaving his head or putting marks on his body against his will; or confinement in jails and prisons under intolerable and inhuman conditions or degrading mental treatment or punishment.

The various forms of torture enumerated above impinge adversely on a person's fundamental human rights to life, personal liberty, movement and dignity of human person, among others (Ayo-Banjo, 2024). The effect of each of the forms of torture to the administration of criminal justice, particularly when the torture takes place at the office or venue designated and designed for the investigation of criminal matters, is of a more serious concern (Obi, and Ezeogu, 2017).

In Russia and Nigeria, there are legal provisions that frown on the phenomenon of torture either because it devalues the worth of a person or it puts a person's life in imminent peril. The legal provisions on the subject-matter of torture in the former are not as robust as

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those of the latter due perhaps to the fact that Russia has not enacted its own specific legislation on the subject-matter of torture like Nigeria. But what are the various laws dealing with the phenomenon of torture in both countries?

3. Examining the Legal Framework against Torture in Nigeria

Nigeria is a member of many international organizations and a party to many international and regional conventions or treaties. Again, the National Assembly of the Federal Republic of Nigeria also makes laws for Nigerians while the respective State Houses of Assembly make laws for the component units (states) (The Constitution of the Federal Republic of Nigeria, 1999). An attempt will, therefore, be made to discuss, albeit briefly, each of the treaties and laws applicable to torture in Nigeria.

This aspect will address some international treaties that have been ratified or domesticated or enacted by the Federal Republic of Nigeria.

i. Universal Declaration of Human Rights

The Universal Declaration of Human Rights of 1948 is the first port of call in this regard. It is a foremost international treaty in the protection of citizens' fundamental human rights. Nigeria has ratified the Convention and it forms the basis of the Nigerian legal grundnorm (Dias, 1985). According to the Declaration, 'no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Universal Declaration of Human Rights, 1948). This is premised on the belief and faith of the peoples of the United Nations in fundamental human rights, dignity and worth of the human person and in the equal rights of men and women. No doubt, the act of torture is a cruel, callous and wicked demonstration of man's inhumanity to his fellow man. The Declaration condemns such an act. This will restore or preserve the humanity of man and the dignity of his person.

ii. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The next international treaty that has been ratified by Nigeria, which appositely addresses torture, is the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Russia and Nigeria are parties to the Convention, having been ratified by both countries. According to the Convention, each State Party shall adopt or take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its domain or jurisdiction (Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984). The Convention so much frowns on torture that it provides that 'No exceptional circumstances whatsoever, whether state war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.' The effect is that under no guise or excuse will torture be permitted. Indeed, the Convention against Torture also criminalises the substantive acts of torture and all attempts to commit torture with attendant condign penalties. The implication of this is that each state party to the Convention can, in its domesticated version or enacted version of the Convention, make provisions for torture as a substantive criminal offence and as an inchoate offence in form of an attempt (The Criminal Code Act, 2004). By the Convention's provisions on the criminalization

of torture and an attempt to commit torture, Nigeria and other countries with similar constitutional provisions, would be saved from any accusation of constitutional violations when persons are charged for torture or attempt to commit it (The Constitution of the Federal Republic of Nigeria. 1999). The Convention equally recognizes the civil remedies available to victims of torture when it amply provides that such victims shall have a litigable cause of action which will entitle them to compensation or other civil remedies cognizable under the affected jurisdiction (Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984). In criminal prosecutions, confessional statements extracted from suspects through torture shall not be admissible against such suspects but against the torturers. Accordingly, 'each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.' The expression '...any statement which is established to have been made as a result of torture...' presupposes that the fact of the involuntariness of the disputed statement must first be established. This requires a special procedure in criminal prosecutions. The procedure will elongate the time of trial and lead to avoidable expenditure of time and resources.

iii. African Charter on Human and Peoples' Rights

This is another international treaty of a regional character that has been domesticated in Nigeria (African Charter on Human and Peoples' Rights 1981). It is an African regional treaty that seeks to protect the citizens of its member countries from the menace of torture. According to this Charter, 'human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.' Again, the Charter provides that 'every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment or treatment shall be prohibited (African Charter on Human and Peoples' Rights 1981).

4. Domestic Legal Framework against Torture in Nigeria

The existing domestic legal framework against the menace of torture is also robust, ranging from the organic law of the land which is the Constitution of the Federal Republic of Nigeria to the Administration of Criminal Justice Act (or Law), 2015.

a. Constitution of the Federal Republic of Nigeria

This is the fundamental law of Nigeria. Any other law that is inconsistent with it is automatically null and void to the extent of its inconsistency. Contained in the fourth chapter of the Constitution are various fundamental human rights that seek to guarantee the humanity of man. According to the Constitution, 'every individual is entitled to respect for the dignity of his person, and accordingly (a) no person shall be subjected to torture or to inhuman or degrading treatment.' The implication of this is that Nigeria's Constitution frowns on torture.

b. The Anti-Torture Act

The Act is Nigeria's version of the Convention Against Torture although the Act does not contain all the provisions of the Convention. The Act deservedly places a heavy burden on

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the government of Nigeria by ensuring that the rights of all persons, including suspects, detainees and prisoners are respected at all times and that no person under investigation or who is held in custody of any person in authority shall be subjected to physical harm, force, violence, threat or intimidation or any act that impairs his freewill; the Act equally provides that the government shall fully adhere to the principles and standards of the absolute condemnation and prohibition of torture set by the Constitution of the Federal Republic of Nigeria and various international instruments to which Nigeria is a State party (Nigeria Anti-Torture Act, 2017).

According to Nigeria's Anti-Torture, nothing whatsoever, including state of war or threat of war, internal political instability or any other public emergency can or will ever justify the infliction of torture on any person within its jurisdiction. The Act prohibits detention places, solitary confinement, a place where a person can be rendered incommunicado or other similar forms of detention as such places can serve as a haven for torturous activities. The Act makes provisions for the inadmissibility of confession, admission or statement resulting from torture, except as against the perpetrator of the torture. Again, victims of torture can complain to competent Authorities and such victims or interested parties on their behalf may seek legal assistance in the proper handling and filing of the complaint from Human Rights Commission, and non-governmental organisations and private persons.

Besides, the Nigerian Anti-Torture Act not only ensures the physical well-being of a victim of torture but also guarantees his psychological wellness by ensuring that he is medically certified healthy following any incident of incarceration or torture. To this effect, a person arrested, detained or under custodial investigation shall have the right to be informed of his right to demand a physical and psychological examination by an independent and competent doctor of his own choice after interrogation, which shall be conducted outside the influence of the police or security forces. The medical report shall contain some details on the history and findings of the physical and psychological state of the person.

In criminal law, the law attributes criminal responsibility to parties who are involved in the commission of an offence (Bamgbose and Akinbiyi, 2015). The Anti-Torture Act provides that a person who actually participates in the infliction of torture or who is present during the commission of the act is liable as the principal; (b) a superior military, police or law enforcement officer or senior government official who issues an order to a lower ranking personnel to torture a victim for whatever purpose is equally liable as the principal; an order from a superior officer or from a superior in the office or public authority shall not be invoked as a justification for torture; and a commanding officer of the unit under whose authority the torture happens is liable as an accessory. It, therefore, appears that the parties mentioned above shall be criminally responsible under the enumerated circumstances any time torture occurs. This is to ensure that no one hides under the fact that he lacks the *mens rea* required for the commission of torture. Liability is, therefore, strict under the Act.

One other innovation introduced by the Anti-Torture Act is that anyone found guilty of torture shall be sentenced to a term of imprisonment not exceeding twenty five (25) years. Again, when torture leads or results to death, the culprit shall, on conviction, be sentenced to death. The problematic area of the Act has to do with enforcement. The provisions therein are lofty but their enforcement is not as easy as written. The Anti-Torture Act provides that the Attorney General of the Federation and other law enforcement and investigative agencies shall

ensure that the function of overseeing the implementation of this Act shall be specifically assigned to a particular office or unit of the agency concerned. The challenge with this provision is that such a contemplated office or unit is not yet in existence. Even if such an office or a unit were in existence, there cannot be a fair enforcement or any enforcement at all as the office or unit is created from within the investigative agency concerned. Can a person be a judge in his own cause and still remain impartial or objective? For the effective and effectual enforcement of the Anti-Torture Act, there must be a separate monitoring unit created from an entirely different department of the government which will be saddled with the responsibility of monitoring the effective implementation of the provisions of the Anti-Torture Act on the menace of torture.

Another aspect of the problematic area of Nigeria's Anti-Torture Act beleaguered by the same enforcement challenge is in the aspect of education and training by Attorney General of the Federation and other concerned parties of the law enforcement personnel (civil or military), medical personnel, public officials and other persons involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. Do such trainings or education programmes take place at all? When they do, the personnel involved hardly see them as a medium of learning but as a money-making exercise.

c. The Evidence Act

The Evidence Act is another piece of legislation in Nigeria that indirectly prohibits torture. This relates to the relevance and admissibility of confessional statements of criminal suspects which were obtained as a result of torture, coercion, force or oppression (*Abdullahi v. Hashidu*, 1999). The Evidence Act is key to the prosecution of accused persons in Nigeria. Once a statement of an accused person has been established to be a product of torture, such a statement will be inadmissible before the court no matter how grave the charge may be.

In criminal proceedings, a suspect's confession is a form of admission made at any time by him which states or suggests the inference that he actually committed the offence alleged against him (Sobere, 2024). A suspect's confession is relevant to the proceedings in which he is standing trial unless excluded by the court. But the torturous aspect of the Act is captured below:

If, in any proceeding where the prosecution proposes to give in evidence a confession made by a defendant, it is represented to the court that the confession was or may have been obtained – (a) by oppression of the person who made it; or (b) in consequence of anything said or done which was likely, in the circumstances existing at the time to render unreliable any confession which might be made by him in such circumstances, the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained in a manner contrary to the provisions of this section.

The Evidence Act has defined the word 'oppression' to include torture, inhuman or degrading treatment, and the use or threat of violence whether same amounts to torture or not. What the international treaties frown on is what the Evidence Act also prohibits – torture. The

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court has the responsibility to determine whether a disputed statement was obtained torture-free or not.

d. The Police Act

The Nigerian Police Act also obliquely makes some provisions on the issue of torture. During investigation of criminal cases, an arrestee who wishes to make a statement is free to do so (Police Act, 2020). Such a statement may be taken in the presence of a lawyer of his choice and if the arrestee does not have a lawyer, the statement may be taken in the presence of an officer of the Legal Aid Council of Nigeria or an official of a civil society organization or a justice of the peace or any other person of his choice albeit such persons shall not interfere with or disturb the process of statement taking. He or she only needs to discharge his duty as a legal practitioner or as such a close person to the arrestee.

e. The Administration of Criminal Justice Act

This is the current adjectival or procedural legislation on the prosecution of criminal cases in Nigeria (Administration of criminal Justice Act, 2015). The relevance of the provision of the Act or Law is that it provides a clear safeguard when recording the statement of a suspect during investigation and even incarceration as opined by (Eyongndi, 2021). According to the relevant provision of the Law:

Where a person arrested on allegation of having committed an offence, volunteers to make a statement it shall be taken, in the presence of a legal practitioner of his choice: or where he has no legal practitioner of his choice any other person of his choice: Provided that the legal practitioner or any other person mentioned in this subsection shall not interfere while the person is making his statement, except for the purpose of discharging his role as a legal practitioner. Where any person who is arrested with or without a warrant volunteers to make a confessional statement, the Police shall ensure that the making and taking of such statement is recorded on video and the said recording and copies of it may be produced at the trial provided that in the absence of video facility, the said statement shall be in writing in the presence of a legal practitioner of his choice.

This provision of the ACJA and the entirety of the Act, provides legal guardrails against torture in criminal investigation and interrogation of accused persons and incarceration either as pre-trial or after conviction (Saheed, 2021).

5. Domestic and International Legal Framework against Torture in Russia

There is also an existing legal regime for the prohibition of torture in Russia. It has both international and national dimensions. An attempt will be made to discuss the legal framework on the basis of two sub-headings.

Russia has also ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment since 1987. The provisions of the Convention as discussed under the Nigerian situation apply *mutatis mutandi* to the Russian jurisdiction. Another important Convention which was also ratified by Russia in 1998 is the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment (CPT). The pith and substance of the Convention is the prohibition of torture and other inhuman or degrading treatments.

The Constitution of the Russian Federation is the first domestic legislation to be mentioned in a discussion on torture. Under the Constitution, man's rights and freedoms are not only the core pre-occupation of the Russian Federation but also the supreme value of Russia's organic law (The Constitution of the Russian Federation, 1993). Hence, Russian Federation owes its citizens the obligation of ensuring the recognition, observance and protection of her citizens' human and civil rights and freedoms, particularly the right to dignity of human person. The Constitution of Russia recognizes basic or fundamental human rights and freedoms of every citizen as being immanently inalienable which are to be enjoyed by every citizen from birth. The underlying philosophy is that 'human dignity shall be protected by the State. Nothing may serve as a basis for its derogation. Nobody should be subjected to torture, violence, or other severe or humiliating treatment or punishment.' It is now sacrosanct in the Russian Federation that any law which abolishes or diminishes human and civil rights and freedoms shall not be adopted. The purport of the foregoing is that in Russia, every republic, kray, oblast, city of federal significance, autonomous oblast or autonomous okrug must observe compliance with the dignity of human person.

Another important Russian legislation on the subject-matter of torture is the Criminal-Procedural Code of the Russian Federation, 2012. According to this piece of legislation and based on a person's honour and dignity before a Russian court hearing a criminal matter, 'No one of the participants in criminal court proceedings shall be subjected to violence or torture or to other kinds of cruel or humiliating treatment, degrading his human dignity.'

Russia has not enacted a domestic legislation on torture in the manner of the Nigerian Anti-Torture Act despite many instances of physical, sexual and psychological torture and abuse against in-mates across the country (Bland, 2022). The phenomenon is rampant in penal institutions with instances of rape in Saratov, Kaluga and Krasnoyarsk. The net of law ought to catch the police officers in charge of police cells/temporary detention cells, penitentiary officials, security agents and investigators who are involved in torture in one way or another (Kalashnikov v Russia, 2002).

6. Why Does Torture Persist in Criminal Cases Despite the Avalanche of Laws?

In both Russia and Nigeria, the menace of torture continues unabated, particularly during the investigation of the commission of crimes. Why is this so when various laws have been put in place? First, the proof of an accused person's guilt is stricter in criminal cases than the proof of liability of a defendant in civil cases. In Nigeria, the standard of proof in criminal cases is proof beyond reasonable doubt while the civil standard is on the balance of probabilities or on preponderance of evidence. In Russia, the standard is premised on irremovable doubt. In Nigeria, the facts to be proved are the facts in issue which are the essential ingredients of the offence charged. Under the Russian criminal justice system, the facts to be proved include the event of the crime such as the time, place, mode and other circumstances surrounding the commission of the offence; the accused person's guilt, the form of the guilt and the motive for committing the offence; the circumstances that depict or characterize the personality of the accused person; the nature and extent of the damage caused through the crime committed; the concomitant circumstances of the crime committed; and the circumstances extenuating or mitigating the punishment to be meted to that accused person upon conviction (Russian Criminal-

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Procedural Code, 2001). Therefore, criminal investigators fish for evidence by all means, including extracting confessions from suspects with the use of force or torture. Again, the proof of criminal guilt is in three ways – direct evidence, circumstantial evidence and confessional evidence. Of these three modes of proof, confessional evidence is the easiest way of proof as it relieves the investigator of expenditure of time, efforts and other resources. In Nigeria, the investigators sometimes use coercion, force, intimidation and torture in order to wring confessional statements out of the suspects being investigated and interrogated. Such evidence is not admissible. Under the Russian criminal jurisprudence, the confessional evidence of an accused person requires corroboration before such confessional material can serve as a foundation or basis for a criminal conviction. Another factor for the ubiquity of torture at the investigation level is lack of awareness about the condign punitive measures against the perpetrators of such a dastardly and inhuman treatment. Again, the investigators engage in the torturous act because they are not checked by the law and government. Besides, non-enforcement of the applicable laws like the Nigerian Anti-Torture Act is an impetus to the impunity of the Nigerian investigators. It is settled that the Act contains condign punitive measures against the perpetrators of torture. But such measures are not being enforced (Akujobi, 2022).

7. The Effect of Torture on the Administration of Criminal Justice

Torture elongates criminal trials. This is a challenge not only to the judiciary but also to the administration of criminal justice. In Russia and Nigeria, the judiciary is an arbiter of criminal disputes. It convicts or acquits based on the evidence before it. In Nigeria, the guilt of an accused person must be proved not beyond every iota of doubt but beyond reasonable doubt (*Ekpo v The State*, 2018). In the cause and process of the proof, the accused person/defendant will object to the admissibility of a disputed confessional statement.

This will stall the trial because trial-within-trial, otherwise called mini-trial, must be conducted to determine the admissibility of such a disputed confessional statement. The concept of trial-within-trial is implied in section 29(3) of the Nigerian Evidence Act that provides that “in any proceeding where the prosecution proposes to give in evidence a confession made by a defendant, the court may of its motion require the prosecution, as a condition of allowing it to do so, to prove that the confession was not obtained as mentioned in either subsection 2(a) or (b) of this section.” If many accused persons object to the admissibility of their confessions, there is going to be a challenge of joint trial which will necessitate a consideration of the statement of each of the accused persons. This is a clog to an expeditious hearing of a criminal case (*Kamila v The State*, 2018).

Torture leads to a miscarriage of justice when disputed confessional statements are wrongly admitted by the learned trial court. And this sometimes happens since judges are also human beings and human errors are sometimes unavoidable. This may necessitate an appeal which will further prolong the fate of the case (*Sule v The State*, 2019).

8. Conclusion and Recommendations

Nigeria has a robust legislative enactment of the Convention against torture. However, the provisions of the Nigerian Anti-Torture Act are not as comprehensive as those of the Convention against Torture. Russia is yet to have its own home-grown Act like Nigeria.

Russia's proposed legislation on this subject-matter has a lot to imbibe from its Nigerian counter-part. Russian can, however, improve on the deficiencies of the Nigerian Act. The scope of the Russian legislation should cover more areas of torture than penitentiary centres, the equipollent of the Nigerian correctional centres. Both Russia and Nigeria do not have effective enforcement mechanisms to breathe life into their respective legal regimes against torture. Both jurisdictions out-law and criminalise torture committed by public or government officials, thereby excluding extra-official cases of torture which are more than the official ones. In view of the fact that torture constitutes a strong barrier to the administration of criminal justice as it elongates criminal trials beyond reasonable periods of time, coupled with the fact that it constitutes a flagrant infraction of a person's fundamental right to the dignity of his person, the governments of both countries must entrench a formidable enforcement framework to combat the phenomenon of torture in and outside official quarters. This will obviate unnecessary objections to the admissibility of victims' statements obtained through torture. Both jurisdictions must also establish strong and impartial monitoring bodies to ensure compliance with the provisions of their respective laws. The minimum punishment for established cases of torture should be either a life sentence or a capital sentence.

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COMPARATIVE ASPECTS OF THE PROVISIONS OF THE CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF MOLDOVA REGARDING EXTRAORDINARY REVIEW

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Abstract: *This study examines the impact of the reform of the institution of extraordinary review in criminal proceedings—implemented through Law No. 246/2023—on judicial practice in the Republic of Moldova, with particular reference to the case law of the Supreme Court of Justice. The amendments to Articles 458–462 of the Criminal Procedure Code have redefined the function of extraordinary review as an essential mechanism for correcting judicial errors and ensuring alignment with the standards of the European Convention on Human Rights. The research underscores the clarification of jurisdictional criteria, the distinction between procedural and substantive examination, and the strengthening of the relationship between domestic procedures and the jurisprudence of the European Court of Human Rights. The findings reveal a doctrinal and jurisprudential shift toward ensuring effective protection of fundamental rights and enhancing the predictability of criminal proceedings.*

Keywords: *extraordinary review, judicial error, fundamental defect, court jurisdiction, legal certainty, fair trial, ECHR, ECtHR.*

1. INTRODUCTION

The transformations undergone by the institution of extraordinary review in criminal proceedings in the Republic of Moldova following the amendments introduced by Law No. 246/2023 mark a decisive stage in the modernization of internal mechanisms designed to correct judicial errors. In a context in which the standards of the European Convention on Human Rights increasingly function as binding benchmarks for the configuration of a fair trial, the legislator sought to redefine the function of extraordinary review by providing it with a clearer structure, more rigorously delimited jurisdiction, and a more direct relationship with the jurisprudence of the European Court of Human Rights. These adjustments are not merely technical; they signal a paradigm shift that reorients extraordinary review toward a judicial model in which the effective protection of fundamental rights takes precedence over procedural formalism.

Recent developments demonstrate that extraordinary review is no longer perceived solely as a remedy for retracting irrevocable judgments, but rather as an instrument for restoring confidence in the administration of justice and realigning domestic decisions with European standards on fairness in criminal proceedings. By clarifying the grounds for review,

strengthening the functional competence of the courts, and establishing distinct bases concerning the influence of the jurisprudence of the European Court of Human Rights, the reform provides a coherent framework for the critical assessment of irrevocable judgments in situations where they may conceal fundamental defects.

In this light, the present study examines the current architecture of extraordinary review, the manner in which courts interpret the new provisions, and their impact on legal certainty and on the uniformity of judicial practice. Through a comparative and integrative approach, the research identifies the directions in which the reform is producing tangible effects, as well as the limitations that persist in the practical application of the new provisions, thereby confirming the role of extraordinary review as an indispensable mechanism for maintaining the balance between the stability of final judgments and the imperatives of substantive justice.

2. Materials and methods

This research falls within the sphere of scientific-applied studies concerning the reform of the institution of extraordinary review in criminal proceedings. The analysis was carried out by combining the analytical method—used to examine the amendments to the Criminal Procedure Code—with the comparative method, employed to relate the new regulations to the standards established in European jurisprudence. Additionally, the deductive method facilitated the formulation of conclusions regarding the impact on court jurisdiction and the function of extraordinary review, while the methods of systematization and generalization contributed to the coherent structuring and interpretation of recent judicial practice. Together, these methodological tools ensured a concise and consistent evaluation of the transformations affecting the institution of extraordinary review.

3. Discussion and Results

Article 4 of Protocol No. 7 to the European Convention for the Protection of Human Rights does not prevent the reopening of proceedings in accordance with the criminal law and procedure of the respective State. On the contrary, it expressly allows the State to remedy miscarriages of justice in criminal proceedings where new or newly discovered facts, or a fundamental defect in the previous procedure, are capable of affecting the judgment rendered. Consequently, the *non bis in idem* rule does not apply when an extraordinary review of the proceedings is conducted.

„Extraordinary review constitutes the extraordinary remedy through which judicial decisions that fail to reflect the truth are removed from the authority of *res judicata*, being vitiated—substantively—either by an incomplete understanding of the factual situation, the use of falsified evidence, or the corruption of the officials who conducted the proceedings, or by the existence of two or more irreconcilable judicial decisions. Accordingly, the purpose of extraordinary review consists in eliminating judicial error (Poalelungi, 2013, Pg. 432).”

Thus, extraordinary review is brought against a judgment that has acquired the authority of *res judicata*, on the basis of facts or circumstances that were unknown to the court at the time the case was adjudicated, subsequently discovered, and which demonstrate that the judgment is founded on a judicial error. To these grounds is added the review of final judgments delivered in cases where the European Court of Human Rights has found a violation of fundamental

rights or freedoms, as well as the review of a judgment based on a legal provision that has been declared unconstitutional (Ghenici, 2022, Pg. 305).”

Final, irrevocable judicial decisions may be subjected to extraordinary review with respect to both the criminal and civil components of the case. When a judgment concerns several offences or several defendants, the review may target either the judgment in its entirety or only a specific part thereof.

Extraordinary review cannot serve as a disguised recours.¹

It must be emphasized that extraordinary review entails a new and autonomous adjudication. Factual errors must arise from circumstances that were unknown to the court that originally resolved the case. Such circumstances must be capable of leading either to a different outcome or to a substantial modification of the challenged solution. Extraordinary review may be requested both in favour of, and to the detriment of, a party. Judgments of conviction, acquittal, or termination of the proceedings may be subjected to review either in their entirety or only with respect to certain acts or particular persons.

„Given that, in extraordinary review, a full reassessment of the evidentiary record does not take place, withdrawal of the accusation is likewise inadmissible (Excerpt from the Decision of the Supreme Court of Justice).”

4. General Aspects Concerning the Extraordinary Review of Criminal Proceedings

On 31 July 2023, the Parliament of the Republic of Moldova adopted Law No. 246 of 31.07.2023 (hereinafter Law No. 246/2023), by which, inter alia, the entire institution of extraordinary review in criminal proceedings was amended. Articles 458–462 of the Criminal Procedure Code (here and throughout referring to the Criminal Procedure Code of the Republic of Moldova in force at the date of submission of this article for publication) were revised, while Articles 463–465⁴ of the Code were repealed.

Judgments subject to extraordinary review – irrevocable judicial decisions, both with respect to the criminal and civil components of the case.

5. Holders of the right to request extraordinary review

An application for extraordinary review may be filed by:

- a) any party to the proceedings, within the limits of its procedural standing;
- b) the convicted person’s close relatives, spouse or husband, even after his or her death;
- c) the Government Agent, in the cases provided for in Article 458(3)(5) and (6) of the Criminal Procedure Code, namely where:
 - the European Court of Human Rights has informed the Government of the Republic of Moldova of an application revealing the existence of a fundamental defect in the

¹ “The grounds for extraordinary review are exhaustively listed in Article 458(3) of the Criminal Procedure Code. In such proceedings, the court examines solely whether the conditions for reopening the case are met. The review court does not have jurisdiction to assess the merits of the appeal or the substantiation of the charges (*mutatis mutandis*, Orders No. 1rh-24/2024, § 71; 1rh-17/24, § 36).” Order of the Supreme Court of Justice of 03 July 2025, Case No. 1rh-41/24, § 37, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=26137.

previous proceedings, raising serious doubts regarding the correctness of the solution delivered in the challenged judgment;

- the European Court of Human Rights has found, through a judgment, or the Government of the Republic of Moldova has acknowledged, by a declaration, a violation of fundamental rights or freedoms which may be remedied, in whole or in part, by the quashing of the challenged judgment.

6. Grounds for Extraordinary Review

Extraordinary review may be requested in the following situations:

- 1) when, by an irrevocable criminal judgment, the commission of an offence during the criminal investigation or in connection with the adjudication of the case has been established (Decision of the Supreme Court of Justice of 21 November 2024, Case No. 1r-16/24);²
- 2) when new or newly discovered circumstances have been established, of which the court was unaware at the time the judgment was issued, and which, independently or together with previously established circumstances, would demonstrate that the convicted person is innocent, or that he or she committed an offence less serious or more serious than the one for which the conviction was pronounced, or would demonstrate that the acquitted person or the person in respect of whom the criminal proceedings were terminated is in fact guilty (Order of the Supreme Court of Justice of the Republic of Moldova of 03.07.2025, Case No. 1rh-6/25).³ Extraordinary review based on Article 458(3)(2) of the Criminal Procedure Code cannot reopen the discussion on the correctness of conclusions regarding arguments already invoked. “Its purpose is to remedy omissions arising from factual circumstances that the court did not know, and which, had they been known, would have led to a different solution in the criminal case (Order of the Supreme Court of Justice of the Republic of Moldova of 16 October 2025, Case No. 1rh-31/2024).”⁴

² The Supreme Court of Justice issued a Decision dismissing the recourse as unfounded, on the ground that the applicant’s arguments did not fall within the scope of the invoked ground for extraordinary review—namely, the one provided in Article 458(3)(1) of the Criminal Procedure Code.

³ “For an application for extraordinary review submitted under Article 458(3)(2) of the Criminal Procedure Code to be admitted, the following conditions must be met cumulatively: a) the evidence invoked confirms circumstances that were not examined through the ordinary remedies of appeal; b) the new circumstances are capable of altering the solution of the irrevocable judicial judgment concerning the merits of the criminal case; c) the failure to examine the new circumstances through the ordinary remedies is not attributable to the action or inaction of the party who submitted the request for extraordinary review.” Order of the Supreme Court of Justice of the Republic of Moldova of 03.07.2025, Case No. 1rh-6/25, § 21, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=26139; see also the Order of the Supreme Court of Justice of the Republic of Moldova of 16.10.2025, Case No. 1rh-31/2024, § 22, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=26458. Nevertheless, the Supreme Court of Justice of the Republic of Moldova emphasizes that “for the purpose of establishing the truth, the defence may, with highly persuasive justification, invoke in support of the application for extraordinary review circumstances that it previously concealed and which confirm that the convicted person is innocent.” We express the hope that the Supreme Court of Justice will further develop this reasoning in its future jurisprudence. Order of the Supreme Court of Justice of the Republic of Moldova of 06.11.2025, Case No. 1r-31/2025, § 12, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=26511.

⁴ Order of the Supreme Court of Justice of the Republic of Moldova of 16 October 2025, Case No. 1rh-31/2024, § 23, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=26458.

- 3) two or more irrevocable judicial decisions are irreconcilable. “This situation refers *stricto sensu* to irrevocable judicial decisions delivered in criminal cases and does not encompass the judgment rendered in the civil component of the case (Decision of the Constitutional Court of the Republic of Moldova No. 28 of 12 March 2020).”⁵
- 4) the Constitutional Court has declared unconstitutional the legal provision applied in the respective case.⁶ Although the law does not expressly provide this, the nature of this remedy clearly indicates that extraordinary review may be sought for the purpose of redressing the situation of the affected person.⁷ Only the decisions of the Constitutional Court delivered after the irrevocable judgment in the criminal case may constitute grounds for extraordinary review (Order of the Supreme Court of Justice of the Republic of Moldova of 21 August 2025, Case No. 1rh-4/24).
- 5) the European Court of Human Rights has informed the Government of the Republic of Moldova of an application from which the existence of a fundamental defect in the previous proceedings can be inferred, raising serious doubts as to the correctness of the solution rendered in the challenged judgment;
- 6) the European Court of Human Rights has established, through a judgment, or the Government of the Republic of Moldova has acknowledged, through a declaration, a violation of fundamental rights or freedoms, which may be remedied, in whole or in part, through the quashing of the challenged judgment.

The Supreme Court of Justice issues an Order declaring the recourse inadmissible where it finds that the grounds invoked do not fall within any of the grounds for extraordinary

⁵ Decision of the Constitutional Court of the Republic of Moldova No. 28 of 12 March 2020, declaring inadmissible Application No. 7a/2020 concerning the constitutionality review of Article 458(3)(3) and Article 462(5)–(6) of the Criminal Procedure Code (para. 31): “*In this regard, the Court notes that, by definition and in essence, the object of examination in criminal proceedings differs from that in civil proceedings. In criminal proceedings, evidentiary criteria and standards are applied which, in several significant respects, differ from those applicable in civil adjudication.*” Decision of the Constitutional Court of the Republic of Moldova No. 28 of 12 March 2020, para. 32.

“*The Court notes that, within the meaning of Article 458(3)(2) of the Criminal Procedure Code, it is not the irrevocable judicial decision delivered in the civil case that may in itself constitute a ground for extraordinary review, but rather the facts and evidence established in the civil proceedings may be invoked for seeking extraordinary review of the criminal proceedings, by applying the evidentiary assessment criteria set out in Article 101(1) of the Criminal Procedure Code.*” Decision of the Constitutional Court of the Republic of Moldova No. 28 of 12 March 2020, para. 37.

⁶ “*In cases where a rule of substantive criminal law is declared unconstitutional, it is natural that the principle of the retroactive effect of the more favourable criminal law—guaranteed by Article 22 of the Constitution—should apply to such situations.*” Judgment of the Constitutional Court of the Republic of Moldova No. 21 of 01.10.2018 on the constitutionality review of Article 458(3)(4) of the Criminal Procedure Code (the retroactive effect of Constitutional Court judgments in matters of procedural criminal law), para. 68. In para. 66 of the same Judgment No. 21 of 01.10.2018, the Constitutional Court also held that Article 458(3)(4) of the Criminal Procedure Code is compatible with Article 7 of the Constitution insofar as extraordinary review may be requested—on the basis of a judgment declaring unconstitutional a legal provision applied in the case—only if the judgment of the Constitutional Court expressly contains such a specification.

⁷ “*Following the reopening of the proceedings, the applicant for extraordinary review must obtain a legitimate expectation of a meaningful benefit, such as, in the case of convicted persons, a reduction of the sentence or an acquittal. The principle of legal certainty does not permit the reopening of judicial proceedings where redress is impossible due to the expiry of the limitation period for criminal liability, the execution of the sentence, or for other reasons. This conclusion also follows from the Constitutional Court’s Judgment No. 21/2018, § 60.*” Order of the

review provided in Article 458(3) of the Criminal Procedure Code (Order of the Supreme Court of Justice of the Republic of Moldova of 03 July 2025, Case No. 1rh-41/24).

7. Time Limits

The legislator has established several time limits for submitting an application for extraordinary review, depending on the specific ground invoked and on the holder of this right.

Article 459(1) of the Criminal Procedure Code provides that extraordinary review based on the grounds set forth in Article 458(3)(1)–(4) of a judgment of acquittal, of a judgment terminating the criminal proceedings, as well as of a judgment of conviction on the grounds that the sentence is too lenient or that the person should be convicted for a more serious offence, may be requested within one year from the date on which the grounds or circumstances justifying the application for extraordinary review became known.

In favour of the convicted person, extraordinary review may be requested at any time, even after his or her death, when one of the grounds provided in Article 458(3)(1)–(4) of the Criminal Procedure Code is invoked by the applicants (Order of the Supreme Court of Justice of the Republic of Moldova of 03 July 2025).

“Extraordinary review of a conviction judgment may be requested in favour of the convicted person at any time, even after the execution of the sentence or after the convicted person’s death (Dolea, 2005 Pg. 622–623).” “The unlimited right to submit an application for extraordinary review, where this operates in favour of the convicted person, finds its explanation and justification in the fundamental principles of criminal law and criminal procedure, according to which the conviction of an innocent person must never occur; and if, nevertheless, such a conviction has taken place, it is imprescriptible and must be set aside at any time, even after the death of the person who was its victim (Dolea, 2005).”

“An application for extraordinary review is considered to be in favour of the convicted person even when it concerns only one of the acts for which the conviction was pronounced.”⁸

From a further perspective, the Constitutional Court notes that *“in the case of extraordinary review of an irrevocable judicial judgment based on the contested norm, the provisions of Article 459 of the Criminal Procedure Code concerning the time limits for extraordinary review of criminal proceedings do not establish a deadline for submitting the application for extraordinary review. At the same time, criminal procedural legislation does not contain provisions concerning the period for which the Court’s judgment has retroactive effect.”*⁹

With respect to applications submitted under Article 458(3)(5) of the Criminal Procedure Code, the legislator has not established a specific time limit—extraordinary review may be requested at any time from the moment the Government is informed until the delivery of the final judgment by the European Court of Human Rights.

⁹ “In the absence of such a provision, the retroactive effect of the judgment declaring a legal provision unconstitutional may extend to every case in which an irrevocable judicial decision was delivered during the period between the date of adoption of the law and the date of the Court’s judgment.” Judgment of the Constitutional Court of the Republic of Moldova No. 21 of 01.10.2018 on the constitutionality review of Article 458(3)(4) of the Criminal Procedure Code (the retroactive effect of Constitutional Court judgments in matters of procedural criminal law), § 61.

For submitting an application for extraordinary review under Article 458(3)(6) of the Criminal Procedure Code, the time limit is six months from the date on which the judgment of the European Court of Human Rights becomes final.

8. Jurisdiction

Under Article 460(4) of the Criminal Procedure Code, applications for extraordinary review submitted under Article 458(3)(1)–(4) fall within the jurisdiction of the court that most recently *pronounced* on the merits of the case, whereas applications submitted under Article 458(3)(5) and (6) fall within the jurisdiction of the Supreme Court of Justice.

Depending on the circumstances, courts at all levels may be the last to have pronounced on the merits of the case.

The merits of the case concern the factual and legal issues that must be resolved in order to establish criminal liability.¹⁰

The Supreme Court emphasizes that Article 460(4) of the Criminal Procedure Code refers to the *pronouncement* on the merits, not to the *examination* of the merits. Situations in which the court has not:

- analysed the evidentiary record;
- assessed the defendant's guilt;
- expressed a position on the soundness of the appeal or the recourse do **not**, in themselves, constitute a pronouncement on the merits of the case.¹¹

As a rule, first-instance courts are competent to examine applications for extraordinary review when they previously issued a criminal judgment that was not appealed and thus became final and irrevocable.

The Supreme Court of Justice has clarified which judicial authority is competent to examine applications for extraordinary review in criminal matters in cases where an appeal was lodged, drawing a distinction between situations in which the appellate court *pronounced* on the merits and those in which the second-instance court did *not* pronounce on the merits.

¹⁰ Order of the Supreme Court of Justice of the Republic of Moldova of 25 July 2024, Case No. 1cs-344/2024, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=25015.

¹¹ Press release of the Supreme Court of Justice of the Republic of Moldova, Retrived from: <https://csj.md/index.php/despre-curtea-suprema-de-justitie/mass-media-si-relatiile-cu-publicul/2514-elaborarea-fisierului-tematic-nou-competenta-instantelor-la-examinarea-cererilor-de-revizuire-mentionate-la-art-458-alin-3-pct-1-4-din-codul-de-procedura-penala>.

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If the appeal was admitted and a new judgment was delivered,¹² or if the appeal was dismissed as unfounded,¹³ the application for extraordinary review falls within the jurisdiction of the appellate court, since the appellate court “pronounced on the merits of the case” within the meaning of Article 460(4) of the Criminal Procedure Code.

If the case:

- 1) was remitted for retrial (and the subsequent judgment was not challenged by appeal),¹⁴
- 2) or the appeal was dismissed as inadmissible,¹⁵
- 3) or as out of time,¹⁶ the court competent to examine the application for extraordinary review is the first-instance court.

The Supreme Court of Justice has provided a principled solution in order to clarify the meaning of the phrase “has pronounced on the merits of the case” in the provisions of Article 460(4) of the Criminal Procedure Code, in the context of the existence of the recourse procedure.

“Accordingly, if a recourse has previously been examined, the phrase ‘has pronounced on the merits of the case’ includes:

a) the admission of the recourse and the delivery of a new judgment concerning the determination of guilt;

b) the dismissal of the recourse as unfounded, where the recourse examination involved the verification of the soundness of the appellate court’s decision regarding the determination of guilt;¹⁷

¹² “Given that, in the present criminal case, at the stage of adjudication in appeal, the first-instance judgment was partially quashed with respect to the civil component, and, in that part, the appellate court delivered a new judgment resolving the civil claim, while maintaining the remaining provisions of the first-instance judgment, and given that the court of recourse, through the decision of 20 October 2021 of the Criminal Collegium of the Supreme Court of Justice, declared the ordinary recourses lodged against the decision of 22 June 2021 of the Chişinău Court of Appeal inadmissible on the ground that they were submitted out of time, it follows, in light of Article 460(4) of the Criminal Procedure Code, that in this case the Chişinău Court of Appeal, acting in its capacity as appellate court, is indeed the last judicial authority that pronounced on the merits of the case. In this regard, the panel observes that, by declaring the ordinary recourses inadmissible for being lodged out of time, the court of recourse did not proceed to examine the recourse on the merits; accordingly, it is certain that it did not pronounce on the merits of the case.” Order of the Supreme Court of Justice of the Republic of Moldova of 16.04.2024, Case No. 1rh-6/2024, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=24723.

¹³ Order of the Supreme Court of Justice of the Republic of Moldova of 16 July 2024, Case No. 1cs-297/2024, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=24977.

¹⁴ Order of the Supreme Court of Justice of the Republic of Moldova of 16 July 2024, Case No. 1cs-297/2024, § 14, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=24977.

¹⁵ The Supreme Court of Justice of the Republic of Moldova emphasized that the dismissal of an appeal as inadmissible (Article 415(1)(1)(b) of the Criminal Procedure Code) does not constitute a pronouncement on the merits of the case, since, for procedural reasons, the appellate court cannot rule on the soundness and legality of the challenged judgment.

Order of the Supreme Court of Justice of the Republic of Moldova of 16 July 2024, Case No. 1cs-297/2024, § 15, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=24977.

¹⁶ Order of the Supreme Court of Justice of the Republic of Moldova of 16 July 2024, Case No. 1cs-262/2024, § 15, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=24983.

¹⁷ Order of the Supreme Court of Justice of the Republic of Moldova of 07 October 2024, Case No. 1cs-509/2024, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=25378.

c) the declaration of the recourse as inadmissible on the ground of being manifestly ill-founded, where the decision of inadmissibility contains an assessment of the soundness of the appellate court's decision regarding the determination of guilt.”¹⁸

The Supreme Court of Justice, in Case No. 1cs-344/2024¹⁹, retained jurisdiction to adjudicate the application for extraordinary review, since, in the course of examining both the ordinary recourse and the recourse in annulment, it assessed the sufficiency of the evidentiary record for establishing guilt and verified the fulfilment of the constitutive elements of the imputed offence.²⁰

This judicial interpretation serves not only to determine the court competent to adjudicate the application for extraordinary review, but also to prevent situations in which the decision of the court of recourse—where the issue of guilt has been examined—is not quashed, while the judgments of the lower courts could nevertheless be quashed upon the admission of the extraordinary review.

To clarify more precisely the expression “*the last court that pronounced on the merits of the case,*” the Supreme Court of Justice also identified the situations in which the court of recourse **has not** pronounced on the merits:

“a) the recourse raising the issue of guilt was dismissed as inadmissible without examining its soundness (Article 432(2)(1) and (2) of the Criminal Procedure Code) (Order of the Supreme Court of Justice of the Republic of Moldova of 21 October 2024, Case No. 1cs-565/2024);

b) the recourse is admitted and the case is remitted for retrial;

c) the recourse is admitted and a new judgment is delivered solely on grounds of law, such as those provided in Article 427(1)(1) and (2) of the Criminal Procedure Code;

d) the recourse is admitted, but the recourse does not challenge the determination of guilt — for example, when only the individualization of the sentence is contested (Order of the Supreme Court of Justice of the Republic of Moldova of 15 January 2025, Case No. 1rh-10/24).”

A short time later, the Supreme Court of Justice observed that these situations are not exhaustive. “Thus, in circumstances where the Supreme Court of Justice dismisses the recourse without conducting a detailed analysis of the evidence and confines itself solely to verifying the legality of the manner in which the evidence was administered by the first-instance and appellate courts, the court of recourse has not pronounced on the merits of the case (Order of the Supreme Court of Justice of the Republic of Moldova of 15 January 2025, Case No. 1rh-10/24).”

¹⁸ Given that the Supreme Court of Justice examined the sufficiency of the evidentiary record and assessed whether the constitutive elements of the imputed offence were met, it was established that the Supreme Court of Justice is the competent authority to adjudicate the application for extraordinary review. Order of the Supreme Court of Justice of 25 July 2024, Case No. 1cs-344/2024, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=25015.

¹⁹ Order of the Supreme Court of Justice of the Republic of Moldova of 25 July 2024 (resolution of the negative conflict of jurisdiction in the examination of the application for extraordinary review), Case No. 1cs-334/2024, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=25015 (accessed: 30.07.2024).

²⁰ *Unlike the case referred to above, in the present matter the Supreme Court of Justice, by dismissing the recourses as inadmissible, confined itself to verifying compliance with the conditions laid down in Article 427(1)(6) of the Criminal Procedure Code (as in force until 1 September 2023) (see para. 5 above). See also: Order of the Supreme Court of Justice of the Republic of Moldova of 21 October 2024, Case No. 1rh-45/2024, § 19, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=25811.*

The Supreme Court of Justice held that the examination of an application for extraordinary review falls within the jurisdiction of the first-instance court, noting that the dismissal of the defendant's recourse as out of time, accompanied by the appellate court's upholding of the conviction judgment, does not in itself constitute a pronouncement on the merits of the case, since neither the evidentiary record, nor the defendant's guilt, nor the soundness of the recourse were examined (Order of the Supreme Court of Justice of the Republic of Moldova of 02 October 2024, Case No. 1cs-398/2024).

"It does not constitute a pronouncement on the merits of the case where the court of recourse orders the partial quashing of the lower courts' judgments with respect to the sentence, individualizes the punishment by reducing it, and does not engage in an examination of the factual circumstances through reclassification of the offence, supplementation, or readministration of the evidence (Thematic File of the Supreme Court of Justice of the Republic of Moldova, *Jurisdiction of Courts in Examining Applications for Extraordinary Review under Article 458(3)*)."²¹

The provisions of Article 460(4) of the Criminal Procedure Code, which determine the court competent to examine an application for extraordinary review, must be interpreted extensively, that is, by taking into account situations in which the higher court merely confirms the legal effects of factual circumstances fully established by the first-instance court and upholds, without modification, the judgments challenged through the ordinary remedies.²²

9. Procedure

The application for extraordinary review must be submitted in written form and must indicate the ground on which it is based, after which it must be lodged with the court competent under Article 460(4) of the Criminal Procedure Code.

It is for the party submitting the application for extraordinary review to prove that all the conditions for admitting the review are met (Order of the Supreme Court of Justice of the Republic of Moldova of 03 July 2025, Case No. 1rh-6/25).²³

The provisions of Articles 431–434 of the Criminal Procedure Code apply *mutatis mutandis* to the examination of the application for extraordinary review, that is, by analogy.

Where a public hearing is held, the debates are limited solely to verifying whether the conditions for admitting the application for extraordinary review are fulfilled.

"Preliminarily, an application for extraordinary review may be declared inadmissible only when, applying by analogy the provisions of Article 432(2)(1)–(4), the court concludes that: 1) the application for extraordinary review was not submitted by one of the persons

²¹ Thematic File of the Supreme Court of Justice of the Republic of Moldova, *Jurisdiction of Courts in Examining Applications for Extraordinary Review under Article 458(3)(1)–(4) of the Criminal Procedure Code*, p. 8. See also the Order of the Supreme Court of Justice of the Republic of Moldova of 15 January 2025, Case No. 1rh-10/24, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=25600.

²² Thematic File of the Supreme Court of Justice of the Republic of Moldova, *Jurisdiction of Courts in Examining Applications for Extraordinary Review under Article 458(3)(1)–(4) of the Criminal Procedure Code*, p. 8. Order of the Supreme Court of Justice of the Republic of Moldova of 03 July 2025, Case No. 1rh-6/25, § 21, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=26139.

²³ Order of the Supreme Court of Justice of the Republic of Moldova of 03 July 2025, Case No. 1rh-6/25, § 21, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=26139.

mentioned in Article 460(1); 2) it is out of time; 3) it does not fall within the grounds set out in Article 458(3); or 4) it is manifestly ill-founded (Morcov, 2024, Pg. 14).”

An application for extraordinary review may also be rejected if the challenged judgment does not belong to the categories of decisions for which this extraordinary remedy is available, or if the application is not lodged with the competent court.

“From the moment the application for extraordinary review is received, the president of the court must distribute it, pursuant to Article 344 of the Code (i.e., randomly), for examination [see Article 462(1) of the Code] (Decision of the Constitutional Court of the Republic of Moldova No. 106 of 07.10.2019).”²⁴

The Constitutional Court noted that, within the extraordinary review procedure, two distinct stages must be differentiated:

- 1) the admissibility of the application for extraordinary review;
- 2) the examination of the merits of the case.

“At the stage of determining the admissibility of the application for extraordinary review ... the court verifies only whether any of the grounds provided by law exist [see Article 458(3) of the Criminal Procedure Code] and whether the time limits set out in Article 459 of the Criminal Procedure Code have been respected (DCC No. 128 of 15 November 2018, § 26). When examining an application for extraordinary review, the task of the court is not to determine the criminal charge, but to verify whether any statutory ground exists for lodging such an application [see, mutatis mutandis, Kokkonis and Chalilopoulou v. Greece (dec.), 31 October 2017, § 13] (DCC No. 88 of 20 July 2020, § 30).”²⁵

The judge receiving the case materials sets a date for examining the application for extraordinary review with a view to its admission, summoning the interested parties. Where the person in whose favour or to whose detriment the review is requested is in custody, even in a different case, the presiding judge orders his or her appearance before the court and requests the coordinator of the territorial office of the National Council for State-Guaranteed Legal Aid to appoint a lawyer to provide state-guaranteed legal assistance, if the person has no defence counsel.

The absence of the parties does not prevent the examination of the application for extraordinary review.

At the scheduled hearing, the court—after hearing the parties present—examines whether the application for extraordinary review has been submitted in accordance with the

²⁴ Decision of the Constitutional Court of the Republic of Moldova No. 106 of 07.10.2019, declaring inadmissible Application No. 134g/2019 concerning the exception of unconstitutionality of the first sentence of Article 33(3), the second sentence of Article 460(1), and Article 463(1) of the Criminal Procedure Code (judicial incompatibility in the successive adjudication of the same criminal case), § 23.

²⁵ Decision of the Constitutional Court of the Republic of Moldova No. 90 of 15.06.2021, declaring inadmissible Application No. 84g/2021 concerning the exception of unconstitutionality of Articles 70(7)(3) and 458(3) of the Criminal Procedure Code (admission of defence counsel to the proceedings and the grounds for extraordinary review of irrevocable judicial decisions), § 19.

“In its jurisprudence, the European Court has established that Article 6 of the Convention is not applicable to proceedings concerning the reopening of a case, since the person requesting such reopening—once the conviction has become final—is no longer ‘charged with a criminal offence’ within the meaning of that provision (*Fischer v. Austria*, dec., 6 May 2003). Only the new proceedings, after the reopening has been authorised, may be regarded as decisive for determining the merits of a criminal charge (*Löffler v. Austria*, 3 October 2000, §§ 18–19).” Decision of the Constitutional Court of the Republic of Moldova No. 90 of 15.06.2021, § 25.

legal requirements and whether the evidence administered during the preliminary examination provides sufficient grounds for the admission of the review. The court may verify any of the items of evidence on which the application is based or, when necessary, may administer new evidence at the request of the parties.

Based on its findings, the court orders, by means of an interlocutory decision, the admission of the application for extraordinary review, or, by means of a judgment, its dismissal. The judgment may be challenged by appeal and recourse.

Where the application for extraordinary review is admitted on the ground that several irrevocable judgments are irreconcilable, the cases in which those judgments were delivered shall be joined for retrial.

Regarding the joinder of cases in the retrial process, the Constitutional Court “*notes that, pursuant to Article 462(6) of the Criminal Procedure Code, where an application for extraordinary review is admitted on the ground that several judgments are irreconcilable, the cases in which those judgments were delivered shall be joined for retrial*” (Decision of the Constitutional Court of the Republic of Moldova No. 28 of 12.03.2020).²⁶

The legislator did not expressly provide that, following the admission of the extraordinary review, the retrial of the case must be conducted by a judicial panel different from the one that examined the admissibility of the review application.²⁶

Once the application for extraordinary review has been admitted, and throughout the entire retrial proceedings, the court may maintain the suspension of execution or may order, with reasons, the full or partial suspension of the execution of the judgment subjected to extraordinary review.

In accordance with Article 462 of the Criminal Procedure Code, after examining the application for extraordinary review found admissible, the court issues an interlocutory decision under the provisions of Article 462 concerning:

- a) the dismissal of the application for extraordinary review;
- b) the admission of the application for extraordinary review, the quashing of the judgment subjected to review, and the reopening of the proceedings before the competent court. Upon admitting the application for extraordinary review and reopening the criminal proceedings, the court may order, with reasons, the full or partial suspension of the execution of the sentence, as well as apply preventive measures.

When the Supreme Court of Justice is not properly seised with an application for extraordinary review, the appropriate solution is to remit the application, together with the corresponding criminal case, to the Chişinău Court of Appeal for examination according to jurisdiction.²⁷

According to more recent jurisprudence, when the Supreme Court of Justice finds that it is not the competent court to adjudicate the application for extraordinary review, it

²⁶ Decision of the Constitutional Court of the Republic of Moldova No. 106 of 07.10.2019, § 25.

²⁷ “*Having examined the application for extraordinary review in relation to the materials of the criminal case and with reference to the procedural provisions applicable to the present matter, the judicial panel of the Supreme Court of Justice concludes that it must be remitted to the Chişinău Court of Appeal for examination according to jurisdiction, since that court is the last judicial authority that pronounced on the merits of the case.*” Order of the Supreme Court of Justice of the Republic of Moldova of 16.04.2024, Case No. 1rh-6/2024, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=24723.

additionally orders the removal from the docket of the file created on the basis of the review application, concurrently with its remittal for retrial (Order of the Supreme Court of Justice of the Republic of Moldova of 15 January 2025, Case No. 1rh-10/24).

10. Procedure for Retrial Following the Admission of Extraordinary Review

Retrial of the case after the admission of extraordinary review is conducted in accordance with the procedural rules governing trial at first instance. Where necessary, and at the request of the parties, the court re-examines the evidence administered during the earlier stages of the proceedings or during the examination of the application for extraordinary review.

11. Judicial Decisions After Retrial

If the court finds that the application for extraordinary review is well-founded, it annuls the judgment to the extent for which the review has been admitted or annuls the irreconcilable judgments and delivers a new judgment in accordance with Articles 382–399 and 410 of the Criminal Procedure Code, which apply *mutatis mutandis*. If the court considers the application for extraordinary review to be unfounded, it dismisses it.

At the same time, the court orders, where appropriate, the reimbursement of fines paid and the return of confiscated goods, as well as the reimbursement of judicial expenses which the person in whose favour the review was admitted was not required to bear. The court also orders that the period of imprisonment already served be counted as uninterrupted work seniority.

12. Remedies Against Judgments Delivered in Extraordinary Review Proceedings

The interlocutory decision admitting the application for extraordinary review is subject to appeal together with the decision on the merits, in accordance with the law.²⁸ The interlocutory decision dismissing the application for extraordinary review may be challenged by recourse before the hierarchically superior court,²⁹ with the exception of interlocutory decisions issued by the Supreme Court of Justice.

13. Extraordinary Review of the Case Following a Petition to the European Court of Human Rights (in the situations provided for in Article 458 (3) (5) and (6) of the Criminal Procedure Code)

²⁸ “From Article 462(4) of the Criminal Procedure Code it follows that the interlocutory decision admitting the application for extraordinary review may be challenged by appeal or recourse only if the judgment issued after the admission of the review is subject to challenge through the ordinary remedies. By its interlocutory decision of 06 February 2024, the Bălți Court of Appeal admitted the application for extraordinary review and reopened the examination of the recourse. By its decision of 03 April 2024, the Bălți Court of Appeal adopted a judgment pursuant to Article 449 of the Criminal Procedure Code. Judgments delivered under Article 449 of the Criminal Procedure Code are irrevocable, meaning that they cannot be challenged by recourse. Consequently, the interlocutory decision admitting the application for extraordinary review likewise cannot be challenged by recourse.” Order of the Supreme Court of Justice of the Republic of Moldova of 21.08.2025, Case No. 1rh-15/24, § 12, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=26296.

²⁹ Decision of the Supreme Court of Justice of the Republic of Moldova of 21 November 2024, Case No. 1r-16/24, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=25429 . See also the Order of the Supreme Court of Justice of 30 January 2025, Case No. 1r-14/24, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=25626.

A petition lodged with the European Court of Human Rights by the parties to a criminal proceeding may, in certain situations, open the path to extraordinary review of the case. This may occur through two distinct legal grounds: extraordinary review based on the communication of the application to the Government of the Republic of Moldova; extraordinary review based on the Judgment of the European Court of Human Rights.

13. 1. Extraordinary Review Based on the Communication of the Application to the Government of the Republic of Moldova.

Pursuant to Article 458(3)(5) of the Criminal Procedure Code, extraordinary review may be requested where the European Court of Human Rights has informed the Government of the Republic of Moldova of an application from which the existence of a fundamental defect in the previous proceedings can be inferred, such defect raising serious doubts as to the correctness of the solution adopted in the challenged judgment.

The ground for extraordinary review set out in Article 458(3)(5) CPC is taken from the former Article 453 CPC³⁰, which previously constituted one of the two grounds for a recourse in annulment (“...where the European Court of Human Rights has informed the Government of the Republic of Moldova of an application from which the existence of a fundamental defect in the previous proceedings that affected the challenged judgment may be inferred”).

In examining the admissibility of a recourse in annulment, the Supreme Court of Justice held that a fundamental defect exists only where the following elements are met cumulatively:

- a) a violation of procedural norms has been established;
- b) this violation is serious;
- c) the violation affected the solution of the judgment delivered.³¹

The mere act through which the European Court of Human Rights informs the Government of the Republic of Moldova of an application was not regarded by the Supreme Court of Justice as constituting, in itself, a fundamental defect (Article 453(1), Article 6(44) CPC).³²

In other words, the communication of the application by the European Court of Human Rights to the respondent Government, as a ground for a recourse in annulment, could not independently and automatically constitute a sufficient basis for the admissibility or admission of the recourse. Invoking the communication as a separate ground for quashing the criminal judgments of lower courts would be unreasoned and sterile, since it had to be accompanied by the identification and finding of fundamental defects that had affected the judgment delivered in the previous proceedings.

“Given the essence of Article 6 of the European Convention on Human Rights, as well as that of Articles 20 and 119 of the Constitution, such recourses in annulment must be

³⁰ Repealed pursuant to Law No. 246/2023.

³¹ Decision of the Supreme Court of Justice of the Republic of Moldova of 25 September 2024, Case No. 1re-110/2023, § 34, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=25175.

In this case, the Supreme Court of Justice of the Republic of Moldova also referred to several examples derived from the case law of the European Court of Human Rights regarding the establishment—or absence—of a fundamental defect, as set out in § 33.

³² See the Decision of the Supreme Court of Justice of the Republic of Moldova of 05 November 2020, Case No. 4-1re-172/2020, Retrived from: http://jurisprudenta.csj.md/search_plen_penal.php?id=2142.

examined separately for the purpose of establishing the existence or absence of any fundamental defect in the previous proceedings. Otherwise, a recourse in annulment based solely on the information communicated by the European Court of Human Rights to the Government of the Republic of Moldova becomes theoretical and illusory."³³

Following the amendment of the extraordinary review procedure in the Criminal Procedure Code³⁴, the Supreme Court of Justice reiterates that *not every communication from the European Court of Human Rights automatically leads to the admission of an application for extraordinary review.*³⁵

The text of Article 458(3)(5) CPC clearly establishes three cumulative conditions that must be met in order for an application for extraordinary review to be admitted on the basis of the communication of the application to the Government:

- 1) the European Court of Human Rights has informed the Government of the Republic of Moldova of the lodging of an application;
- 2) from the application and the communication of the European Court of Human Rights, the existence of a fundamental defect in the previous proceedings can be inferred;
- 3) the fundamental defect in the previous proceedings raises serious doubts as to the correctness of the solution adopted in the challenged judgment.³⁶

According to Article 6(44) CPC, a "*fundamental defect in the previous proceedings which affected the judgment delivered*" constitutes "*a serious violation of the rights and freedoms guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, by other international treaties, by the Constitution of the Republic of Moldova, and by other national laws.*"

*"The concept of 'fundamental defect' appears to suggest that only a serious violation of a procedural norm which severely undermines the integrity of the previous proceedings may serve as a basis for reopening them to the detriment of the accused, where he or she has been acquitted or sanctioned."*³⁷

Where reopening is requested in favour of the convicted person, the requirements for reopening the proceedings may be less stringent, provided that the rights of other persons are not affected.

³³ Judgment of the Constitutional Court of the Republic of Moldova No. 26 of 10 November 2020 on the constitutionality review of certain provisions of Article 453(1) of the Criminal Procedure Code, adopted by Law No. 122 of 14 March 2003 (grounds for the recourse in annulment), § 58.

³⁴ Pursuant to Law No. 246/2023, which entered into force on 1 September 2023.

³⁵ Order of the Supreme Court of Justice of the Republic of Moldova of 18 June 2025, Case No. 1rh-7/2023, § 28, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=26457.

³⁶ The Supreme Court of Justice of the Republic of Moldova notes that the failure to hear a witness *in personam* and the absence of any reasoning demonstrating the absolute impossibility of ensuring the witness's examination before the appellate court, as required by Article 371(1)(2) of the Criminal Procedure Code, as well as the omission to convincingly address the argument concerning entrapment in the commission of the offence in light of the jurisprudence of the European Court of Human Rights, raise serious doubts as to the correctness of the solution adopted both in recourse and in the recourse in annulment.

See the Order of the Supreme Court of Justice of the Republic of Moldova of 18.06.2025, Case No. 1rh-17/24, § 35, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=26106.

³⁷ Judgment of the Constitutional Court of the Republic of Moldova No. 19 of 3 November 2022 concerning the exception of unconstitutionality of Article 476(1) of the Contravention Code (extraordinary review of a final decision imposing a contravention sanction), § 60.

“In the latter case, the nature of the defect will have to be assessed primarily in relation to whether the right to defence was violated and whether the proper administration of justice was thereby impeded. In all cases, the grounds justifying the reopening of the proceedings must be of such a nature as to ‘affect the judgment delivered’ (mutatis mutandis, ECtHR, Mihalache v. Romania, 2019, para. 133).”³⁸

13.1.1. Judgments Subject to Extraordinary Review

Irrevocable judgments delivered in cases in which the European Court of Human Rights has communicated the application to the Government of the Republic of Moldova are subject to extraordinary review.

13.1.2. Holders of the Right to Request Review

- the party to the proceedings designated in the communication of the application to the Government of the Republic of Moldova as the alleged victim of a violation of at least one right guaranteed by the European Convention on Human Rights;
- the convicted person’s relatives, where the convicted person has died and the application is lodged in his or her favour;
- the prosecutor;
- the Government Agent.

13.1.3. Time Limits

For submitting an application for extraordinary review under Article 458(3)(5) CPC, the legislator has not established a specific time limit — it may be submitted **at any time**, from the moment the Government is informed until the final judgment of the European Court of Human Rights is delivered.

13.1.4. Competent Court

The competent authority is the Supreme Court of Justice.

13.1.5. Procedure

The procedure is analogous to that applicable to the classical grounds for extraordinary review provided in the present article (Article 453(3)(1)–(4) CPC).

“Applications for extraordinary review based on the communication of the application by the ECtHR to the Government (Article 458(3)(5) of the Criminal Procedure Code), after irrevocable judgments have been delivered in those cases, do not fall within the categories examined as a priority by the Supreme Court of Justice.”³⁹

13.1.6. Solutions Available to the Review Court

Under Article 462 CPC, once the application for extraordinary review is found admissible, the court issues an interlocutory decision providing for:

³⁸ Decision of the Supreme Court of Justice of the Republic of Moldova of 25 September 2024, Case No. 1re-110/2023, § 32, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=25175.

³⁹ Order of the Supreme Court of Justice of the Republic of Moldova of 31 July 2025, Case No. 1rh-7/2023, § 13, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=26241.

a) the dismissal of the application for extraordinary review;
b) the admission of the application, the quashing of the judgment subjected to review, and the reopening of the criminal proceedings before the competent court.⁴⁰ Upon admitting the application and reopening the criminal proceedings, the court may, with reasons, suspend in whole or in part the execution of the sentence and may also impose preventive measures.

13.1.7. Judicial Decisions Following Retrial

If the court finds the application for extraordinary review well-founded, it annuls the judgment to the extent for which the review was admitted or annuls the irreconcilable judgments, and delivers a new judgment pursuant to Articles 382–399 and 410 CPC, which apply *mutatis mutandis*.

If the court considers the application unfounded, it dismisses it.

The court also orders, where appropriate, the reimbursement of fines paid and confiscated goods, as well as the reimbursement of judicial expenses which the person in whose favour the review was admitted was not required to bear. The court also orders that any period of imprisonment already served be counted as uninterrupted work seniority.

In such cases, the legislator provides the possibility — and the opportunity — for an anticipatory remedy of a violation of the provisions of the European Convention on Human Rights, that is, before the European Court of Human Rights delivers its judgment.

13. 2. Extraordinary Review Based on a Judgment of the European Court of Human Rights

According to Article 46 of the European Convention on Human Rights, interpreted in light of Recommendation (2000) 2 of the Committee of Ministers of the Council of Europe of 19 January 2000 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights, the Contracting States are encouraged to review their national legal systems in order to ensure the existence of adequate possibilities for re-examining a case, including reopening proceedings, in situations where the European Court of Human Rights has found a violation of the Convention.

Each High Contracting Party to the Convention is obliged, under Article 1 of the Convention, to secure the rights and freedoms enshrined therein to all persons within its jurisdiction, and, under Article 46 § 1, has undertaken to abide by the final judgments of the European Court of Human Rights in cases to which it is a party.⁴¹

The obligation to remedy the harm resulting from violations of human rights constitutes a principle of public international law. This principle requires, to the greatest extent possible, the reparation of all consequences of the act contrary to international norms and the restoration of the situation existing prior to the violation (Poalelungi, 2013, Pg. 424).

⁴⁰ The Supreme Court of Justice of the Republic of Moldova notes that, in order to ensure the fairness of the proceedings, it is necessary to extend the effects of extraordinary review also to the convicted person who did not apply to the European Court of Human Rights and did not file an application for extraordinary review. See the Order of the Supreme Court of Justice of the Republic of Moldova of 18 June 2025, Case No. 1rh-17/24, § 38, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=26106.

⁴¹ Decision of the Criminal Collegium of the Supreme Court of Justice of 17 September 2020, Case No. 1rh-4/2020, Retrived from: http://jurisprudenta.csj.md/search_col_penal.php?id=16729.

COMPARATIVE ASPECTS OF THE PROVISIONS OF THE CRIMINAL PROCEDURE
CODE OF THE REPUBLIC OF MOLDOVA REGARDING EXTRAORDINARY REVIEW

“The effects of ECtHR judgments finding that national courts have violated human rights guaranteed by the European Convention operate upon the irrevocable domestic judgments—after exhaustion of all ordinary remedies—through the extraordinary remedy of extraordinary review, by which the court retracts its own judgment.”⁴²

The European Court of Human Rights has held that the most appropriate form of redress for the violations committed may be the reopening of the domestic proceedings (*mutatis mutandis*, *Lungoci v. Romania*, judgment of 26 January 2006; *Huseyn and Others v. Azerbaijan*, judgment of 26 July 2011; *Ajdarić v. Croatia*, judgment of 13 December 2011).

The European Court of Human Rights further emphasized, in *Moreira Ferreira v. Portugal* (no. 2), judgment of 11 July 2017⁴³, § 99, that “the considerations set out therein are not intended to diminish the importance of ensuring the existence of domestic procedures through which a case may be re-examined in light of a finding that Article 6 of the Convention has been violated. On the contrary, such procedures may be regarded as an important aspect of the execution of its judgments, and their availability demonstrates the respondent State’s commitment to the Convention and to the Court’s case law (see *Lyons and Others v. the United Kingdom* (dec.), no. 15227/03, ECHR 2003-IX).”

The purpose of extraordinary review following a judgment of the European Court of Human Rights is to eliminate the negative consequences produced by a domestic judgment that is incompatible with the European Convention on Human Rights.⁴⁴

“For the Republic of Moldova, as a Contracting State, the most effective method of restoring the person whose rights have been violated to his or her original situation (restitutio in integrum), in accordance with the applicable legal provisions, is the use of the extraordinary remedy—namely, the procedure of extraordinary review at the national level—through which the court retracts its own judgment.”⁴⁵

“In this regard, it must be noted that not every violation of the European Convention or its Protocols committed by the Republic of Moldova and established by the ECtHR constitutes a ground for the extraordinary review of a judicial judgment on the basis of new circumstances.”⁴⁶

⁴² Decision No. 3 of 09 June 2014 of the Plenum of the Supreme Court of Justice of the Republic of Moldova *On the Application by Domestic Courts of Certain Provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms*, § 19.

⁴³ *Moreira Ferreira v. Portugal* (no.2), judgment of 11 July 2017, § 99. Retrived from: <http://hudoc.echr.coe.int/eng?i=001-175646>.

⁴⁴ Decision of the Criminal Collegium of the Supreme Court of Justice of the Republic of Moldova of 11 April 2019, Case No. 1rh-3/2019, Retrived from: http://jurisprudenta.csj.md/search_col_penal.php?id=13526. See also: Decision of the Criminal Collegium of the Supreme Court of Justice of the Republic of Moldova of 21 October 2021, Case No. 1rh-2/2021, available at: http://jurisprudenta.csj.md/search_col_penal.php?id=19673 (accessed: 23.09.2024).

⁴⁵ Decision of the Criminal Collegium of the Supreme Court of Justice of the Republic of Moldova of 24 February 2015, Case No. 1rh-1/2015, available at: http://jurisprudenta.csj.md/search_col_penal.php?id=3965 (accessed: 23.09.2024). The Supreme Court of Justice noted that the European Court of Human Rights had found a violation of Article 6 § 1 of the Convention due to the lack of procedural fairness at the national level. The Court identified as a breach the use of evidence obtained through the entrapment of the person into committing the offence.

⁴⁶ Decision No. 3 of 09 June 2014 of the Plenum of the Supreme Court of Justice of the Republic of Moldova, *On the Application by Domestic Courts of Certain Provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms*, § 17.

From the case law of the European Court of Human Rights, it clearly follows that reopening should be available where a criminal conviction was obtained in unfair proceedings (see *Öcalan v. Turkey*, judgment of 12.05.2005, § 210; *Popovici v. Moldova*, judgment of 27.11.2007, § 87; *Levința v. Moldova*, judgment of 16.12.2008, § 113; *Vetrenko v. Moldova*, judgment of 18.05.2010, § 64) (Gribincea, 2015, Pg. 81).

To give effect to Recommendation Rec (2000) 2 of the Committee of Ministers of the Council of Europe, the Moldovan legislator introduced a distinct ground for extraordinary review, namely Article 458(3)(6) CPC. Given the respondent State's discretion to determine the most appropriate measures and conditions for achieving *restitutio in integrum*, taking into account the means available under the national legal system, Article 458(3)(6) CPC establishes three cumulative conditions for this ground:

- Existence of a judgment of the European Court of Human Rights. The finding by the ECtHR — or the recognition by the Government in a unilateral declaration — of a violation of a right guaranteed by the Convention constitutes a *sine qua non* condition for all proceedings initiated under Article 458(3)(6) CPC. The violation must be stated in the operative part of the ECtHR judgment. The violation may concern any article of the Convention or its Additional Protocols.
- The violation found can be remedied, in whole or in part, by quashing the challenged domestic judgment.⁴⁷

According to the case law of the Supreme Court of Justice⁴⁸, there are also three conditions for the admissibility of applications for extraordinary review that fall under Article 458(3)(6) CPC:

- a) the existence of a final judgment of the European Court of Human Rights;
- b) the finding in that judgment of a violation of the fundamental rights or freedoms of the participant in the domestic proceedings;
- c) the violation established by the European Court of Human Rights can be remedied through the extraordinary review of the challenged judgment.

The Supreme Court of Justice dismissed an application for extraordinary review because it concluded that the third condition for the admission of the application was not met, in fact indicating that one of the essential conditions for a different ground for extraordinary review was absent.⁴⁹

⁴⁷ The European Court of Human Rights recalls, in *Spînu v. Romania*, “that where an individual — as in the present case — has been convicted following proceedings that involved violations of the requirements of Article 6 of the Convention, a new trial or the reopening of the proceedings at the request of the interested party is in principle an appropriate means of redressing the violation found (see *Gençel v. Turkey*, no. 53431/99, § 27, 23 October 2003, and *Tahir Duran v. Turkey*, no. 40997/98, § 23, 29 January 2004).” Judgment of the European Court of Human Rights of 29 April 2008, § 82, Retrived from: <https://hudoc.echr.coe.int/eng?i=001-122759>.

⁴⁸ Order of the Supreme Court of Justice of the Republic of Moldova of 16 December 2024, Case No. 1rh-2/23, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=25507.

⁴⁹ Order of the Supreme Court of Justice of the Republic of Moldova of 16 December 2024, Case No. 1rh-2/23, § 48, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=25507. It is readily observable that the Supreme Court of Justice of the Republic of Moldova relied on the non-fulfilment of a condition for admitting the application for extraordinary review which is not provided for in Article 458(3)(6) of the Criminal Procedure Code, but is instead taken from a different ground for extraordinary review—Article 458(3)(5) CPC— which is not applicable to the present case and was not invoked by the applicants.

Previously, the Supreme Court of Justice had not interpreted Article 458(3)(6) CPC — which entered into force on 1 September 2023 — through the lens of the condition imposed by Article 458(3)(5) CPC, namely the requirement concerning “*the existence of a fundamental defect in the previous proceedings raising serious doubts as to the correctness of the solution in the challenged judgment.*”⁵⁰

Subsequently, the Supreme Court of Justice reaffirmed the three conditions expressly provided by Article 458(3)(6) CPC.⁵¹

13.2.1. Judgments Subject to Extraordinary Review

Irrevocable judgments in which the European Court of Human Rights has found that they were delivered in breach of human rights or fundamental freedoms, or in which the case was struck out following a friendly settlement between the State and the applicants, may be subjected to extraordinary review.

The Criminal Collegium of the Supreme Court of Justice concluded that an application for extraordinary review lodged by counsel on behalf of the convicted person must be dismissed as unfounded where the applicant relied not on a judgment of the European Court of Human Rights, but on a Report of the Parliamentary Assembly of the Council of Europe, which is not a statutory ground for review.⁵²

13.2.2. Holders of the Right

- the party to the proceedings who, according to the judgment of the European Court of Human Rights, has been recognised as the victim of a violation of at least one right guaranteed by the European Convention on Human Rights;⁵³

⁵⁰ Order of the Supreme Court of Justice of the Republic of Moldova of 27 February 2024, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=24469 (application for extraordinary review admitted); M.N., Order of 27 February 2024, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=24467 (application for extraordinary review admitted); C.V., Order of 06 March 2024, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=24529 (application for extraordinary review dismissed on the ground that the third condition of Article 458(3)(6) CPC was not met); Order of 11 September 2024, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=25124 (application for extraordinary review dismissed on the ground that the third condition of Article 458(3)(6) CPC was not met).

⁵¹ Order of the Supreme Court of Justice of the Republic of Moldova of 30 April 2025, Case No. 1rh-2/2025, §§ 36, 38, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=25911.

⁵² At the same time, counsel for the convicted person argues that the ground for extraordinary review of irrevocable judgments is constituted by the Report of the Parliamentary Assembly of the Council of Europe (PACE) of 27 July 2019, which lists a series of cases allegedly affected by abusive, selective, and politically motivated criminal prosecution. In this context, the Criminal Collegium considers it relevant to note that, although counsel refers in the text of the application for extraordinary review to the provisions of Article 464¹ CPC, he does not indicate the existence of any of the statutory grounds in this respect. In the present case, there is clearly no condition met for opening the extraordinary review procedure, since there exists neither an ECtHR judgment establishing a violation of the individual's fundamental rights or freedoms, nor any decision by the High Court ordering that the case be struck out following a friendly settlement between the State and the applicant. Accordingly, the Criminal Collegium finds that extraordinary review under the procedure provided by Article 464¹(1) CPC is possible only in the situations expressly listed in Article 464¹(1) CPC — conditions which, in fact, are not present in the case at hand. Decision of the Criminal Collegium of the Supreme Court of Justice of the Republic of Moldova of 10.11.2020, Case No. 1rh-8/2020, Retrived from: http://jurisprudenta.csj.md/search_col_penal.php?id=17546.

⁵³ “This application for extraordinary review may be lodged by the person whose right has been violated (Article 464¹(2)(a) CPC), who held the status of a party both in the case against the Republic of Moldova decided by the European Court of Human Rights and in the case adjudicated by the national (Moldovan) courts. In light of the

- the convicted person's relatives, even after the latter's death, provided the application is made in favour of the convicted person;
- the prosecutor;
- the Government Agent.

13.2.3. Time Limit

For submitting an application under Article 458(3)(6) CPC, the time limit is six months from the date on which the judgment of the European Court of Human Rights became final.

13.2.4. Procedure

The procedure does not differ in substance from that applicable to the other grounds for extraordinary review. A delay of more than 16 months in examining an application for extraordinary review seeking the reopening of proceedings following an ECtHR judgment led the Supreme Court of Justice to admit a request for expedition, obliging the competent court to resolve the application within four weeks.⁵⁴

13.2.5. Types of Decisions

The court seised with an application for extraordinary review may:

- a) dismiss the application;
- b) admit the application, quash the judgment subjected to review, and reopen the proceedings before the competent court.⁵⁵

13.2.5. Before the entry into force of Law No. 246/2023

Article 464¹ (11) CPC allowed the Supreme Court of Justice, upon admitting the application for extraordinary review, either to retain the case for retrial or to remit it for retrial in extraordinary review to the court in which the violation occurred, where the administration of evidence was necessary.

“In the absence of clear current regulations concerning the jurisdictional-functional competence of the retrial court following the admission of an application for extraordinary review on this ground, it must be considered that retrial remains within the competence of the court at the level where the violation was committed, in accordance with Article 33(3) CPC on incompatibilities (Morcov, 2024, Pg. 12).”

above, the Collegium finds that the present application for extraordinary review has been filed by a person with respect to whom the Court has ruled, there being a judgment finding a violation of the right of the individual requesting the review.” Decision of the Criminal Collegium of the Supreme Court of Justice of the Republic of Moldova of 24.02.2015, Case No. 1rh-1/2015, Retrived from: http://jurisprudenta.csj.md/search_col_penal.php?id=3965.

⁵⁴ Order of the Supreme Court of Justice of the Republic of Moldova in Case No. 1rh-2/23 of 07 November 2024, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=25377.

⁵⁵ The Supreme Court of Justice notes that, in order to ensure the fairness of the proceedings, it is necessary to extend the effects of extraordinary review also to the convicted person who did not apply to the European Court of Human Rights and did not file an application for extraordinary review, with the result that the court of recourse must also rule on that person's recourse. See the Order of the Supreme Court of Justice of the Republic of Moldova of 15.01.2025, Case No. 1rh-24/2024, § 73, Retrived from: https://jurisprudenta.csj.md/search_col_penal.php?id=25603.

Supporting this view, one may add that it would be logical that, where the violation found by the European Court of Human Rights was tolerated by both lower courts (the first-instance court and the appellate court), the case should be remitted for retrial in extraordinary review to the court that last pronounced on the merits.

13.2.6. Judicial Solutions After Retrial

If the court finds that the application for extraordinary review is well-founded, it annuls the judgment to the extent for which the review has been admitted or annuls the irreconcilable judgments and delivers a new judgment in accordance with Articles 382–399 and 410 CPC, which apply *mutatis mutandis*. If the court considers the application unfounded, it dismisses it.

The court also orders, where appropriate, the reimbursement of fines paid and confiscated property, as well as the reimbursement of judicial expenses which the person in whose favour the review was admitted was not required to bear. It also orders that the period of imprisonment already served be counted as uninterrupted work seniority.

14. CONCLUSIONS AND RECOMMENDATIONS

The reform of the institution of extraordinary review in criminal proceedings, implemented through Law No. 246 of 31 July 2023, has generated a significant impact on national judicial practice, particularly on the jurisprudence of the Supreme Court of Justice. The amendments to Articles 458–462 of the Criminal Procedure Code have reshaped the conceptual framework of extraordinary review, strengthening its role as a safeguard for the protection of fundamental rights.

The analysis of the legal provisions and subsequent judicial interpretations allows the formulation of the following conclusions:

Extraordinary review is affirmed as a mechanism for correcting judicial errors, without substituting the ordinary remedies. Its purpose lies in restoring judicial truth and ensuring effective justice, in accordance with the principles enshrined in the European Convention on Human Rights.

The jurisprudence of the Supreme Court of Justice has contributed to clarifying the notion of “the court that pronounced on the merits,” thereby delineating the competences of first-instance, appellate, and recourse courts, as well as the situations in which the assessment of evidence determines jurisdiction in extraordinary review.

The legislative amendments have established a dual opening toward European jurisprudence by introducing two distinct grounds for extraordinary review linked to the activity of the European Court of Human Rights: the communication of the application to the Government of the Republic of Moldova and the final judgment of the European Court of Human Rights. This development represents an essential step in aligning national legislation with European standards on the reparation of human rights violations.

The extensive interpretation of the jurisdiction of the review court adopted by the Supreme Court of Justice of the Republic of Moldova reflects a modern trend toward flexibility in criminal procedure, aimed at efficiency, avoidance of jurisdictional conflicts, and guaranteeing effective access to justice. The jurisprudence of the Supreme Court favors a teleological rather than formalistic approach in applying the institution of extraordinary review,

prioritizing the effective correction of judicial errors and the genuine protection of individual rights, consistent with Article 6 of the European Convention on Human Rights.

An important development concerns the clarification of the balance between the principle of legal certainty and the right to a fair trial, through the creation of constitutional and supreme court jurisprudence delineating the situations in which reopening of proceedings is justified by overriding interests of justice.

The extraordinary review of criminal cases following judgments of the European Court of Human Rights is not merely an obligation of international compliance, but also a mechanism of internal self-correction, through which the Republic of Moldova strengthens its capacity to prevent and rectify judicial errors without relying exclusively on external mechanisms.

In light of these findings, the following recommendations are warranted:

- Uniformisation of the jurisprudence of the Supreme Court of Justice through the elaboration of a thematic Guide on extraordinary review in criminal proceedings, synthesising the leading decisions and admissibility criteria;
- Completion of the normative framework by: establishing the obligation that retrial under extraordinary review be conducted by a panel distinct from the one that ruled on admissibility, in order to guarantee impartiality and decisional independence, particularly for the grounds set out in Article 458(3)(1)–(4) CPC;
- Creation of a unified database correlating the jurisprudence of the Supreme Court of Justice on extraordinary review with the relevant judgments of the European Court of Human Rights concerning the Republic of Moldova, for the purpose of enhancing transparency, predictability, and consistency of judicial practice.

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THE ISSUE OF ORGANISING THE INVESTIGATION OF CORRUPTION OFFENCES COMMITTED BY PUBLIC OFFICIALS WITH SPECIAL STATUS BASED ON THE PRACTICE OF THE REPUBLIC OF MOLDOVA

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Abstract: *This article examines the structural obstacles that undermine the investigation of corruption offences committed by public officials with special status, emphasising that many acquittals stem not from a lack of evidence but from deficiencies in criminalistic organisation and improper evidentiary management. The study shows that the failure to specify the official's concrete duties in the indictment, the unlawful establishment of the criminal investigation team, and the non-observance of legal requirements concerning the authorisation and use of special investigative measures generate significant evidentiary vulnerabilities. Likewise, shortcomings in the organisation of flagrant operations and the superficial manner in which hearings are conducted affect the integrity of the criminal process, while any form of inducement or provocation by state agents leads to the exclusion of evidence. The article highlights the need to establish a rigorous evidentiary discipline, to ensure a clear correlation between the alleged conduct and the official's competences, and to strengthen prosecutorial oversight of the investigative process. Consolidating these mechanisms is essential for enhancing both the efficiency and the credibility of criminal proceedings in corruption cases.*

Keywords: *corruption investigation; criminalistic methodology; special investigative measures; evidentiary fairness; flagrant operation; entrapment.*

1. INTRODUCTION

Investigating corruption offences committed by public officials with special status constitutes one of the most sensitive areas of the criminal process, as it requires balancing the protection of the public interest with the safeguarding of fundamental guarantees afforded to individuals subjected to criminal proceedings. Recent judicial practice reveals a substantial gap between the aims of the criminal investigation and the results obtained in court, where numerous cases end in acquittals not because the evidence is insufficient, but due to methodological, tactical, or procedural shortcomings at the investigative stage. This reality underscores the need for an in-depth assessment of how investigative bodies organise, plan, and execute criminalistic and procedural activities in a field characterised by heightened institutional and evidentiary complexity. From a scientific perspective, the complexity of

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investigations concerning corruption by officials with special status derives both from the nature of their duties—regulated through normative acts distinct from the general regime of public service—and from the specific evidentiary requirements for demonstrating the elements of the offence. Judicial practice highlights, among other issues, repeated difficulties in delineating the official's competences, in lawfully establishing the criminal investigation team, in authorising and exploiting special investigative measures, and in organising the flagrant operation—factors that ultimately compromise the integrity of the evidentiary process. Additionally, shortcomings in interviewing witnesses and whistleblowers, along with the risks of entrapment created by collaborators or state agents, directly affect the validity of the criminal process and the fairness of investigative methods. Against this backdrop, the present article seeks to identify the main reasons behind evidentiary failures in such cases and to propose an analytical framework aimed at improving the criminalistic methodology applied in practice. Drawing on judicial decisions and interpreting them through the lens of modern criminalistics, the study aims to outline concrete directions for optimising the organisation of the criminal investigation, ensuring an appropriate balance between the effectiveness of criminal repression and the protection of fundamental rights. The overarching objective is to lay the foundation for an investigative model capable of preventing recurrent errors, strengthening the quality of evidence, and enhancing the credibility of justice in cases involving corruption committed by public officials with special status.

2. Materials and methods

The present research falls within the field of scientific-applied studies concerning the criminalistic organisation of investigations into corruption offences committed by public officials with special status. Its analytical foundation lies in the examination of final and irrevocable judicial decisions, relevant procedural acts, and the applicable normative framework, which together enabled the identification of recurring patterns of methodological and procedural errors in criminal investigations. The analytical method was employed to assess the content of indictments, the manner in which the criminal investigation team was established, and the techniques used for authorising and exploiting special investigative measures. The comparative method allowed the findings derived from national practice to be correlated with the standards developed in the case law of the European Court of Human Rights regarding proportionality of interferences, evidentiary fairness, and the exclusion of entrapment. In addition, the deductive method facilitated the formulation of conclusions concerning the systemic causes underlying evidentiary vulnerabilities, while the inductive method contributed to identifying common elements across the analysed cases, thus outlining a coherent picture of the tactical and criminalistic shortcomings. Methods of systematisation and generalisation were used to organise the information into a unified structure that reflects both the specific features of public officials with special status and the scientific principles governing the investigation of corruption. By combining these methodological tools, the research provides a rigorous and integrated assessment of current investigative practices, laying the groundwork for concrete directions aimed at improving the organisation of criminal investigations in this category of cases.

2. Discussion and Results

An analysis of judicial practice reveals a persistent and troubling reality: deficiencies in the criminalistic organisation of the investigation and the failure to adhere to scientific investigative methodology represent the primary cause of evidentiary failure, ultimately reflected in acquittals. The courts have consistently shown that evidence obtained unlawfully, disproportionately, or through the investigative authorities' exceeding their passive role cannot sustain a conviction, even when factual indications may appear compelling.

In several cases¹, the courts have found that the indictments lacked clarity, having been formulated by reference to general legal provisions without specifying the concrete duties of the public official with special status. In the case of M.S., for instance, the prosecution relied on the provisions of Law No. 158/2008 on the Public Function, disregarding the fact that police officers are regulated by Law No. 320/2012 on Police Activity and the Status of the Police Officer, which rendered the accusation vague and, consequently, unfounded.² In P.D., the court held that neither the objective nor the subjective elements of the offence had been proven, noting that the prosecution failed to demonstrate “*the act of requesting, accepting, or receiving illicit benefits in the exercise of public office*”³. Such inconsistencies illustrate the absence of a “competence matrix for public officials with special status,” through which the prosecution must demonstrate that the act requested by the bribe-giver fell within the actual legal competences of the suspect or defendant. Without this correlation, the material element of the offence becomes a legal hypothesis rather than a proven factual reality.

Under these circumstances, the investigative authority must exercise heightened rigour in defining and documenting the legal status of the public official with special status. In practical terms, the investigators must examine with care the appointment acts, the documents demonstrating the exercise of office, the job description, as well as the special regulations delimiting the official's competences and responsibilities under the law. The individualisation of these duties serves as an essential precondition for establishing the causal link between the official's action and the benefit solicited or received. In the absence of such verification, the accusation risks being based on an abstract interpretation of legal norms, devoid of evidentiary substance.

Accordingly, the investigative authority must construct a “competence matrix for public officials with special status” that correlates the alleged conduct with the official's concrete legal prerogatives, thereby avoiding errors of legal classification and ensuring the soundness of the evidentiary foundation with respect to the objective element of the corruption offence (Diaconescu, 2004, p. 592).

¹ For example: Decision of the Criminal Panel of the Bălţi Court of Appeal of 22 February 2017, delivered in Case No. 1a-196/2016. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/44C1F078-CD19-E711-80D3-0050568B2C1F. Decision of the Criminal Panel of the Bălţi Court of Appeal of 07 November 2023, delivered in Case No. 1a-31/2021. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/3A1C8BA6-4E4B-49B2-8AEA-D517226D70C0; Decision of the Judicial Panel of the Comrat Court of Appeal of 11 January 2021, delivered in Case No. 1a-45/2020. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/EB176CC1-4227-46FB-877A-94D0CD512EB2; Decision of the Criminal Panel of the Chişinău Court of Appeal of 31 January 2024, delivered in Case No. 1r-396/23. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/A1B07FE2-2E13-478A-8CF3-825B40910C10.

² Decision of the Judicial Panel of the Comrat Court of Appeal of 11 January 2021, rendered in Case No. 1a-45/2020. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/EB176CC1-4227-46FB-877A-94D0CD512EB2.

³ Decision of the Criminal Panel of the Chişinău Court of Appeal of 31 January 2024, rendered in Case No. 1r-396/23. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/A1B07FE2-2E13-478A-8CF3-825B40910C10.

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In a series of cases⁴, the courts emphasised the illegality of the manner in which the criminal investigation team had been constituted, finding that certain procedural acts had been carried out by individuals who did not hold the status of criminal investigation officer. In the case N.O., the Court of Appeal held that appointing an intelligence officer as a criminal investigation officer without an order issued by the prosecutor is null, and that any evidence obtained in such conditions is inadmissible.⁵

In such circumstances, the investigative authority must exercise heightened diligence when establishing the criminal investigation team, strictly complying with the legality requirements set out in the Code of Criminal Procedure. In particular, the appointment of team members must be formalised by a prosecutor's order, expressly indicating the competences and responsibilities assigned to each participant. Any deviation from this procedure may result in the nullity of procedural acts and the exclusion of evidence collected by unauthorised persons. From a criminalistic perspective, rigour in forming the investigation team ensures not only the legal validity of the inquiry but also the methodological coherence of the evidentiary process, preventing functional ambiguities between intelligence officers and criminal investigation officers. Accordingly, the prosecutor must exercise effective oversight over the legality of establishing the investigation team, thereby guaranteeing the authenticity and evidentiary strength of the materials administered.

Deficiencies relating to the authorisation, execution, and use of evidence obtained through special investigative measures constitute the most frequent grounds for acquittal⁶. In more than half of the criminal cases in which defendants were acquitted, the courts excluded intercepted communications and/or recorded images, finding that the requirements of the Code of Criminal Procedure had not been observed.

In the case C.M., the trial judge found that the original storage medium containing the intercepted communications was missing, that there was no indication of the packaging and sealing of the carrier, and that transcripts had been imported from another criminal case without a lawful order or judicial ruling authorising this transfer.⁷ In H.C., the court criticised the investigative authority for failing to seize the device from which the recording had been made,

⁴ For example: Decision of the Criminal Panel of the Bălţi Court of Appeal of 22 February 2017, delivered in Case No. 1a-196/2016. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/44C1F078-CD19-E711-80D3-0050568B2C1E; Decision of the Criminal Panel of the Bălţi Court of Appeal of 06 February 2024, delivered in Case No. 1a-721/2020. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/E5AFFAFA-38E0-4A88-A4FE-876C4B5C15CD; Decision of the Judicial Panel of the Cahul Court of Appeal of 29 May 2019, delivered in Case No. 05-1a-664-06062018. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/7CC795FC-E470-443D-9B0C-1BC4CE2E2870.

⁵ Decision of the Criminal Panel of the Bălţi Court of Appeal of 06 February 2024, delivered in Case No. 1a-721/2020. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/E5AFFAFA-38E0-4A88-A4FE-876C4B5C15CD.

⁶ For example: Decision of the Criminal Panel of the Bălţi Court of Appeal of 07 November 2023, delivered in Case No. 1a-31/2021. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/3A1C8BA6-4E4B-49B2-8AEA-D517226D70C0; Decision of the Criminal Panel of the Bălţi Court of Appeal of 13 May 2021, delivered in Case No. 1a-439/2020. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/54FD1A38-B2C3-4422-AC6C-0C19855C6F3E; Judgment of the Bălţi Court of 04 July 2015. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/D4F6BBE9-052A-E511-A983-005056A5FB1A; Decision of the Judicial Panel of the Cahul Court of Appeal of 28 October 2019, delivered in Case No. 05-1a-495-06052016. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/3EBB30EB-07F3-4D84-B03C-644B3198B5EC; Decision of the Criminal Panel of the Bălţi Court of Appeal of 25 May 2016, delivered in Case No. 1a-231/15. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/8A675DE2-3D39-E611-A9BA-005056A5FB1A.

⁷ Judgment of the Bălţi Court of 04 July 2015. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/D4F6BBE9-052A-E511-A983-005056A5FB1A.

relying instead on a copied file, thereby compromising the authenticity of the evidence.⁸ A similar conclusion was reached in C.Ș., where the special investigative measures were annulled because state agents had taken an active role, an involvement tantamount to entrapment.⁹ The case of P.L. is illustrative of a different problem: the artificial initiation of the criminal act. The court established that the whistleblower had acted out of personal revenge, provoking the public official with special status to accept money for a fictitious act (the deletion of non-existent penalty points), which resulted in the nullity of all evidence.¹⁰

These cases reveal a serious and recurring tendency: instead of serving as instruments for documenting ongoing criminal conduct, special investigative measures often become tools for creating the incriminating situation itself, in violation of the principles of legality and proportionality.

Accordingly, the investigative authority must exercise exceptional methodological caution when ordering, executing, and using special investigative measures. First, strict compliance with the authorisation requirements set out in the Code of Criminal Procedure is essential, including a well-reasoned justification of the necessity and proportionality of each measure, so as to prevent its transformation into a mechanism of entrapment. Second, the investigative authority must ensure the integrity of the original recording media, the accurate documentation of the packaging and sealing of information carriers, and the complete recording of the chain of custody, thereby safeguarding the authenticity of the evidence.

At the stage of using the results, any form of active participation by state agents that could generate artificial situations or simulated criminal acts must be excluded. From a criminalistic standpoint, special investigative measures must be instruments for uncovering real criminal behaviour, not for creating it. For this reason, both the prosecutor and the criminal investigation officer must exercise effective control over the technical and legal stages of these procedures, ensuring the legality, authenticity and fairness of the evidentiary process, and preventing the subsequent exclusion of evidence in criminal proceedings.

In several cases¹¹, the courts criticised the lack of proportionality between the intrusiveness of special investigative measures and the seriousness of the offence under investigation. In C.A., for example, the judges noted that the interceptions had been conducted without any genuine justification of necessity, even though the evidence could have been obtained through other, less intrusive means.¹² In G.S., the court found that the special investigative measures had been ordered without assessing subsidiarity and without evaluating

⁸ Decision of the Judicial Panel of the Cahul Court of Appeal of 28 October 2019, delivered in Case No. 05-1a-495-06052016. Retrieved from:

https://instante.justice.md/ro/pigd_integration/pdf/3EBB30EB-07F3-4D84-B03C-644B3198B5EC.

⁹ Decision of the Criminal Panel of the Bălți Court of Appeal of 07 November 2023, delivered in Case No. 1a-31/2021. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/3A1C8BA6-4E4B-49B2-8AEA-D517226D70C0.

¹⁰ Decision of the Criminal Panel of the Bălți Court of Appeal of 25 May 2016, delivered in Case No. 1a-231/15. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/8A675DE2-3D39-E611-A9BA-005056A5FB1A.

¹¹ For example: Decision of the Criminal Panel of the Bălți Court of Appeal of 07 November 2023, delivered in Case No. 1a-31/2021. Retrieved from:

https://instante.justice.md/ro/pigd_integration/pdf/3A1C8BA6-4E4B-49B2-8AEA-D517226D70C0; Decision of the Criminal Panel of the Bălți Court of Appeal of 27 May 2020, delivered in Case No. 1a-561/2018. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/6B0F1E01-38F9-4F42-9DC5-83CCDBC94374; Decision of the Criminal Panel of the Chișinău Court of Appeal of 31 January 2024, delivered in Case No. 1r-396/23. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/A1B07FE2-2E13-478A-8CF3-825B40910C10.

¹² Decision of the Criminal Panel of the Bălți Court of Appeal of 07 November 2023, delivered in Case No. 1a-31/2021. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/3A1C8BA6-4E4B-49B2-8AEA-D517226D70C0.

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their proportionality in relation to the restriction of fundamental rights.¹³ From a criminalistic perspective, the absence of this procedural balance produces vulnerable evidence and undermines the entire evidentiary process, as the measures become an end in themselves rather than instruments for discovering the truth.

In such circumstances, the investigative authority must adopt a balanced and legally reasoned approach when ordering special investigative measures, in full compliance with the principles of proportionality and subsidiarity set out in the Code of Criminal Procedure and in the case law of the European Court of Human Rights. Before seeking authorisation for such measures, investigators must assess whether the intended objective can be achieved through traditional evidentiary means that are less intrusive, such as witness interviews, seizure of documents, or forensic and technical examinations. It is likewise advisable for the prosecutor to expressly justify the necessity of the measure, the seriousness of the alleged conduct, and the relationship between the restriction of fundamental rights and the public interest pursued.

From a criminalistic standpoint, compliance with these requirements is not merely formal; it ensures the fairness of the evidentiary process and the integrity of the investigation. A measure ordered without a genuine proportionality assessment risk turning the investigative activity into an abusive surveillance exercise, jeopardising not only the admissibility of the evidence but also the credibility of the justice institutions.

The analysis of several cases¹⁴ reveals serious irregularities in the organisation of the flagrant operation: the absence of continuous video recording of the money handover, the lack of fluorescent markings, the omission of UV testing, and the failure to ensure the chain of custody of the seized items. In all such cases, the material evidence was declared inadmissible because its integrity could not be verified. The courts emphasised that *“marking, handing over, documenting, and subsequently examining the money constitute a unified sequence of procedural and criminalistic actions; any interruption of this sequence nullifies the evidentiary value of the result.”*

As shown, judicial practice confirms that a flagrant operation is one of the most sensitive and complex procedural-criminalistic activities, as it requires direct intervention at the moment the offence is being consummated and generates essential evidence for establishing culpability. From a criminalistic standpoint, any procedural deviation in the planning or execution of the flagrant operation directly affects the authenticity, integrity, and probative force of the evidence. The absence of continuous video recording of the money handover, the omission of fluorescent markings, the lack of UV testing, or the failure to ensure the chain of custody are deficiencies that compromise the logical sequence of actions and render the material evidence contestable. Scientifically, a flagrant operation must be conceived as an

¹³ Decision of the Criminal Panel of the Bălți Court of Appeal of 27 May 2020, delivered in Case No. 1a-561/2018. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/6B0F1E01-38F9-4F42-9DC5-83CCDBC94374.

¹⁴ For example: Judgment of the Chișinău Court, Ciocana seat, of 06 August 2019, delivered in Case No. 1-1235/2017. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/DE113F63-2733-4177-9C2F-98494AD2A417; Decision of the Criminal Panel of the Bălți Court of Appeal of 06 February 2024, delivered in Case No. 1a-721/2020. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/E5AFFAFA-38E0-4A88-A4FE-876C4B5C15CD; Decision of the Criminal Panel of the Bălți Court of Appeal of 13 November 2019, delivered in Case No. 1r-164/2019. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/3C7B8669-A256-411E-85D3-9EB058A500CA; Decision of the Criminal Panel of the Chișinău Court of Appeal of 31 January 2024, delivered in Case No. 1r-396/23. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/A1B07FE2-2E13-478A-8CF3-825B40910C10.

integrated procedure in which the marking, handing over, documenting, and forensic examination of money or other objects used constitute consecutive and inseparable stages. The continuity of these actions guarantees the traceability of the evidence and excludes the possibility of subsequent interference with the evidentiary material. Interrupting the procedural flow or failing to provide uninterrupted video documentation breaks the unity of the procedure, thereby nullifying the probative value of the outcome. For this reason, continuous recording—capturing the moment of the handover, the distinctive markings applied, the seizure, and the transfer for forensic examination—is a fundamental methodological requirement in organising flagrant operations.

In this context, the investigative authority must strictly adhere to the principles of planning, control, and full documentation of the flagrant operation. It is recommended that: the marking of banknotes be carried out, where appropriate, with certified fluorescent substances, with exact documentation of the banknote serial numbers and the method of application; video recording cover the entire operation without interruption—from the handover to the seizure of the evidence—without cuts or unjustified pauses; the chain of custody be ensured through the immediate drafting of the official report, sealing of the items, and storing them in conditions that preclude contamination or substitution; the involvement of specialists in the preparatory and subsequent stages of the flagrant operation be duly recorded so as to guarantee the validity of the technical-scientific forensic findings on markings and traces; coordination between intelligence officers and the investigative authority or prosecutor be carried out on the basis of a written operational plan specifying roles, technical means used, and measures ensuring legal and procedural safeguards.

Compliance with these requirements ensures not only the legality and fairness of procedural activities but also the credibility of the act of justice. From a criminalistic perspective, a flagrant operation cannot be treated as a mere surprise capture of an offender in action; it is a scientifically grounded evidentiary procedure in which each technical detail contributes to constructing incontestable proof and strengthening the preventive and educational functions of the criminal process.

The interviewing of witnesses and whistleblowers is one of the most significant procedural-criminalistic activities, through which the investigative authority reconstructs the circumstances of the events, the mechanism of the offence, and the role of each participant. However, the analysis of the examined cases¹⁵ shows that, in many instances, this activity is approached formally, without an interview strategy tailored to the concrete objectives of the investigation. Superficial questioning, the use of general or irrelevant inquiries that do not contribute to establishing the causes and circumstances of the corruption offence, and the omission of face-to-face confrontation between individuals whose statements contradict each other, all constitute serious methodological deviations. From a criminalistic standpoint, such

¹⁵ For example: Decision of the Criminal Panel of the Bălți Court of Appeal of 22 February 2017, delivered in Case No. 1a-196/2016. Retrieved from:

https://instante.justice.md/ro/pigd_integration/pdf/44C1F078-CD19-E711-80D3-0050568B2C1F;

Decision of the Criminal Panel of the Bălți Court of Appeal of 27 May 2020, delivered in Case No. 1a-561/2018. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/6B0F1E01-38F9-4F42-9DC5-83CCDBC94374; Judgment of the Chișinău Court, Buiucani seat, of 12 December 2019, delivered in Case No. 1-4063/2019. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/B1019D88-172A-4F04-9CEE-89085AD36609; Decision of the Judicial Panel of the Cahul Court of Appeal of 29 May 2019, delivered in Case No. 05-1a-664-06062018. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/7CC795FC-E470-443D-9B0C-1BC4CE2E2870.

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shortcomings distort the factual picture and diminish the corroborative value of indirect evidence, undermining the foundation of the entire evidentiary process.

In both theory¹⁶ and practice, (Olteanu, 2009, p. 153–154. 346) an interview cannot be reduced to merely recording answers; it requires an analytical-synthetic operation based on prior planning of questions, (Ostavciuc, 2020, p. 4–5, p. 70) a logical sequence of inquiry, and constant adaptation to the reactions of the interviewee. The witness or whistleblower must be approached gradually—from general facts to specific details—while respecting psychological (Poalelungi, 2013, p.1192) requirements concerning the avoidance of suggestion and the maintenance of neutrality. In corruption cases, the interview carries particular significance: it must clarify not only the material act of requesting or receiving undue benefits but also the functional context, the motivation, the intent, and the relationship between the persons involved. Omitting these elements renders the statement an incomplete evidentiary source. Likewise, the confrontation of individuals whose statements contain contradictions is not a mere formal step but a scientific tool for verifying the truthfulness and internal coherence of the declarations. The absence of confrontation amounts to abandoning one of the most effective methods of internal verification of testimonial evidence. Without confrontation, contradictions remain unresolved, and the court is deprived of the means to assess witness credibility objectively.

Accordingly, the following criminalistic recommendations are necessary for investigative bodies: detailed planning of interviews, establishing a set of questions focused on the concrete act, the relationships among participants, and the context in which the corruption act occurred; complete audio-video recording of interviews, in order to preserve not only the verbal content but also the non-verbal reactions of the interviewee; conducting confrontations whenever significant contradictions arise, with detailed documentation of reactions, changes in statements, and body language; ordering and conducting psychological examinations or expert consultations in complex cases, to assess the credibility of statements and any external influences affecting witnesses; correlating testimonial evidence with material evidence and the results of special investigative measures, in order to consolidate a coherent and persuasive evidentiary body. Respecting these requirements ensures the scientific character of interviews and contributes decisively to establishing the material truth. From a criminalistic perspective, interviewing and confrontation are not merely tools for gathering information but cognitive instruments for reconstructing criminal reality, whose value depends entirely on the professionalism and methodology with which they are carried out.

Entrapment (Copețchi, 2017, p. 18–25) represents one of the most delicate and controversial criminalistic issues in the investigation of corruption offences committed by public officials with special status. From a scientific standpoint, it marks the fine boundary

¹⁶ See: United Nations Office on Drugs and Crime, Vienna, *Technical Guide to the United Nations Convention against Corruption*, United Nations, New York, 2009, 240 p. Retrieved from: https://www.unodc.org/documents/treaties/UNCAC/Publications/TechnicalGuide/09-84395_Ebook.pdf; Olteanu, Gabriel Ion; Ruiu, Marin, *Criminalistic Tactics*, AIT Laboratories Publishing House, Bucharest, 2009, pp. 153–154. 346 p. ISBN 978-973-88201-4-2; Ciopraga, Aurel, *Evaluation of Testimonial Evidence in Criminal Proceedings*, Junimea Publishing House, Iași, 1979, p. 16. 272 p.; Doraș, Simion, *Criminalistics*, Volume II: Elements of Tactics, Tipografia Centrală, Chișinău, 1999, p. 128. 281 p.; Osoianu, Tudor; Ostavciuc, Dinu, *The Procedure for Hearing Witnesses and Victims under Special Conditions during the Criminal Investigation Phase*, *Studia Universitatis Moldaviae. Legal Sciences*, 2023, pp. 138–153. Retrieved from: https://ibn.idsi.md/sites/default/files/imag_file/138-153_0.pdf.

between legitimate undercover investigative activity and the unlawful inducement of an individual to commit the offence. Recent judicial practice¹⁷ confirms that courts now apply the “fruit of the poisonous tree” doctrine with increased strictness, excluding evidence obtained through entrapment—whether carried out by state agents or by informants previously used in other cases. In such situations, the evidentiary act loses validity regardless of its seemingly incriminating content, as it no longer reflects a free manifestation of the perpetrator’s will but rather an artificial construct generated by state authorities.¹⁸

From a criminalistic perspective, entrapment affects the very essence of the evidentiary process, transforming the investigation from a mechanism of documentation into one of fabrication. When a whistleblower or undercover agent goes beyond observing and recording pre-existing criminal conduct and instead induces, however subtly, the illicit act, a serious methodological and tactical deviation occurs, one incompatible with the principles of legality, fairness, and proportionality. In such cases, special investigative measures cease to serve the discovery of the truth and instead undermine the credibility of the entire criminal process.

To prevent such errors, concrete recommendations are necessary for investigative bodies and intelligence officers:

- *A clear distinction between documentation and inducement.* Before authorising an undercover measure, the prosecutor must assess the existence of a reasonable suspicion grounded in prior factual indications and not in mere assumptions or suggestions made by whistleblowers.

- *Rigorous control of collaborators and informants.* When such individuals have been involved in similar cases, a critical assessment of their credibility is required to avoid the systematic use of persons prone to provocation.

- *Full and transparent documentation of interactions.* All contacts between the state agent and the targeted individual must be recorded in full; gaps in evidentiary continuity (fragmented recordings, omission of the initial contact) must be avoided as they create suspicions of manipulation.

- *Professional training of investigative officers.* They must be trained according to modern criminalistic methodology, which prioritises observation, behavioural analysis, and the collection of authentic evidence rather than the artificial construction of criminal acts.

- *An active supervisory role of the prosecutor.* The prosecutor must exercise genuine oversight at every stage of the operation, ensuring that the purpose of the investigation remains the uncovering of existing criminal conduct, not the generation of new criminal scenarios.

¹⁷ For example: Decision of the Criminal Panel of the Bălți Court of Appeal of 07 November 2023, delivered in Case No. 1a-31/2021. Retrieved from:

https://instante.justice.md/ro/pigd_integration/pdf/3A1C8BA6-4E4B-49B2-8AEA-D517226D70C0;

Decision of the Criminal Panel of the Bălți Court of Appeal of 03 July 2019, delivered in Case No. 1a-703-2017. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/91D0740C-40AB-4CBB-A609-EBE97AD40322; Judgment of the Edineț Court, Ocnița seat, of 06 July 2018, delivered in Case No. 1-117/2017. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/71ADD173-2281-E811-80D7-0050568B4D5B; Decision of the Criminal Panel of the Bălți Court of Appeal of 22 March 2017, delivered in Case No. 1a-622/2016. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/06B93904-D92F-E711-80D3-0050568B2C1E; Decision of the Criminal Panel of the Chișinău Court of Appeal of 31 January 2024, delivered in Case No. 1r-396/23. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/A1B07FE2-2E13-478A-8CF3-825B40910C10; Decision of the Criminal Panel of the Bălți Court of Appeal of 25 May 2016, delivered in Case No. 1a-231/15. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/8A675DE2-3D39-E611-A9BA-005056A5FB1A.

¹⁸ Decision of the Criminal Panel of the Bălți Court of Appeal of 25 May 2016, delivered in Case No. 1a-231/15. Retrieved from: https://instante.justice.md/ro/pigd_integration/pdf/8A675DE2-3D39-E611-A9BA-005056A5FB1A.

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By complying with these requirements, investigative activity preserves its scientific and fair character and remains aligned with the principles of the rule of law. From a criminalistic standpoint, eliminating any form of entrapment strengthens the evidentiary process, enhances the credibility of law enforcement institutions, and increases the effectiveness of genuine anti-corruption efforts.

The analysed cases outline a coherent picture of the difficulties encountered in organising investigations in corruption matters: a persistent imbalance between operational activity and procedural-criminalistic methodology, the absence of coherent investigative planning, and a failure to respect the principles of proportionality and fairness in the criminal process. The public official with special status operates within an especially sensitive institutional framework, and the investigation of corruption offences involving such officials requires absolute methodological precision. Whenever investigative bodies replace scientific methodology with operational improvisation, the outcome becomes predictable: exclusion of evidence, findings of procedural nullity, and ultimately, acquittal.

Consequently, improving the organisation of criminal investigations in this category of cases must focus on establishing a strict evidentiary discipline, including intermediate legality checks for special investigative measures; ensuring unity between the operational plan and the criminalistic plan under the effective supervision of the investigative authority or the prosecutor; introducing a mandatory technical validation filter for digital evidence; complying with criminalistic tactics during interviews, confrontations, searches, and flagrant operations; and providing specialised training for investigative officers in evidentiary fairness and the avoidance of entrapment. Only through the implementation of these measures can investigations into corruption committed by public officials with special status meet the standards of efficiency, fairness, and evidentiary validity required both by domestic law and by European jurisprudence.

4. Conclusions and Recommendations

The analysis of judicial practice concerning the investigation of corruption offences committed by public officials with special status reveals a persistent lack of methodological and procedural rigour within investigative bodies. A significant portion of acquittals is not due to the absence of the alleged acts, but to the failure of the evidence to comply with the legal standards of legality, authenticity, and fairness. The lack of individualisation of the official's duties in indictments, the informal or unlawful constitution of the criminal investigation team, the improper application of special investigative measures, and the flawed organisation of flagrant operations directly undermine the validity of the evidentiary process. Likewise, superficial interviews, the omission of confrontations, and the tolerance of situations amounting to entrapment compromise the entire evidentiary structure, leading to the exclusion of essential proof. These findings demonstrate the need for a profound reform of the manner in which investigations in such cases are organised, as offences involving public officials with special status require a far more technical, integrated, and thoroughly documented approach than ordinary corruption offences. Only through criminalistic discipline, procedural accuracy, and the effective supervision of the prosecutor can the robustness of the evidentiary process and the credibility of the act of justice be ensured.

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ENFORCEMENT OF ENVIRONMENTAL IMPACT ASSESSMENT IN THE OPERATIONS OF THE OIL AND GAS INDUSTRY IN NIGERIA: NEED FOR A PARADIGM SHIFT

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Abstract: *In general, more regulation was expected to harness the EIA tool for improved governance of the oil and gas industry's operations, where as it stands now; not much has been achieved yet. The country suffers a great deal due to poor control and management of events in the oil and gas sector that result in environmental issues such as contamination, pollution and ruins; even with all the laws, regulations and institutional directives. The doctrinal research approach which guided this study towards the examination on what constitutes the activities of a certain and particular area (i.e. oil and or gas), their manner of operation (including those relating to EIA requirements) as well as their compliance level both with national legal framework and others such like international conventions-treaties-protocols-textbook references-case laws among others, with regard to how enforcement or compliance cum recommendation on environmental concerns/ social-economic developmental initiatives have so far been pursued. Thus far, some activities seemingly complies with current needs (societal demands) without prejudicing its future generations' entitlements. There is ample evidence showing that operations of oil companies in Nigeria led to severe negative impacts on environment, aquatic animals, jobs, economic trees and crops due to recurrent spillages, fire incidences as well as gas flaring which could have largely been stopped or minimized if proper enforcement of directives and recommendations were put into practice. Specific suggestions on measures for bringing about improved socio-economic/deployment without compromising environmental integrity for posterity in Nigerian Oil Industry are equally recommended.*

Keyword: *Environmental Impact, Enforcement, Oil & Gas operations, Regulations, Assessment, Reforms*

1. Introduction

In the light of various accounts, the hunt for oil in Nigeria must have been kick started sometimes in the year 1908, by a German-owned company known then as Nigerian Bitumen Company, which did; on that very first day, oil prospecting somewhere in Araromi village of Ondo State in South-West part of Nigeria (Nwokedi, 1998). The search, prospecting and drilling were said to have been stopped because they were not successful because it did not yield any result of oil discovery; on this note in 1914 *Minerals Ordinance* of 1914 was enacted to regulate

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oil exploration and exploitation in the country then, it was gathered that exploration activity took off again in 1937 by Anglo-Dutch group who Shell d'Arcy is located in Owerri, Imo State, in the South-East region of Nigeria. In this regard, due to the Second World War all operations came to a halt and exploration activities were stopped until 1946 when Shell merged with the British Petroleum to become Shell BP. Thereafter the *Ordinance* of 1914 was amended by *Ordinance* No. 1 of 1925, No. 3 of 1950 and No. 5 of 1958.

Consequently, the *Minerals Oils (Safety) Regulations* were enacted when people started to pay more attention to oil and there was an upsurge in the activities of prospecting for and drilling petroleum. This paper will consider the changes that took place in this first attempt at regulating. Following a review, such legislation emerged as the *Mineral Oils (Amendment) Decree* 1970, which has also come under later review in 1993 and 1997. These statutory instruments include *The Petroleum (Drilling and Production) Regulation* 1969 issued by virtue of *Section 9* of the *Minerals Ordinances Orders* of 1914, which was further revised in gentlemen's agreement between Shell BP Company and Nigeria government. Yet it was not until four years later that oil exploded onto Nigerian scene when in 1956 Shell BP struck liquid gold at Oloibiri in Ogbia Local Government Area (present day Bayelsa State), followed by another find at Afam (present day Rivers State) same year. Sustaining any growth trends saw production reaching early on five thousand one hundred barrels per day by year end. Consequently, it became possible to export crude oil to Europe with Nigeria joining comity of nations listed among major oil producers/exporters; however, all those legislations failed to capture any notion relating environment or its preservation/support.

In 1960, following the independence of Nigeria from the British Crown, there arose the issue of constructing a domestic refinery by the oil and gas industry at Port Harcourt so that the country would be self-productive and sufficient as far as the domestic market was concerned. Consequently, in 1965, *Hydrocarbon Oil Refineries Act* was issued to license operators in the refining of hydrocarbon oils and control it. Similarly, that same year saw the commissioning of the Port Harcourt Refinery with an installed capacity projected at about 35,000 barrels production per day.

This article has it that the *Petroleum Act* of 1969 became the principle written law governing Oil and Gas in Nigeria until the *Petroleum Industry Act* 2021 (together with its subsidiary legislations) came into operation (Akpomovie, 2011). Nevertheless, these stipulations take care of all objects of operations e.g. drilling, operation of drilling rigs, bulk transportation of petroleum products etc. without rationale. Their input in the early nineties was about 29% and by 1971 to seen estimated at around 44%, yet and even in the nineties; their share of all foreign exchange earnings has been as high as 90% up to now. It amazes that in a few years they were able to boost their production up to 1.5 million barrels.

Nigeria eventually joined the Organization of Petroleum Exporting Countries in 1971 and became a signatory to the July 1971 agreement only by then; that agreement's contents as being "declaratory statement of petroleum policy in member countries" in Article 90/Organization of Petroleum Exporting Countries *Resolution XVI* which has also been adopted within the organization. This became the position paper for the Federal Government's quest to secure mandatory participation in these concession areas and thus it introduced joint venture. The modalities of Federal Government's participation, along with its rights and

obligations consequent upon these acquisitions, were given legal form by way of participation agreements. Further, it has been elaborated by Olisa, “*an assignment of a fractional interest in a petroleum leasehold estate and also transfer of assets and funds employed in development of such leasehold*” (Olisa, 1987).

In 1971 marked another milestone in the evolution of Nigeria petroleum law, the NNOC was set up to..., The Nigerian National Oil Corporation was given authority to carry on business as regards the Acquired and other assets interest of the Federal Government and to this end it became the Federal Government's commercial arm/agent. In 1977 Nigerian National Oil Corporation gave way for Nigerian National Petroleum Corporation (Siyanbola and Oladipo, 1990). This came with a new structure that resumed functions of Ministry of Petroleum Resources. NNPC was empowered for carrying on business in oil and gas industry or any other inspectorate arm of industry. *Exclusive Economic Zone Act* commenced operations in 1978 while AGRA was enacted in 1979. This is followed by Nigerian *LNG Act* which took effect from year 1990 with a backdated commencement date of April 24, 1989. Also, this enactment is incrementally moving towards re-directing investment into Gas aspect of the sector. As at now there exist plethora legislations governing Oil and Gas business in Nigeria more tilting towards generation of revenue leaving almost infinitesimal fraction on preservation and protection or environment and health impact it portends on populace.

The above-described laws and what they are used to do when closely and critically reviewed in relation to regulation of oil and gas sector, we see that in comparison they all are more inclined towards social development and economic development rather than protection and conservation of environment.

1.1 Environmental Impact Assessment Act, Cap E12 Laws of the Federation of Nigeria 2004

This bill stands out as a landmark legislation within the Nigerian environmental system and for this reason it was much noted because it was among the early few bills to give ordinary people say in decision making with regard to development. This may be initiated by an organ of either a private or public nature which is keen on undertaking a project that potentially degrades the environment and one may be directed by the said organ to put in place an instrument requiring their approval before the issue is tackled. *EIA* then poses us priority number one as far I am concerned; you must address a letter applying for *EIA* before proceeding on any proposal by the Agency. It also provides legality should there be contravention of any provision contained therein. The main aim of *Environmental Impact Assessment Act* from general perspective is prevention of undesirable impacts associated with development projects which should be identified and solved before commencement of such project (Okon, 2001).

These are some objectives of Environmental Impact Assessment amongst others are responsible use and exploitation of natural resources; sustainable productivity of ecosystem; the most important fact in this regard is that the air, land and water have carrying capacity and absorptive capacity which are to be preserved; prevention of the degradation of environmental quality; and use of appropriate technology.

In section 2 of the Act, it is specified that an Environmental Impact Assessment study has to be carried out before the commencement of an oil and gas project. The purpose of this

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exercise is to help one understand more clearly what the project is all about and how much / it will affect/impact the environment.

In section 4 the principal parameters of an Environmental Impact Assessment are defined with regard to the following key issues are a description of the proposed activities; draft on the affected environment along with the details that you will use to know and assess which type of environment the proposed activities will affect; and a description of the practical activities as appropriate.

This is because holistically, the comparison between their possible environmental impacts and what is likely to happen and also how the proposed action, its possible alternatives operate gives you the short term or long-term impacts cannot be directly compared. Hence, it is also necessary to provide the rationale as to why the proposed task aims at addressing particular negative tendencies in a setting and at the same time you are expected to describe them so that they can be appraised. It is done to find knowledge gaps and to identify the fact that the required information cannot be estimated may also be an issue. Inquires on the issues of the environment in any State or Local Government outside Nigeria or its equivalent, does it affect by the proposed activities or not.

Under Section 7, it is stipulated in the Act that, before an agency proceeds to make a decision on an activity that has been subjected to environmental assessment, it will invite comments as follows: Government agencies' views, the public's view, professionals in the area and interested groups so far as the EIA of the activity is concerned.

2. Sustainable Development and Environmental Protection

In Nigeria, as well as in other countries it is clear that the issue of sustainability is much complex and it covers the academia and professional world. The objectives created by the principles following this order are found within a given institution or an organization. This will ensure there is enough skills to tackle Nigeria's sustainable development needs in implementing Post 2015 Development Agenda (Erhun, 2015). In spite of the fact that in the last years even growth rate which could help to decrease poverty has not been maintained. It occurs in Nigeria where you can see that, for long period now, economic and social dimensions/developments are given priority over human rights, environmental protection and sustainability (Ayodele, 2000). Therefore, economic sustainability is one of the principal aspects of sustainable development. Economic sustainability describes the ability to keep and maintain high real growth rate of economy for attaining development or economic goals without infringing right to conserve and live environment/life as inadvertently guaranteed permanently.

When considering Nigeria perspective, it is easy to see a wide range of obstacles that can slow down the process of development, which in turn necessitates applying more comprehensive approach focused on combination of economic, social, environmental and human rights security elements. Looking at the objectives if the economy as captured in the constitution of Nigeria (FME 1979:49), it's said that State shall *“(a). direct its policy towards ensuring amongst other things as its primary purpose; mobilizing the resources of the nation for promoting national prosperity, and an efficient, a dynamic and self-reliant economy;/ (b). control the national economy in such manner as to secure highest welfare, freedom and*

happiness of every citizen on basis of social justice and equality of status and opportunity;/ (c) operate or supervise major enterprise”; / (d) only guarantee a citizen’s right to practice any business or profession beyond sanctioned by law major sectors”

Moreover, it is elucidated that the State shall ensure the goals not only in approach but also in instruments of economic development, which effect and guarantee respect for human rights and fundamental freedoms as well as possibilities for all. This concerns coordination, among other things sociopolitical organization so there is quicker social reformation therefore there should be full exploitation of all available resources for people development. The wealth or means of making and distributing goods or services may not be monopolised or oligopolised or deployed so as to serve a given class to the detriment of others. These are statutory rights like right to home, right to food, right to work for minimum wages within geographical boundaries of Union Territory or its territories which are owned or leased by anyone / any corporation /state/collective entities, right to old age care including pension and relief for victims of disasters due to natural calamity; shoe; right against unemployment allowances from his employer if he becomes out of employment; Petrocaribe loan-disabled-rights alone buoyed off from time immemorial.

Just like Nigeria, Nigeria has ethnic and religious issues which also implies that there may be discrimination and deprivation between the different ethnic groups of the society. It is not today that Krik-Greene was quoted in Mustapha's article on ethnic factor in Nigerian politics:

‘The fear has always been the hidden motive in Nigerian politics and was manifested every time there were a tension or confrontation. No, neither it is a physical fear of violence nor a spiritual one of retribution but instead it is a psychological fear of discrimination, of domination. This is a fear that someone may not be able to get what they really deserved or expected (Mustapha, 2006).

Nevertheless, a book by Ibeanu (2007) indicates that there were tensions in Nigeria due to the dread of being outmatched by its ethno-regional elite which helped ‘set off’ the currents of ethnic and political tension. The writer also cautioned against thinking interstitially that what Nigeria currently has is ‘heterogeneity of congruous social groups with inclinations on primordial bonds that impel them to violent civil conflict and deep suspicion’ (Akin, 2007). This issue keeps on rising since those ethnic groups who do not have Ministerial positions will raise issues about marginalization and sidelining. This fear is still very much alive today within the various tribes in Nigeria especially among the different tribes this web may be indeed be in a bid to predict the sustainability of Nigeria’s politics and therefore overhaul the entire political system of the country. According to Matsura “Development that is sustainable is as much a prescriptive issue, as it is a scientific concept. It is directly linked with peace, human rights and equality having in mind ecosphere and global warming.”

It is imperative that all these mechanisms are in place to guarantee the fair and just exploitation of productive resources which intern determine peace and SDIs for a pluri-national state at some given level. Ukpore might be reflecting on his part of statement when he condemns that if sustainability should come within the reach everyone, women/men (even though her phrase may appear paradoxical) shall participate in implementation of economic policy and social development (Ukpore, 2009). Nevertheless, on an issue like this all must have a say- the Nigerian position stability expects to have stake of all ethicized in Nigeria (Coronel,

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Alves da Silva, and Leonardi, 2016). Nevertheless, participation on decision making varies from one nation to another depending on socio-political consciousness of the people, for instance let us look at the following situation with different nationalities: In spite of this observation, however, it is not apparent whether certain groups are indeed worse off than others:

This was the case even within the colonial era where that can be observed, by taking education as an example, how this phenomena hindered the growth of Human capital formation through education and general country development. In Northern Nigeria under the British Colonial policy we find two policies that were combined; the anticipation of a class of African educated men, just as it took place in Southern Nigeria, and the determination to fashion an Anglo-Muslim aristocratic culture in Northern Nigeria. According to Lugard, such type of educated men emerged from Southern Nigeria who were inconsiderate and unable to sit under any kind of control rather his overemphasis appears very self-centered.

Nigeria, being a British colony, as of now is for the most part interpreted to be so only in the event that Britain by chance decided not to play up North in case its population did not really deserve it nor inhibited her education from going on by them and for themselves Central Nigeria just like Southern was none (Ayodele, 2000). To this we can infer he calls attention as we analyze sustainable development in sub-Saharan Africa, particularly in Nigeria it is necessary slow down one gear and extend more room for sustainable democracy because the majority of states known for chaos put their emphasis into support of political peace more than environmental problems nor Ecosystems of their state (Omotola, 2009). From this instance one gets to comprehend Nigeria that provides one Coming reference situation for interface between the sectors (Aboluwodi, 2011). Although there seems to be a yawning gap in the goals of uniting the different ethnic constituencies into a nation-state and the major significance of doing it is rather than fighting environmental related issues. Indeed, it is obvious that the myriads of problems that are experienced in Nigeria today clearly show that economic and revenue generation issues take precedence, and they lead even over sustainable development and environmental protection.

It is self-evident that these tensions are more displayed in the Political landscape of Nigeria and include but are not limited to religious crises ethnic agitations economic stagnation and decline inequitable distribution and use of the commonwealth degradation of the environment insecurity. The solution to these problems is considered as the principal solution to one of the most acute issues known as sustainable human development, one. The implication at this point is that Nigeria should redesign its current socio-political arrangement so that more real development could be accommodated. Thus, it has been put very appropriately, adequately or fittingly that “it is only in the context of a reconstructed state that Nigeria can experience the likelihood of sustainable development” (Babawale, 2007).

2.1 Environmental protection, Sustainable Development and the Oil and Gas Industry in Nigeria.

This kind of development is one way to respond to the environmental challenges affecting the entire planet and it has now affected many countries around the world including

Nigeria. although, it might be debated by many seeking to find and exploit oil and gas in Nigeria may be the single most important activity causing environmental degradation, making environment unsustainable in the process. This way the government through all instruments, takes over the obligation of assuring that mineral extraction in its territories is really sustainable; so that there will be continuous growth on environment yet not on people's right to lives, offering a sound or moderately quite loud environment. So it is therefore on these premises that sustainable development imposes Nigerian state with duty to ensure both present and future generations receive optimum social economic benefits from natural resources within a state without undermining need for protection of environment. The United Nations Resolution on Permanent Sovereignty over natural resources provides that sovereignty must be exercised in the interest of national development and well-being of the entire people of the state concerned (United Nations General Assembly resolution 1803 (XVII) 1962).

From the above discussion, it can be said that sustainable development has its basis on the following three main pillars; economic development, social development and environmental protection. Therefore, the Nigerian Government as well as Oil companies operating in Nigeria are obliged to follow and respect regulatory provisions and also embrace and implement policies which will do this integration. The oil companies in their operations.

Furthermore, they should take steps to enable them to be more cost-effective with their use of energy, apply the gentle approach that targets pollution and mitigation as well as show sensitivity in their corporate social responsibilities to the oil producing communities. They should also address the problems of environmental degradation, depletion and despoliation which they have caused, forbear from doing so in their future projects while observing human rights and labour standards. It is also envisaged that these prerequisites will be met by oil companies in their exploitation of natural resources for the advancement of economic, social as well as environmental sustainability under sustainable development.

The above specifications were based on the understanding of the concepts of sustainable development as given by the UNDP and WEC in their energy assessments which, under this head, are forms of energy generation and use for the purpose of supporting a long-term overall human development covering all social, economic and environmental dimensions. The quality of life for every living being on earth should steadily rise without compromising its capacity – this is what the sustainable development guarantees.

2.2 Environmental Impact Assessment and Environmental Protection

Thus, this process can also be termed as Environmental Impact Assessment since it shows the evaluation of the changes happened to the environment in the course of development to help determine if those changes are positive or negative. It is a tool of policy and management, deployed in the practice of planning and decision as per the *Act* (Lawrence and Folarin, 2004). Prior to commencement of any Oil and Gas project is stipulated by The Environmental Impact Assessment Act that an Environmental Impact Assessment be carried out. This is done in order that sound decision can be taken on what project is being proposed and its likely impact upon the environment. In one of the requirements stipulated by EGASPIN, it provided for an Environmental Impact Assessment study to be carried out which states that it shall be prepared by proponent/initiator with consultants certified by Department of Petroleum Resources who together with Department DPR Review.

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The World Bank reveals this; as from 1991 through OPSOP-85-1 it forces to get the protection of environment implemented in projects at an early stage even before an IFI borrower proposes it for assistance. Just the same, a good number of international and regional organizations as well as bilateral donors at the regional level/ take it for granted, and even prohibitive measures may be put in place which prevent such support from reaching projects in Nigeria without EIA implementation.

Hanly v. Kleindienst (1972), is the classification of the Supreme Court in USA referred to as a twofold test that helps one to know if an activity causes a major human environment impact. They are that it is used to determine whether the impacts of a proposed activity will be greater than those of current uses in the area affected by it and the kind of environmental impacts which are qualitative effects of the action itself which are non-transitory and do not depend on any probability or frequency that cause the contribution to the existing adverse conditions or uses in that area.

In Nigeria under the *Environmental Impact Assessment Act*, in Section 2(2) the wording used is also 'significantly affect the environment'. However, this phrase has not been interpreted in courts of Nigeria so far and it is proposed that an American definition would be a good leading factor. Environmental Impact Assessment has been very crucial to prevent environmental degradation. This together with responsible use and exploitation of natural resources are among key areas it has contributed. These however are among commendable success stories as there is still much to be done mostly in the monitoring and compliance with an Environmental Impact Statement emanating from an Environmental Impact Assessment study.

This paper will seek to analyze the fact that environmental impact assessment is almost never mentioned let alone done before the approval of projects in Nigeria and more so those in the infrastructure sector. The application of it, which is legislated by this Act, are not followed as far as developing a program of work that will take into account both development and environmental concerns for the implementation of environmentally-friendly projects is concerned. Most of these will be Federal, State and Local Governments who normally give approvals for projects even before the required preliminary impact study list is prepared only for such EIAs as they may require (Muhammad, 2014). In particular a case was said to have occurred when Aluminum smelting Company ignored BAF Environmental Impact Assessment report on its intended dredging activity in Imo River.

Thus it stands out that; Under an international joint venture agreement among Aluminum Smelting Company Nigeria limited, Ferrostal AG Germany, Reynolds international Incorporated United States, referencing the olden times, it can be speculated that Westminster Dredging might have been responsible for dredging of Imo River which was contracted to them even though the EIA report pointed out that there could be serious repercussions of dredging without first implementing mitigation measures and recommendations. Also, it said that 'if dredged will bring into production 'salt water intrusion into fresh water zone' then condemn spoil surface fresh water or 'upper underground relocation in present relocating and tidal outflow/inflow,' which may cause salt intrusion hence likely elevate turbidity inland aquatic resources and menace submergence fishing settlement' or farming landscape. It is therefore in

this direction they suggested that prior to commencement of any dredging activities, a very wide investigation should be carried out and model developed.

In the report were even more detailed: for example, they recommended that levees, temporary dams or silt fences should be put up to keep or stop the loose materials from spreading too far away from the dredging area. The above was not only skipped in an EIA report but also taken for granted and moved to the head office of Aluminum Smelting Company of Nigeria Limited. Instead, a Nigerian Navy was contracted; their naval fast attack crafts were then sent to guard the dredger into illegal dredging and hence causing one of the worst environmental disasters. Eventually, Imo River engulfed its banks spilling into Opobo Town, Queens Town and Kalaibama which are all within Opobo/Nkoro Local Government area of Rivers State.

However, the move caused concerns during the proposal to dredge Rivers Niger and Benue by Petroleum Trust Fund then, for the improvement of their inland waterways also. In this regard, there was a problem with the proposed EIA of the dredging of Rivers Niger and Benue when PTF hired a consulting firm to conduct Environmental Impact Assessment Report. Egborge reported that *“During the dry season the team had completed all the field work and only after that they discovered that it was relevant to consult with primary stakeholders and communities”* (Egborge, 2013). It is thus clear that sustainable environmental development will be realized only when procedural requirements as laid out under *Environmental Impact Assessment Act* or any other relevant guidelines relating to performance of Environmental Impact Assessment are adhered to.

Yet, for EIA which is an instrument through which regulation should be used as a means of achieving sustainable development in both private and public sectors of Nigerian economy there is need for more intensive coverage. I would like here draw your attention to a number errors in drafting arising from different provisions of the statute; both the implementation of the *Act* and enforcement of its provisions properly would help achieve the goals of sustainable developments in the oil and gas industry in Nigeria if it were to be implemented.

3. Enforcement Challenges of the Environmental Impact Assessment requirement

However, the process of Environmental Impact Assessment is not always followed to the latter and in most cases, it is upon the project developer's discretion (Ako, 2020). A consortium of Lagos State/Harm, an IPP (Independent Power Project) for example made some contracts that involved Lagos State Government, Environmental Power Nigeria Ltd, Yinka Folawiyo Power Limited. That the Independent Power Project (IPP) was initiated to tackle epileptic power supply experienced in Lagos State was as a result of this development. Despite that fact that such requirement was stated by Environmental Power Nigeria Ltd no EIA came out for impromptu Barges projects within the same time frame and also there were no records or filing which showed if an EIA has been conducted during development or operation of system project.

Thus, like in *Oronto Douglas v. Shell Petroleum Development Co.Ltd* (1974) in the Douglas case - Oronto Douglas was contesting Shell's stand which stated that it would not conduct an Environmental Impact Assessment for Nigerian Liquefied Natural Gas project at Bonny. The court found that the plaintiff did not have the locus standi to sue Shell in as much as it related to observance of the provisions of the Environmental Impact Assessment Act by

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shell. It is under the *Environmental Impact Assessment Act* that you may encounter other problems. For instance, it's probable to undermine EIA totally just because of the exception this Act makes. The exceptions are in *Section 15(1)* – so it shall not be required to carry out environmental assessment of project.

Based on the above, the agency classifies the project as one of those identified by the president, commander-in-chief of the armed forces or councils having their environmental effect at a minimum level. The project is planned during an emergency that is nationwide and as such only short-term employees will be taken on for it measures have been taken by the government. In the light of his opinion nothing in the programme should affect this project nor imply that anything would be done unless, and if, the conditions printed above do not exist for a project that could be in the interest(s) of public health or safety.

The previous paragraphs above, for instance, are not applicable to the *Environmental Impact Assessment Act*. If for example a person stops certain development in Nigeria this does not mean that the President of Nigeria might not circumvent or disapprove laws needing an Environmental Assessment Impact in oil and gas projects. It thus appears that multi-national oil corporations who enjoy a business relationship with the President may convince him into providing approval for their planned projects without carrying out Environmental Impact Assessment, even if it runs counter to the fact that it highlights adverse impact of such projects. The discretion powers vested on the president should be exercised reasonably; they are conditional on minimal negative impact which shall emanate from projects carried out on environment or public health interest. Consequently, it is imperative to ask what exactly at least harm has to come from a project before it becomes selfish, and how can one determine this with any dignity?

The government does not take it into account if you are about to give the decision-making authority on that subject; rather, it will overemphasize the importance of its projects in social and economic contexts alone. This problem is obviously interconnected with the oil and gas field which is proved by some court's decisions. In *Chinda & Ors v. Shell BP* (1974) - it was refused by Court to grant an injunction against defendant from polluting plaintiff's land, creek & fishpond, however while arguing on this matter it argued that; since an order of such nature is injurious to a company negatively impacting the revenue accruing...supplementary paper on: Negative effects of the above includes on negative position of Federal Government revenue collection system. It was argued that same conclusions were reached by court in *Shell BP v. Usoro* case. This is made clear in all irregularities that Ajomo who during his time in the oil sector was instrumental in raising the profile of environmental degradation made it very clear that such issues are not adequately addressed since oil companies wield blanket influence and the courts patronize these corporations. The judges paying no heed to the fact that there can be no wisdom in destroying nature as by using something wisely then, it will make sure that economic development preserved.

The situation is however not the same as described that it is in one place of the United States of America. According to Holland (2005), doubles perspectives to environmental impact assessment issue in America, and they can be characterized as firstly, this data will be gathered by the federal agencies in order to know what health and environmentalists there may be

consequences of their action and; to create awareness on any environmental issues that may be of concern according to the appropriate agency action.

The statute named National Environmental Policy Act (NEPA) requires Federal Agencies of the USA that in case of the actions of the Agency are (1) ‘major’ and (2) they ‘significantly’ affect “quality of the human environment”, they will have to provide an environmental impact statement. Most Federal Agencies have established procedures to define what types of decisions need to be given consideration and preparation of environmental impact statements. Judges have interpreted these terms by reference to cases originating in the United States. For instance, “major” has been viewed as a type of an action that “is a significant enough course which necessitates a vast amount of planning, time, resources or expenditure.”

The case of *Rucker v. Wills* (1973) introduces an important point - it was found that defendants, who were corps of engineers, did not have to prepare environmental impact statement on a permit of building a fishing pier and marina. The court concluded that the project was “not major” wherein private character of a project and minimal federal involvement were highlighted.

The key difference that exists explicitly here is the fact that in Nigeria priorities are more focused on revenue generation and monetary benefits above all, it displays openly its disregard to the environmental protection requirements as a result the need for environmental impact evaluation examination is not a priority there, and any recommendations from such evaluations to be used for or against issuing approval for oil and gas prospecting or mining. Instead, they show more interest in collection of information and liability of activities carried out in that field in long term or short term prior to issuance of operational license for that activity.

3.1 The Precautionary Principle

The concept was indeed initially expressed in *Principle 15* of the *Rio Declaration* that calls for an approach by which a broad range and capability-based measure will be employed to protect environment by all states. Regarding risks of a harm which is serious or irreversible, at present there are no full scientific development and/or the possibility of technical measures to control the situation. Certainty, under no circumstances should yesteryears of these reasons convince you that there is not a valid ground to delay the adoption of such measures, which are low cost as far as preservation of environment is concerned.

This category falls within those states which implement the NFE and therefore attracts their attention. The prescriptive nature of this principle is directly deduced from the fact that natural systems should not be exploited but maintained. It is more of a risk management strategy as adequate emphasis has been laid on getting the scientific data for development decision making and there is an obligation to use precautionary measures in accordance with potential damage. It mirrors concepts found in law of torts such as the reasonable foreseeability test and the prevention of harm. This principle has been transposed into many international treaties. In *Article 3(1)* under the *United Nations Framework Convention on Climate Change*, it is provided

The parties should be in a position to prevent, mitigate and ultimately eliminate the root causes of climate change, as well as its side effects. It is important to note that just because the certain scientific knowledge is incomplete, it doesn’t mean that there are no chances of serious

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or irreversible harm hence measures should not be taken; rather than that it implied that policies and measures to address climate change should be cost-effective in order to create global benefits at/with low cost. In the same course, under *Bamako Convention* 4(3) e/f section we read it, interprets that it deals with those needs of banning of importing into Africa and intra-Africanian trading of hazardous wastes-needs that From now on, each party will endeavor to adopt the Japanese/Korean approach to the pollution problem which in part requires among other things not releasing substances into the environment that can affect people or the environment for which there is no direct scientific proof with respect to such harm. The parties agreed to work together for directing suitable measures as a precautionary principle concerning pollution prevention by clean production and capacity equivalence not assimilated permit-based system on emission.

There are numerous approaches to the deployment of the spirit in practice, it is a blend of dynamic leadership and disposition to act in case there are no reasons for action. Within an urban context this principle has its complete practical realization when a central government should be encouraged in doing what is right, by prohibiting certain behaviors which can be harmful to identified environments. This shall also imply regulation on activities, substances amongst others that may harm the environment even when there is no conclusive scientific proof on their danger or majority support. Measures that may help reduce pollution such as waste minimization's redesign, input substitution and clean production processes should be widely implemented.

The referenced document also underscores this as a significant part of the deal and states that 'the precautionary principle' whose author specifies it when doing such is to be employed. Accordingly, if there are threats of serious or irreversible damage, lack of full scientific knowledge should not be used as a reason for postponing cost-effective means to prevent environmental degradation. With this, therefore; and by implication, it could be vigorously suggested that the principle under discussion is a benchmark for all Oil and Gas laws and operations in Nigeria, and conversely shall be used for application/ deployment of a law or laws related to or safeguarding natural environment or management of environment.

3.2. The Preventive Principle

The Nigerian oil and gas laws asides, for instance, also imply that a right could not exist to harm these waters in the course of petroleum exploitation. It also embodies an obligation to avert those perils which are underlain by the CIL rule of not causing serious harm to the environment extraterritorially. Preventive paradigm seeks to trim down the odds for environmental harms whether there is trans-boundary or international harm causal connection.

Presently, as regards disputes between the neighboring states-parties and in situations where the partners of a natural resource are involved, for example if it is a river, the "precautionary principle" should be operated to the effect that every state or states which shares borders with another state or states should take steps so that they will not do anything which may prejudice their neighbor's interests in what is a common resource. Briefly put, State A must see to it that in its plan for some activity that might have possible detrimental effect on State B, the later shall be given prior notice. An excellent example is Pulp Mills – Argentina took steps against Uruguay at International Court of Justice, *inter alia* complaining about

Uruguay's alleged failure to comply with obligation under treaty to hold consultations re-uses capable of affecting Rio Uruguay as waterway between them.

On 26 February 1975 Argentina signed Treaty with Republic of Uruguay. As per some treaty provisions articulated by Argentina republics of Uruguay and Argentina were going to establish joint regime for utilization of river. Under Statute 1974 parties who fail resolve dispute amicably through direct negotiations may refer it to International Court of Justice either party. *Statute* 1975 prescribes functions and parties obligations as regards pollution prevention and liability for damage effects generated by pollution establishment *ad hoc* administration River Uruguay, encompassing regulatory coordination elements. *Republica* Argentina submits more specifically, *Article* 9-13 the statutes provide mandatory prior notification consultation Caruaru part planning execute works liable affect navigation regime river quality its waters. *Republica* Argentina stated government Uruguay unilaterally permitted Spanish company ENCE build pulp mill near Fray Bentos city without observing notification consultation procedure October Argentine

In the same time period, the government gave its grievance about permitting that chain of industries because their operations were causing harm to the environment by then and it even went ahead to complain to him about those specific companies. The industry promoters made representations direct to Uriguan Government and, in spite of his representations Caruaru Sigue persisted to not attend to prescription *Por la norma* 2011-975; Then was convened by the Argentine State for stating the actions of the Uruguayan Republic through him and he complies with the obligations assumed juridic instrument international with reference: the duty of the measures necessary and sensible for the best use of the river Uruguay, there are obligations that require you to give information to Caruaru and or Argentina before the meeting, it is hammered home that procedures prescribed under *chapter* II of the 1975 *statute* are followed. These also include the obligations to protect and preserve the aquatic environment from any kind of pollution and such protection should be given to fisheries, and biodiversity as one of their duties; for example, taking a deep look about environmental impacts that should be authentic and fair to all parties. Combine efforts in preventing pollution, preserving biodiversity and also ensuring the provision of fisheries fishery system.

In its judgment, the International Court of Justice decided that with a majority of eleven to three, the People's Eastern Republic of Uruguay did not violate her responsive obligations under such *paragraphs* as those incorporated in *Articles* 35, 36 and 41 *Uruguay Statute of Rivers*. The Court also concluded that there was insufficient proof was there before it that can lead to the conclusion that Uruguay failed to do its duty in this respect too –namely the protection of fauna and flora- among others, and other things.

The standards are also adopted by Nigeria which is in the context of application of Preventive Principle and there they refer to some specific sectors. The measures are focused on reducing the discharges into Nigerian's environment of the poisons Some other mechanisms include monitoring systems for industries, condition that the industry will use the best available technology in prevention and treatment of waste, directive on environmental audits and sanctions against shortsightedness.

In spite of there being numerous environmental standards and regulatory laws there exists a gap of the expression of rights and responsibilities regarding the organizations that are expected to safeguard these values. Based on findings by this paper, the agency does neither

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have enough human resources nor do they have enough funds for them to effectively perform their duties. The government should financially support National Environmental Standards Regulations Enforcement Agency and ensure staff training in their agency. Hence, it is therefore strongly recommended that along with acquiring legal responsibilities they are also vested powers to regulate oil and gas industries which apparently are being left by criminals to ruin environment without any control or supervision system to interject them.

3.3. The Polluter Pays Principle

It is based on the recognition that in any economic system of cost allocation those who create pollution should bear the costs of their activities. It does not however imply that the general public should be made to pay for the costs but is a method of correcting an externality or internalizing a cost. The polluter Pays Principle embodies a technique for internalizing environment costs in that whoever benefits from environmental degrading activity will bear the cost of such damage. Especially, Polluter Pays Principle is made for giving injured parties, relief to who have suffered harms due to certain harmful activities towards the environment. This principle finds application in United States on making polluters liable for destruction caused to natural environment.

There are scenarios when organ-spiller dangerous ingredients were merely advised and in more severe situations penalized under the repealed *National Environmental Protection Agency Act*. The spiller was also to be held liable including costs of removal that may be incurred by any government body or agency in restoration or replacement of natural resources damaged or destroyed as a discharge and third parties in reparation, restoration, restitution or compensation as may be determined by the agency from time to time. Thus, this is the expression of Polluter Pays Principle for that matter and this is done so that there should not be any externalities as far as liability and environmental pollution are concerned. Nonetheless, it continues to apply because National Environmental Agency has not yet legislated any provision so far till date so it remains peculiar rule on liability for oil pollution which obtain in Nigeria. Even up till now there are peculiarities in this respect.

The award under *Section 11(5) of the Oil Pipelines Act* deals with such cases at present. This is why the paper concludes that besides the *NESEREA Act*, liability should be imposed on perpetrators of pollution for environmental harm caused by activities in oil and gas sector. One may give the above advice and preserve environment at the same time only when it comes to using oil & gas for economic benefits, even if this practice prevents any company in oil and gas sector from being granted an operational license.

4. Conclusions and Recommendations

Oil companies currently operating in Nigeria urgently require to alter their production and consumption approach. They are required to do so by engaging in the Environmental Impact Assessment process; developing policies that will do less harm to our environment and make our natural resources more sustainable. Moreover, if a proposed project shows an Environmental Assessment likely negative impact on the environment it should be abandoned irrespective of the projected subject-matter and the prospects of economic gains that it provides. Hence, since there is likely to be a conflict between environment and economy, the

environment should prevail. In addition, there should be an implementation by the Nigerian government.

The government through policy and legislative measure should promote sustainable exploitation of natural resources, without tolerating a further deterioration of the environment.

Also, active steps should be taken by the government through policy measures to improve the quality of life of people by providing food, education, jobs, health care, water and sanitation. To tackle the menace of poverty and its effects, the government should urgently introduce poverty eradication programs for the people in the oil producing communities.

The government and stakeholders within the industry should ensure that oil companies in carrying out their operations should adopt measures that will increase their energy efficiency and embark on pollution reduction and mitigation projects. The government should ensure through monitoring and enforcement mechanisms that companies carry out their corporate social responsibility in their host communities.

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CHILDHOOD SAFETY BETWEEN LAW, EDUCATION AND SOCIETY

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Abstract: *Children's rights are regulated at national and international levels, all of which guarantee fundamental rights and establish precise responsibilities for parents and the state. Their education is basically a process through which we all want to shape them into responsible adults. Parents, the state, society try to help them develop their skills and personality through all the means at their disposal. Society is equally important in this process of shaping children into future adults, playing a massive role in their socio-emotional, moral and cognitive development, Children are the keys to Paradise, said Eric Hoffer, the great American philosopher. Perfect, serene and pure beings, they are a treasure, the most precious treasure. And yet...*

Keywords: *children, legislation, education, society, Romania, Italy, parents, state, development, citizens, rights, policies.*

Introduction

The most important principle of democracy is that of respecting fundamental human rights. We talk, almost incessantly, about the respect due to the human being, human dignity. Our freedom and peace depend on respecting this principle, it depends on whether or not we are the masters of our own lives.

Children also have the same rights, but adapted to their age and needs. Children benefit from protection both before and after birth, given that the law considers them to be lacking physical and intellectual maturity until the age of 18. This is how the law regulates children's rights. Globally, violence against children is a never-ending problem. Statistics show that 2 out of 3 children suffer every day, from violent punishment at home, which includes physical and psychological abuse, to sexual violence. Every year, approximately 130,000 children and adolescents under the age of 20 lose their lives due to violence. This is the reality at a global level. In Romania, too, the situation is alarming.

Brief Presentation of the Situation in Romania

The Romanian Constitution in art. 49 states: paragraph (1) "Children and young people enjoy a special regime of protection and assistance in the realization of their rights. 2) The state grants allowances for children and aids for the care of sick or disabled children. Other forms of social protection of children and young people are established by law.

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

(4) Minors under the age of 15 may not be employed as employees.

(5) Public authorities have the obligation to contribute to ensuring the conditions for the free participation of young people in the political, social, economic, cultural and sporting life of the country."

Also, Law 272/2004 on the protection and promotion of children's rights states in Article 2 paragraph (1) that: "This law, any other regulations adopted in the field of respecting and promoting children's rights, as well as any legal act issued or, as the case may be, concluded in this field, shall be subordinated with priority to the principle of the best interests of the child."

The provisions of the law establish the notion of child abuse or neglect as any voluntary action of a person who is in a relationship of responsibility, trust or authority towards the child, including parents, which endangers the life, physical, mental, spiritual, moral or social development, bodily integrity, physical or mental health of the child (Emeşe, 2018:308). With regard to neglect, we refer to the omission, voluntary or involuntary, of a person who has the responsibility for the upbringing, care or education of the child to take any measure subordinate to this responsibility, which endangers the life, physical, mental, spiritual, moral or social development, bodily integrity, physical or mental health of the child (Art. 89 (2) Law 272/2004).

The existence of a behavior that can be characterized as serious neglect does not necessarily refer to the existence of aggression or violence, family abandonment. Serious neglect also represents the fact that the minor is deprived of means of support that endangers his health and physical development (SCJ Civil Section, Decision no. 2396/1997).

The annex to Government Decision No. 969/2023 on the approval of the National Strategy for the Protection and Promotion of Child Rights "Protected Children, Safe Romania" 2023 - 2027, states that the strategy in question "was developed on the basis of a close collaboration process between the National Authority for the Protection of Child Rights and Adoption (ANPDCA) and line ministries, public institutions responsible for implementing policies in the field of the protection and promotion of child rights and representatives of the academic environment" (Annex to Government Decision no. 969/2023). The vision of this strategy is to ensure, with the involvement of children, the effective realization of the rights of all children, including the most vulnerable, in all areas of life, by ensuring full access to quality public services.

The content of the strategy states that the current strategy "reaffirms the principles underlying the promotion and respect of children's rights, as adopted by the previous strategy, adding new ones, results from the evaluation carried out on the implementation of the previous National Strategy, which covered the period 2014 - 2020."

The 2021 evaluation report on the evaluation of the implementation of the National Strategy for the Protection and Promotion of the Rights of the Child 2014 - 2020, was carried out under contract no. 43289903/29.11.2019, between UNICEF Romania and Pluriconsult SRL, the evaluation which was carried out between December 2019 and June 2021 in accordance with the Terms of Reference and the Inception Report. The object of the evaluation, according to the Terms of Reference, is the National Strategy for the Protection and Promotion of the Rights of the Child 2014-2020 (Annexes 3 and 4). The Government of Romania

approved this document in 2014 by Government Decision no. 1113/2014 initiated by the Ministry of Labor, Family, Social Protection and Elderly People (currently, the Ministry of Labor, Family, Youth and Social Solidarity).

The 2021 Report shows that the UN Convention on the Rights of the Child, the provisions of the UN Convention on the Rights of Persons with Disabilities (UN CRPD) and the Optional Protocol to this Convention, the objectives and targets proposed within the Europe 2020 Strategy in terms of poverty reduction, the priorities of the Council of Europe Strategy for the Promotion of the Rights of the Child (2012-2015) and the provisions of the European Commission Recommendation of 20 February 2013 "Investing in children: breaking the vicious circle of disadvantage" (2013/112/EU).

The results of this Report show that: the situation of children from disadvantaged socioeconomic backgrounds has registered modest improvements; the percentage of children at risk of poverty or social exclusion has decreased to 35.8%, Romania remaining, however, at European level, with the highest rate of risk of poverty and social exclusion among children; the number of children in the special protection system has decreased very slightly from 58,178 on December 31, 2014, to 50,401, in December 2019, a decrease of 13.4%, the number of placement centers decreasing from 166 to 143; the number of children with disabilities increased between 2014 and 2019 from 70,493 to 72,349, the number of children with disabilities included in some form of education increased from 55% in 2014 to 62% in 2019; the main indicators that determine the impact of the education system have not improved, with the financing of the education system being far from the real needs of the education system, thus facilitating the increase in school dropout, the results in national and international assessments remaining modest and functional illiteracy or, rather, in some cases, non-functional illiteracy, increasing to a worrying level; the number of cases of violence against children has increased from 12,542 in 2014 to 15,996 in 2019; no progress was recorded in terms of the access gap of children from rural areas to services, the discrepancy between urban and rural areas increasing throughout this period; infant mortality was decreasing; progress was noted in terms of managing children's issues at local and county level by SPAS and DGASPC. Regarding the situation of children in conflict with the law, the disparity between urban and rural areas did not change. The authors of the Report believe that, for the future, it is important to invest in the training and education of specialists because the services responsible for respecting the standards of judicial procedures either do not exist in certain areas or are not sufficient, because the local authorities dealing with the development of these services have been modestly involved according to resources and skills, this determining the high rate of recidivism (Evaluation of the implementation of the National Strategy for the Protection and Promotion of the Rights of the Child 2014 – 2020).

It is very important to mention Government Decision No. 440/2022 for the approval of the National Strategy on Social Inclusion and Poverty Reduction for the period 2022 - 2027 dated 30.03.2022, a decision that shows what is the "Global Action Plan, which Romania chooses to support in the coming years, (and which) addresses poverty reduction, combating inequalities, social injustice and protecting the planet by 2030".

In point 4.2. The situation of children exposed to the risks of poverty and social exclusion, shows that: "According to the latest EUROSTAT data available for all 28 Member States of the European Union, in 2017, the values of the relative poverty rate calculated at the

threshold of 60% of the median disposable income per adult-equivalent for these states place Romania in last place in the EU28 ranking Source: Eurostat, EU-SILC. Romania occupies the same position in 2017 and in the EU28 rankings established for the relative poverty rate calculated at the threshold of 50% and 40%, respectively, but this rate is depreciating. Thus, if for the threshold of 60%, the ratio of the values known for this indicator for the EU28 and Romania is 1:1.6, for the threshold of 50%, the value recorded for Romania (17.6%) doubles the EU28 average (10.6%), and for the threshold of 40%, the value recorded for Romania (12.1%) almost doubles the EU28 average (6.0%) (Annex to Government Decision no. 440/2022).

Calculated at the threshold of 60% of the median disposable income per adult-equivalent, the relative poverty rate among children in Romania is over 40% higher than the value recorded among people over 65 years of age, "that calculated at the threshold of 50% almost doubles the value recorded among people over 65 years of age; and that calculated at the threshold of 40% almost triples the value observed in the population over 65 years of age. (Source: Eurostat, EU-SILC).

Balancing the legislation regulating the promotion and observance of children's rights and the grim statistics regarding the real situation of children in our country (violence, poverty, poor education, etc.), the result raises big questions and many reasons for concern. Can this vicious circle be broken?

42 articles of the UN Convention - the foundation of the rights of the child, define the rights of children everywhere.

Among these principles we find: the best interests of the child, non-discrimination, the right to life and development, etc. Furthermore, the convention, ratified by Romania in 1990, clearly establishes that the authorities have the obligation to protect families so that they can fulfill their caring role.

There is an entire organized system that is responsible for protecting and promoting children's rights in our country. The family, the community, and the authorities must collaborate in implementing children's rights. Somewhere this chain breaks.

The questions that arise from the enumeration of these legislative norms that regulate, ensure and promote children's rights are, why, even in the 21st century, do not all children benefit from their respect and application? Why are there unhappy children, whose rights are constantly or sporadically violated? Why are there children who are physically and emotionally abused, children who beg, children who are unhappy because they have to endure loneliness in the countless cases when parents are forced to choose other states in order to be able to offer them a decent living?

For too many years now, there has been talk about the problem of an entire system that needs to be changed. Changed by whom and how and when? The eternal answer: "a joint effort by the authorities, civil society, schools and the media is needed for this change". Answers on paper. In the meantime, we encounter emotionally and physically abused children, children who go to bed hungry, children given to the care of relatives who cry for their departed parents, children killed by violence and everyone's indifference. Of course, during all this time, reports are being drawn up, catalogs are being made, associations are being established, promises are being made, reorganizations are being made, laws are being adopted, challenges are being talked about, debates and research are taking place. Theoretically, every child in Romania has

their rights ensured and guaranteed. Theoretically... In real life, however, there are thousands of children without rights, without protection, without childhood.

The major themes of research and analysis regarding them are related to: child protection against any form of violence, the quality of education, their access to health, combating poverty in families and communities, the quality of social services, improving the situation of children with disabilities, the role of parents, authorities and society.

If we consult the statistics on abuse against minors, we find that in 2025, cases of sexual abuse and exploitation of children reached a critical level, doubling compared to those in 2024.

In Romania, Law 156 on the organization of the activity to prevent the separation of children from their families was published in the Official Gazette no. 484 of May 31, 2023. This law gave rise to heated debates because there were accusatory voices expressing concern about the fact that the Romanian state proposes a census of all children in Romania based on established criteria, carries out a screening of them, after which it determines which of these children represent a "risk of family separation" (<https://www.juridice.ro/679311/separarea-copilului-de-familie-devine-norma-sa-nu-fie.html>). These voices say that a presumption of dysfunction is established for families with children, a presumption that can only be removed by presenting or proving criteria necessary to demonstrate the absence of family vulnerability. Such a regulation annihilates, they say, the most authentic and delicate part of human freedom, related to the relationship of an individual with their own child, the state intervening to decide some limits over the will of the parent.

We give two negative examples in this regard. The case of Ashya King whose parents were arrested for taking their child for treatment abroad. The parents, Brett and Naghmeh King, were arrested in Spain, a country that refused to hand them over to the British authorities. They were put on international wanted list, not because they were feared criminals, but because they wanted what was best for their own child. Brett and Naghmeh King stole their own child from Southampton General Hospital. The child is healthy today precisely thanks to the two parents who refused to give in to the authorities who had already decided that Ashya was lost.

The case of baby Alfie, which has generated indescribable emotions, raises big questions about the limit that a parent can set for the state authorities in a situation where the state makes decisions regarding a minor whose parents are alive and can decide for their child alone, a decision that is diametrically opposed to the decision of the parents who gave him life and who know and understand the interests of their child best. Who and how can set this limit? Doesn't exceeding such a limit actually represent a serious, gross violation of human rights, of the rights of the child? Can't the English state be accused of seriously violating the rights of little baby Alfie and his parents? Is the British judiciary guilty for giving its consent to disconnecting the little baby from the machines that kept him alive, despite the will of the parents?

Indeed, Article 4 of Law 156 explains which children are considered to be at risk of family separation.

Depending on the family that is responsible for raising and caring for the child, that is, in the situation where the family is faced with one or more of the following situations: a) the economic situation and precarious living conditions existing in its family environment and/or in the community, respectively a situation of risk of monetary poverty or extreme poverty; b) the precarious health of one or more family members, including their disability; c) the abusive,

violent environment existing in the family and risky behaviors that may negatively affect the relationships between adults, children and between adults and children.

And in the situation where the child is in vulnerable situations such as delinquent behavior, repeated leaving of the home, alcohol and drug use, attempted suicide and school dropout, he is in such a situation of risk of separation, even though the family he is part of does not fall into any of the situations presented above.

According to this law, the public social assistance service, whose competences we must trust, determines, following an assessment, whether the child is in one of the situations considered vulnerable. After that, this same service is obliged to draw up a service plan that will include the necessary services with which the state, through its competent authorities, will respond to "the identified needs of the child and his family, the social assistance benefits, the interventions necessary to implement the respective plan, the purpose pursued by implementing the plan, who provides those services and for what period of time". This service plan, drawn up by the public social assistance service following the assessment of all aspects related to each individual case, must be approved by order of the mayor.

We note, with some reservation, that the public social assistance service has a series of responsibilities and we wonder to what extent these social assistance representatives will cope with all the challenges and situations they will encounter in carrying out their activities compared to the insufficient number of employees in these services. Also, it is not by chance that we wonder how prepared or if the expertise of these social workers is up to the level necessary to solve such serious problems involving children. Considering the fact that the state charges them with such a great responsibility, we believe that it will also pursue their specialization in this regard.

Moreover, we cannot help but wonder who guarantees us, the parents, that in a few years, the expressions "social environment unsuitable for the child's upbringing and education" or "negative influences on the child" will have the same meaning as they do today. Because a situation can become so-called "vulnerable" depending on how certain terms often used in the law are explained.

Chapter II of the law shows which institutions and services have responsibilities in the activity of preventing the separation of children from their families, namely "the Ministry of Family, Youth and Equal Opportunities, the central public authority which, through the National Authority for the Protection of Child Rights and Adoption, implements the national policy in the field of child rights protection".

We note that the law envisaged that public social assistance services at the level of communes, cities and municipalities would register in the National Children's Observatory all children at risk of family separation and all families with children in vulnerable situations. Law 156/2023, art. 16: "(1) The National Children's Observatory is hereby established, hereinafter referred to as the Children's Observatory, which is a module within an information system developed and administered by the National Authority for the Protection of Children's Rights and Adoption, hereinafter referred to as ANPDCA.

(2) The child observatory represents the set of activities carried out with IT means for the registration by local public administration authorities of children at risk of family separation.

We will see, in the future, whether or not this law will give rise to abuses in terms of establishing the risk situation for the minor child and how the parents of such a child at risk of family separation will react or confront the authorities in their desire to keep their family intact.

Brief Overview of the Situation in Italy

Child safety is today one of the most frequently evoked and, at the same time, the most ambiguous concepts in the entire system of protection of fundamental rights, being frequently invoked as an absolute and indisputable value, without clarifying its legal scope, its normative basis and, above all, its relationship with other constitutionally and conventionally guaranteed rights. In institutional language and in practical application, child safety has become a kind of general clause, capable of absorbing and justifying deeply invasive interventions in family life, often pushing the threshold of public intervention far beyond the limits initially established by the legal system. This expansive function has been repeatedly highlighted by researchers as problematic in terms of the legality and substantive proportionality of public action (Ferraro, 2022). This evolution requires critical reflection not only on the formal legitimacy of the measures adopted, but also on their real coherence with the principle of proportionality and the substantive purpose of protecting the best interests of the child.

In the Italian constitutional system, child protection has never been conceived as a substitute for parental authority, but rather as a subsidiary and residual intervention, activated only in the presence of proven incapacity or serious insufficiency of the parents, according to the model outlined in articles 2, 30 and 31 of the Constitution, which assigns to the family the role of primary social formation, and to the State a function of guarantee and support, not of ordinary substitution (Sesta, 2023). This framework is fully confirmed in the supranational dimension, where child protection is part of a multi-level system of rights that places family life at the center, as the main space for personal development.

Article 8 of the European Convention on Human Rights, as consistently interpreted by the case-law of the Strasbourg Court, requires States not only to refrain from arbitrary interference with private and family life, but also to adopt positive measures aimed effectively at preserving family ties, clarifying that the separation of a child from his or her family unit can be justified only in exceptional circumstances and always subject to a strict assessment of necessity and proportionality (ECtHR, *K. and T. v. Finland*, 2001; ECtHR, *Neulinger and Shuruk v. Switzerland*, 2010). From this perspective, the safety of the child cannot be understood as a value incompatible with the family, but rather as an objective that must be pursued primarily within it, unless this proves impossible for serious, present and demonstrated reasons, the authorities being obliged to take measures specifically aimed at family reunification (ECHR, *Strand Lobben and Others v. Norway*, Grand Chamber, 2019).

Despite the clarity of these principles, judicial and administrative practice demonstrates a progressive expansion of the concept of risk, which is increasingly defined in potential, prospective or merely hypothetical terms, with a shift from concrete risk to perceived risk, which ultimately legitimizes anticipatory and highly invasive interventions (Camerini, 2020). The safety of the child is thus separated from the assessment of a current and objectively verifiable danger and anchored in indicators of social vulnerability, economic fragility or family history which, although relevant for the analysis, do not in themselves constitute a condition of prejudice capable of justifying the restriction of fundamental rights.

One of the most problematic aspects of this development concerns the role assumed by social services and technical-administrative bodies, which are often attributed a decisive role in assessing the safety of a child. The reports drawn up by these services, although formally classified as knowledge instruments, are in fact elevated to the rank of privileged sources of evidence, often kept away from effective critical examination, with a methodology that is frequently opaque and characterized by a mixture of descriptive observations, subjective interpretations and value judgments not always supported by verifiable evidence (Ferraro, 2022; Barone, 2021). The evaluative language used, rich in elastic categories and non-operationalized concepts, contributes to the construction of risk frameworks that are difficult to challenge precisely because they lack a basis in measurable and common parameters.

In this context, juvenile judges risk operating in an extremely conditional decision-making framework, in which technical assessments tend to overlap with jurisdictional functions, transforming the decision into a formal ratification of preconceived decisions. The jurisprudence of the Court of Cassation has repeatedly reiterated that the removal of a minor from the family unit constitutes a last resort and that any intervention that limits parental responsibility must be based on a thorough assessment of the current harm and the impossibility of adopting less invasive measures, excluding automatic decision-making and generalized presumptions (Civil Court, Section I, no. 14426/2021; Civil Cassation, Section I, no. 9691/2022; Civil Cassation, Section I, no. 23320/2024). However, these principles struggle to translate into uniform and coherent practice, leaving room for heterogeneous and sometimes disproportionate interventions.

The tendency to favour separation as the standard response to family complexity is one of the most obvious shortcomings of the current system. Removal, which legally constitutes an exceptional and temporary measure, is increasingly used as a tool for risk management and operational simplification, responding to organizational concerns and limiting institutional liability, rather than an individualized assessment of the best interests of the child (Camerini, 2020). In this way, safety is pursued through separation, rather than through strengthening parenting skills and available local resources.

The consequences of this approach are particularly significant for the psychological and emotional development of the child, as separation from parents and the family context has a profound impact on the child's identity, emotional continuity and sense of internal security. The rupture of primary ties, especially if prolonged and lacking a clear prospect of return, can generate lasting traumatic effects, compromising the very well-being that institutional intervention is intended to protect (Barone, 2021; ECHR, Strand Lobben, cited above). From this perspective, the safety of the child cannot be assessed solely in terms of the absence of immediate danger, but must include the protection of relational and emotional stability.

Other critical issues arise at the systemic and cultural level, as the current guardianship model tends to selectively target families characterized by socioeconomic fragility, migratory origins or a history of difficulties, transforming the child's safety into a criterion for differentiated intervention, which risks reinforcing structural inequalities, instead of reducing them (Ferraro, 2022). Added to this is an often formal management of the child's right to be heard, which is recognized at the legislative level, but undermined in practice when their voice is not in line with the already outlined institutional trajectory (Barone, 2021; ECHR, Neulinger and Shuruk, cit.).

In light of these considerations, the need for a profound rethinking of protection policies is evident, aimed at restoring the principle of proportionality and reaffirming the residual nature of removal. Child safety must be brought back to a relational and dynamic dimension, based on concrete, current and demonstrable assessments and on institutional interventions designed as instruments to support, not replace, the parental role (Sesta, 2023; Cass. civ., Sect. I, no. 23320/2024). Only a system capable of distinguishing real from assumed risk and investing in strengthening family and territorial resources can be considered truly oriented towards protecting the best interests of the child.

Conclusions

Two countries, same problems. A unanimous conclusion is that not all children benefit from the regulations that protect and represent their interests.

In Italy, we observe that the state, through the competent authorities, intervenes far too easily in family life, extracting children from their families for more or less objective interests and reasons. In Romania, the state is preparing or trying, we believe, to ensure the rights of minors in difficulty by burdening social workers with major responsibilities, both with regard to them and their families.

Whether they are in Romania, Italy or any other corner of the world, children need the protection of all of us.

Child safety cannot be reduced to an abstract formula or a simple defensive objective, it must be understood as the result of a complex balance between protection, freedom and responsibility. A system that sacrifices complexity for the sake of simplifying decision-making risks producing new forms of insecurity, undermining trust in institutions and compromising the well-being of the children it aims to protect.

The real challenge lies not in expanding the scope of public intervention without discrimination, but in improving the quality of decisions, restoring the centrality of the law, motivation and family as the main guarantee for the safety of children.

Among the most important rights of children are: the right to health, the right to education, the right to protection from violence, the right to play and leisure, the right to family and care, the right to opinion and expression, the right to protection from exploitation, the right to a decent standard of living. Unfortunately, they are rights on paper.

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THE LACANIAN SUBJECT IN THE CONTEXT OF US LEGISLATION

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Abstract: *The notion of the subject is one met in different areas of the human and real or hard sciences. From literature to biology, the subject is omnipresent but rarely notion that holds the same fundamental substance or role. In the case of law, psychology and grammar we are speaking of the nucleus of analysis in all three areas of study. In this article we will try and see if there is any connection beyond this apparent fact through the lens of Lacanian psychoanalysis and how can all these three areas connect further in order to conjure up new paths of understanding*

Keywords: US law, legal subject, Lacan, Psychoanalysis, legal theory.

1. *We came as Romans (Introduction)*

The concept of the "subject" serves as the bedrock of all fields of study centered on human behavior, yet its definition shifts radically depending on the field of study and of the scientist analyzing the subject itself. In economy, the subject is the person that creates or loses capital and the method by which it happened, in legal theory, more specifically, in the American legal system, a natural or legal person that can acquire rights and obligation, in sociology, the subject is the person as part of a society and in psychology and psychiatry the human which shows certain symptoms or issues that hinder the normal functions of a person is the subject.

We can go further and claim that even hard sciences like physics and chemistry is still bound by the subject. The difference is that the subject is not the studied, but it's the researcher. The researcher becomes the subject studying and reaching new information or confirming ideas previously known or studied. This side of subjectivity is not of interest for our current pursuit.

Political ideology serves as another step in the formation of the subject. Marxism has a long and storied tradition not only of political analysis, but also of cultural, sociological, literary, economic and even scientific analysis with its own presuppositions and ideas that are either taken as fact or combated in order to further the Marxist analytical tradition. On the contrary liberalism and conservatism have similar traditions, even if there is a rarity in seeing someone claim conservatism in academic circles. There is no universally applicable definition of a subject that can satisfy all humanistic researchers and can unify field fully into universal humanistic research. An economical subject of great interest to the economist and be presented as a great example of capitalism may be a horrendous monster from the standpoint of sociology or psychology for the way he achieved his wealth.

Jacques Lacan posits that the subject is a "split creature," born from a linguistic encounter and defined by a fundamental "lack". We will further explain this in the next section, but we wish to start from this point due to the originality of the notion. Throwing what should be the stable nucleus of a science to the wind is bold, if not irresponsible.

The legal system demands a high degree of stability, coherence, and clarity. In legal theory, the "legal subject" is an entity—either a natural person or a legal person (such as a corporation or NGO)—capable of holding rights and fulfilling obligations.

Unlike the Lacanian subject, which is shattered by its introduction to the "symbolic order" and the "real" during the mirror stage of childhood, the legal subject must be a predictable unit that can sign contracts, commit deeds, and be held accountable for its actions. The law operates on the presupposition that the subject is a functional, whole entity. A more common name for this presumption is that of the rational actor. The tension between these two definitions creates a complex intersection: how can the law, which requires a stable actor, account for the Lacanian reality of a split subject which is never whole and never concrete and functional.

In this article, we will navigate these two notions in order to find not only connections, but also form new pathways of approaching the legal subject in the American legal system

2. *Ghost in a Shell (The Lacanian Subject)*

When we think of a subject in psychology, we obviously perceive the patient on Freud's couch or of a stereotypical movie scene of a middle-class American pondering on what makes them miserable. For the most part, this is not a wrong perception in the gaze of contemporary psychological practices. One psychoanalyst that may disagree with this perception is of course Jacques Lacan. In his theories he discussed broadly how the psychoanalytical subject appears. For Lacan, the subject is never a coherent stable notion, it is a split creature that appears only when he is spoken, not spoken too, not spoken of, but spoken by language.

How does such a subject work then? In Lacanian psychoanalysis the subject is not a continuum that holds coherence and as such can be studied like a dissected frog or a medical patient. For our intents and purposes, we will accept that a psychological subject is the result of action and is birth of linguistic encounter, or as Lacan would have it, "a subject is that which cannot be an object". This aforementioned definition, simple as it may appear, further obfuscates our search for a subject. A better way to understand the Lacanian subject is through the lenses of the Cartesian cogito. Rene Descartes pondered the famous maxim, "*cogito ergo sum*", I think, therefore, I am. This phrase in itself has been used by many in order to appear profound but most phenomenologists have argued against the notion and the positions it forms.

We can strictly criticize the maxim by deducing the contrary, if one doesn't think, they do not exist. This would create an ontological nightmare. If we are to take the cogito as a given in the domain of criminal law, for example, a defense such as "my client did not think when he stabbed the victim, therefore, he cannot be accused of the deed, he did not exist at that given time in that specified space". This of course is ridiculous, but technically valid. Lacan approaches this differently, he embraces this dualism of being and non being. The way he goes about it is to differentiate the I that thinks from the I that exists. This is the key to how we should understand the subject. The I that thinks it's unconscious, while the I that exists is conscious.

The subject is split between the state of being in action and not being in thinking. This is the ontological notion of the subject, and yet, it still doesn't achieve a clarity that allows us to work and expand on the original purpose of our little intermission (Bruce Fink, pp.43-45). Let us think of how the subject is formed in its early childhood. In Lacanian psychoanalysis, a child will unavoidably enter what is called a mirror stage. Around 6 months, the baby will be able to perceive itself in the mirror, hence the name, before that the child could only self-actualize through the language used by the parents and other objects.

The moment a child gazes consciously in a mirror it has an epiphany and a split. The mirror shows the child, but the child knows that it is not all. It intuits that there is more to itself than the mirror image. The child having been slowly exposed to the symbolic order by interacting with its parents, relatives, family acquaintances and objects, it slowly formed a logic

of reality but seeing itself in the mirror it will have the shattering introduction to the real. Since the baby will unavoidably approach the mirror stage and find out that its reflection is not a wholistic image it will shedder and form the split subject.

Driven by lack, it will function as a split subject presupposing its own coherence by simply living. It will chase objects that fulfill desire temporarily and end up never truly being whole by obtaining the goal of the phantasy or the formation of a coherent subject. The subject is defined ultimately by the lack and the impossibility of wholeness. It is a presupposition needed for everyday life, both psychological and physical. With this in mind we can finally understand the previously stated definition, the subject is that which cannot be an object, that is to say whole and apparently coherent.

The Lacanian subject is a human who is split in its day-to-day function, the unconscious side is a language that we cannot fully comprehend and the conscious is the human that signs contracts, commits criminal deeds and has to live with the consequences of the thoughts it acts.

3. *Shell in the Ghost (the legal subject)*

When it comes to the subject of rights and obligations, we have an easier time comprehending the notion. It is a generally well understood that a subject of rights or a legal subject is an entity that can and does hold rights and obligations. By legal entity we of course refer to the functional binary of legal persons and natural persons. We call it a binary due to the obvious differences in form and function of individuals and associations of individuals that have a pecuniary or non-profit motive to exist.

There are obvious legal differences between the legal person, and the natural person. The natural person is born while the legal person has to be formed by bureaucratic means, there are rights exclusive to one or the other, there are different institutions that handle that the entity has fulfilled their duties towards the state and law and of course, there is a different social value and role for both (Katrina Geddes, pp.8-10). For the sake of example, we will look at how these legal entities answer in front of a criminal court and how they are allowed to carry out commercial business, both similarities and differences.

Firstly, let's ponder upon the way they show themselves to a criminal court. A natural person is capable of a wider variety of deeds that may lead to a criminal conviction. Be it the way that murder is structured into degrees in common law or the clear-cut codification of the German-Roman legal tradition, we can generalize some basic infractions that all legal systems condemn and frown upon. Murder, manslaughter, theft, muggings and assault, these are all fundamentally considered criminal behaviors by most if not all legislations. We can call such deeds direct crimes, by direct we mean to say that there is a clear culprit and victim of which the rights were infringed. Of course, not all crimes are committed with clear intentions to harm others. For a crime to be punished at its highest degree there must be proof of *mens rea*. If the mental element of a criminal action cannot be proven the classification and punishment will be changed accordingly.

A corporation or an NGO can contribute to such actions, however, there is a lack of clarity in the process of premeditation or in the chain of actions that caused a non-premeditated tragedy to happen. What we mean by clarity, is the multiplicity of a legal person. There is rarely a singular mind that leads an organization to committing a criminal act. There must be a few people to contribute to any and all criminal actions. And since we have talked about the crimes that generally involve a natural person, there are some criminal deeds that can be achieved either by a group of people or by a legal person. Acts such as tax evasion, racketeering,

trafficking both in illegal goods and people and all other manner of economic crimes are generally bound to legal persons.

What separates the crimes we can associate with the natural person done by a group of people associated by the desire to commit a criminal deed and a legal person doing it through a proxy or by mandate is the objective of the person. As we previously stated, the way a natural person and a legal person is formed is obviously different, and the each operates is obviously different. A natural person presents itself in a court of law while a legal person is a multiplicity of moving parts. A crime committed by a group of natural persons out a personal vendetta or the desire to earn ill-gotten moneys is ultimately the equivalent of a unicellular operating in a material and social biome directly. The group fulfills a purpose and then it continues to exist or it seizes once the genetically embedded reason or reasons for the deed stop existing.

Let's take the case of Ken McElroy for example (<https://www.youtube.com/watch?v=rYmYL1umRuU>). Mr. Ken was known as the bully of the town he resided in. He lived in Skidmore, Missouri, USA. The town itself was terrorized by behaviors such as shooting at the town's grocer or harassing the town priest. On June 30, 1981 he was killed while a crowd of at least 30 people were witness. The coroner's report stipulated that he was shot by two different firearms, and yet, not a single town resident said anything about his death. The desire of the town was clear, to get rid of a person who got away with numerous infringements of the law and good morals. It was a clear vendetta against a reprehensive human, hence, not even the legal system made the attempt to find a culprit. The whole town could have been investigated, a whole bunch of people saw the deed being committed but out of a shared, universal and unicellular desire to get rid of the town bully. It was not a legal or moral decision, but it was ununderstandable one.

A legal person is not a unicellular formation of chance or necessity. A legal person is a machinic being. It has to operate according to the wires, gears and engines of its choosing. There is no ad-hoc legal person, it is a concrete formation that has to accomplish a clear objective; however, it is still bound by human desires and intentions.

Is the secretary or newest employee of Jordan Belfort (<https://collider.com/wolf-of-wall-street-true-story-behind-movie-jordan-belfort/>), better known as the wolf of Wall Street, a part of this manipulative scheme, or just innocent bystanders to his individual corruption. Between the head honcho and the participant of crimes committed by legal persons, there is a great deal of distance that separates many natural persons in a long and unclear chain of causality.

The natural persons as legal subject in criminal law exist in a state of clarity, while the legal person is mired in multiplicity and as such, the justice system has to unwind webs of thoughts in order to prosecute the real culprit. When it comes to civil law, the differences are still bound to the formation of these persons but they are also bound to human anthropology and evolution. Again, natural persons being formed through biology has a different set of rights and obligations from a legal person, birth from abstraction and made concrete by the fulfilment of clear legal steps. The one right that a natural person holds and cannot be achieved by legal persons is of course marriage and all rights that surge from the existence of family and blood ties. The formation of a family is a fundamental endeavor to the furthering of society, the primary step of making a family is to get married, or if possible, enter a fac simile such a civil partnership.

The legal person, cannot form a familial unit, just as the natural person cannot have access to certain financial mechanisms allowed only to financial organizations or NGO's. In the US most charities are tax exempt (<https://www.state.gov/bureau-of-democracy-human>

[rights-and-labor/releases/2025/01/non-governmental-organizations-ngos-in-the-united-states](#)), a general rule that is followed by most legislations. In most countries, businesses can request certain tax exemptions and returns for costs that are part of running set business.

Again, by the separation of how these persons are formed allows for differential rights and obligations. The other side of separations is purpose. In the case of civil law we have a reversal of the clarity issue. Natural persons can have a wide variety of purposes, while a legal person has to state its purpose clearly when it is formed.

A natural person may buy a butcher's knife in order to become a better cook, or to commit a murder. A legal person has to bureaucratically record the purchase any object and clearly state each item's use and purpose on inventories and tax returns. Some scholars would argue that the legal subject is of an essential nature when it comes to upholding legal order, while some other would argue that we are faced with the death of the legal subject.

Traditionally, theorists constructed the legal subject in accordance to positive law theory and that different societies posited a different notion of the legal subject. If we are to take Hart's ideas to heart, we are to believe that even primitive humans were legal subjects to some degree (E. Richard Gold, pp. 85-86, 2025). Even if we can hold that true, there is still an issue of infinite regress. Primitive humans had laws, but not rules of recognition and of obligation which determine the modern legal subject. It has a level of advancement which allows us to study the legal practices. Where infinite regression appears is in the root, if there is a separation of rules what is the real root of any laws?

It very much exists outside of the law (E. Richard Gold, p.87, 2025). If we are to apply this idea of infinite regression, we find out that law does not originate of morality or of law, those two ideas require a level of social and political power. Such powers are obtained by means that exist both in legal and illegal paradigms, but it does not purely originate of some original law. In more modern perceptions, such as legal pluralism, there is a stronger focus on the normative aspect of law. Norms can originate outside of law and eventually become a law. Norms are internalized by the subject and as more subjects decide to adopt certain ideas they will transform into laws, be them social, professional, or official legislation (E. Richard Gold, p.93).

On the opposite side, there is a strong argument in regards to the death of the legal subject as we understand it. How can we assert the death of the legal subject if it is of the essence? By forming a new perception of what a subject is according to the institutions that apply the law. By the death of the legal subject, we don't mean to say that the theoretical notion has disappeared, but that the form of the subject that has been accepted by most legal schools of thought in order to give birth to a new algorithmically engineered subject (Katrina Geddes, p.26, 2023). Instead of a human facing the consequences of decisions, good or bad, we now have a long string of algorithms that represent a human, even more than a lawyer would be able to represent its client. A judge is less reliant on its own life experience and humanity as data and probability become the primary source of knowledge from which decisions are derived. The great error and reasonable fear that surges from such a switch is obvious, beyond data not always being sufficiently precise, data abandons the humanity of the subject. Subjectivity is built on the human experience; the statistical subject is built on data. This is not limited to the legal codes or the laws of the land, it is built on an inequality inherent to capitalism and the way it separates the capitalist from the laborer.

In the current US political climate, we observe a devolution towards a form of technological feudalism by which some wealthy barons have become holders of the true power and colonizers of the human mind (<https://www.youtube.com/watch?v=SUTbnjIHfkg>).

By this process of colonialism, we observe how all humans start to copy and merge with the internet, becoming part and parcel of the internet as it seeps into reality. The internet is no longer a place, it is an overlay of the physical world. We become machinic, and lose the subjectivity of the human experience.

The scariest application of the algorithmic subject is the work of the American state working with Palantir (<https://www.nytimes.com/2025/05/30/technology/trump-palantir-data-americans.html>) in order to compile data on the population. This data will unavoidably seal the coffin of the traditional, human legal subject and the birth of the algorithmic subject. We birth a pre-condemned subject that can always be interpellated by the state (Strathausen, Carsten, pp.3-6, 1994)

Regardless of legislation, the legal subject has to have a coherence and a clarity of definition. This is the way law can operate in a functional way, all matters must be clear or gain clarity by trial in the case of common law. Holding this in mind, how are we supposed to merge the Lacanian notion with the necessary stability of legal theory.

4. *To Kill a Mockingbird*

We now understand that the Lacanian subject is a presupposition of necessity that we use to describe the human as it exists and that legal subject refers to any person, be them legal or natural that can acquire rights or be bound to fulfill obligations. As stated in the introduction, the notion of the subject is the fundamental aspect of any science but it is different for every body of knowledge. Is there a form where these two perceptions of the subject can meet?

We can argue that yes, there is a point of connection between the Lacanian and the legal subject. As humans develop and form themselves as subjects of all manners, psychoanalytic, legal, social or economic, they share the fundamental aspects of the human experience. What makes humans humane, is the flaw of living.

All creatures are flawed to some extent or in some form or fashion. The flaws of humanity are bound to appear and repeat both in natural and legal persons. Lacan extensively wrote about two forces that shape our subjectivity and the quality of being a subject, to be precise, he conceived of the ideas of “The Big Other” and the “objet petit a”.

The Big Other, refers to the law that is formed by the paternal figure in a child’s development. While the maternal figure will provide the child with love the father will impose the no, the limit, the blockage of desire. This first no will be repeated through life as the child matures and becomes an adult, it will metamorphize into the laws of behavior in society.

The object A is the disappearing object of desire. Many times, we find ourselves wishing for different things, job promotions, a new car, a different house to rent or buy, and the moment we attain set thing that forms the object of desire we may find ourselves hollow. It’s either not what we imagined, or we just enter the routine of having that object. Lacan theorizes that we don’t desire the object as much as we desire the process of obtaining the thing in itself. The objet petit a does a disappearance trick every time we think we grasp it.

These two forces work in a jagged circle. While the human will search to reach object A, it must traverse the negations of the Big Other, of the paternal no. Here we see the concrete relation between the Lacanian subject and the legal subject.

The natural person will operate through life struggling to attain the object cause of desire and will struggle against legal requirements in order to achieve its purpose. Even if the law in itself requires clarity and imposes rules it still has to deal with the messiness of humanity. Some will choose to fight the paternal interdiction, as such, the legal system must intervene and seize the intention and the path chosen by the subject.

Again, the split subject, a presupposition we engage with in order to analyze human behavior and how we act is hit by the rigidity of laws. The law has to deal with the lack of coherence which defines the split subject. So how does law deal with that?

We have a double axis of interpretation. We have the obvious aforementioned legal and natural person, but we also have the axis of capital power. We have a plethora of cases from the American justice system to justify our axis.

We already spoke of the lack of clarity in criminal cases that involve legal persons. In this lacanian interpretation, this lack of clarity becomes even more confounding and yet it gives us a better resolve. In the social hierarchy of a legal person, many legal formations overlap on each other, the law in itself, the company rules and ultimately the social norms. All of these legal systems will pull at the split subject and for the most part, the system which grants better access to the object cause of desire will win out.

For the previous example of the Wolf of Wall Street, his secretary may have known about all of his shady dealings, but silence and respecting the true laws of the company may have been more satisfactory than respecting the US legal system.

The issue of natural persons committing a criminal act by having a logic to how they function still works in the lacanian paradigm. Even if the cogito and the being are different, in the aforementioned instance of Ken McElroy. The action of murdering the person was the easiest path to obtain a commonly shared desire, that is, to get rid of the town bully. We see the same story play out in the decision making of a group of people that are not legally bound into a legal person, but natural persons sharing into a desire and grouping themselves in an immoral but understandable deed.

This logic is furthered in civil law, keeping the notion of clarity as a decisive factor in how persons are judged. The natural person has to fabricate a reason for his civil action, there is no contradiction between the split subject and the legal subject there. Lacan thinks of all of our actions as being thought after, in moments when we can decipher the unconscious.

The legal person is however in a strange predicament. The law enforces a clarity of all intentions and purposes when its subjecthood is questioned. If any action undertaken by the legal person lacks in motivation it becomes a liability that opens up the gate of felony or criminality. There is always a return to the chaos of the split subject as legal persons are still formations of natural persons with differing intentions, psychological persons and factors that form the individual.

The role of capital in the equation serves as the split subject of the legal system and state itself. America being the fatherland of capitalism as we know it now, it unfortunately serves its progeny to a greater extent than other nations.

The trial of Sean Combs very much elucidates this. By clever legal tactics and by the power of purchase that allows some to acquire the services of great lawyers, we are left with the ugly situation of a monster being condemned to about 4 years in prison even if there is credible proof of him doing far more heinous deeds than those he was convicted of.

What we can say with some degree of certainty is that the shift towards the algorithmic subject will unavoidably diminish the role of the Lacanian and human subject in the court of law. It is very much a passing from the symbolic register, which encapsulates legal interactions, or as previously presented, the No of the father, and the creation of the imaginary system of laws in which the judge stands as a placeholder, not as an integral part of the human law.

What comes after, is a system of legal judgment that uses humans not as decision makers, but as pure imaginary beings that serve a predetermined decision in which no human has intervened, but a set of data decided what is to be done.

5. *Freudian Slip (Conclusion)*

What we have achieved by dissecting the legal subject from a Lacanian perspective is a deconstruction of the norm. We have proven that the legal subject is a concrete notion but it has to battle with the human psyche.

While most humanities subjects require the subject to be clear and articulate as a being, the fact of the matter is that no human is a pristine logical being. We are human, all too human, and this magical trait is both a curse and a blessing. It creates the unique perspective, rich in abstraction and feelings no other species that we know of can achieve.

This state of being human however, comes at the cost of a rich and treacherous psychological existence. The subject of humanities is forever an incoherent mess given shape purely by speech and the analysis that results from set speech. The rules of different fields of study form a further split using its internal logic and language in order to further form a working presupposition used for deeper analysis.

Legal language, both that used by the American legislator or magistrate is functionally a new form of subject splitting to reach its purpose of maintaining social order. Unavoidably, we happen to have errors due to the chain of splitting aspects, never allowing a judge to fully comprehend the mind of the parties he is seeking justice for.

There is no clear solution to this issue. All humans existing as split subjects will unavoidably end up judging pieces of others, and even more sinister, humans will remain split or exaggerate the inner separations and become unable to act with the apparent coherence we engage with when confronted with the force of the law.

What is certain, and must be avoided at all costs, is the extension of the algorithmic subject as it is being developed by the American legal system in tandem with the political and economic systems that are slowly mutating towards the non-human, machine driven legal system that benefits the one who built set machine.

Even if the flaws of a regular legal system that is driven by the humanization of cold legal doctrine, paradoxically, human errors is necessary in order to achieve a fair decision regardless of any case.

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OFFENCES UNDER LAW NO. 206/2025 ON AQUACULTURE. LEGISLATIVE TECHNICAL ASPECTS

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Abstract: *Law no. 206/2025 on aquaculture, which entered into force on December 7, 2025, is an extremely useful legal instrument in the reference field because it establishes the legal framework for the development of this economic sector in our country, while ensuring the possibility of sustainable development in the rural environment. Like any other normative act regulating a specific field, this law also contains the chapter on liability and sanctions, which also includes the part of incrimination norms. These incrimination norms are part, according to art. 173 of the Criminal Code, of the scope of the concept of "criminal law". In this context, it is necessary to analyse the legal content of the offenses in this law, emphasizing the norms of legislative technique.*

Keywords: *aquaculture; offense; sanction; legislative technique; criminal law.*

1. Introduction

Through Law no. 206/2025 on aquaculture (published in the Official Gazette of Romania no. 1120 of 4 December 2025), which entered into force on 7 December 2025, a distinct legal framework was created for the performance of aquaculture activities. From this point onwards, the fishing sector, which remains regulated by the Government Emergency Ordinance no. 23/2008 on fishing (published in the Official Gazette of Romania no. 180 of 10 March 2008, with subsequent amendments and completions), is separated from the aquaculture sector, an aspect also highlighted by the final provisions of Law no. 206/2025, in art. 77 para. (1) of this law being stipulated which provisions are repealed from the emergency ordinance mentioned above.

In art. 2 point 2 of Law no. 206/2025, aquaculture is defined as "the activity of raising or cultivating aquatic organisms, using techniques designed to increase the production of the organisms in question, through population, ensuring food resources, protection from pests, in a framework in which the respective organisms remain the property of a natural or legal person throughout the entire period of raising/cultivation and harvesting".

In art. 1 para. (1) of G.E.O. no. 23/2008 it is provided that "this emergency ordinance regulates the protection, conservation, management and exploitation of living aquatic resources, aquaculture activity, processing and marketing of products obtained from fishing and aquaculture (...)". In the context in which the very title of the emergency ordinance was modified by the entry into force of the provisions of Law no. 206/2025, in the sense of referring only to fishing, and considering that in art. 77 para. (2) of Law no. 206/2025 it is provided that the phrase "fishing and aquaculture" in the emergency ordinance is replaced by the phrase "fishing", we consider it an omission by the legislator to continue referring to aquaculture in

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the ordinance and we propose *de lege ferenda* the elimination of the term "aquaculture" from that normative act. Furthermore, we specify that it will not be possible to replace the phrase "fishery and aquaculture" everywhere in G.E.O. no. 23/2008 because the name of the state institution that manages "the definition and implementation of the policy regarding the conservation and management of living aquatic resources, existing in maritime and continental waters, aquaculture, processing and organization of the market for fishery products, fishing and aquaculture structures" (for details, see: https://www.anpa.ro/?page_id=372, last accessed: December 4, 2025) is still the National Agency for Fisheries and Aquaculture.

In art. 2 point 18 of G.E.O. no. 23/2008, "fishing" is defined as "the activity of extracting living aquatic resources from natural fish habitats, in compliance with the measures for the protection, conservation and regeneration of living aquatic resources". Therefore, fishing is carried out only in natural habitats. Moreover, in art. 2 point 18¹ of G.E.O. no. 23/2008, "fishing for scientific purposes" is defined as "the extraction of living aquatic resources from natural fish habitats and from fish facilities, according to the approved annual plan, at any time of the year, including during periods of prohibition, in any area, for any aquatic species, at any age and size, with the use of any methods, tools, devices and fishing nets, both during the day and at night, based on the special authorization for fishing for scientific purposes". We note that scientific fishing is also carried out in fish farms. This situation seems interesting to us, in the context in which both Law no. 206/2025 and G.E.O. no. 23/2008 use the same terms, for example, "recreational fishing", respectively "fishery" and "fishing", but only some benefit from a definition and this is identical, in both normative acts, or the definitions are different, respectively they are not defined. We take into account that the phrase "recreational fishing" is defined identically in both normative acts, the term "fishery" has a different meaning in each of the two normative acts. Thus, in art. 2 point 22 of Law no. 206/2025, "fishery" is defined as "the set of activities relating to fishing, aquaculture, processing and marketing of fish. This term can also define a segment of this set for a species or a group of species". In art. 2 point 17 of G.E.O. no. 23/2008, "fishery" is defined as "the set of activities concerning fishing, processing and marketing of fish. This term can also define a segment of this set for a species or a group of species". The difference is given by the lack of reference to aquaculture.

The phrase "fishery development" is used in the Emergency Ordinance no. 23/2008 but without being defined, but the definition of this phrase is found in art. 2 point 8 of Law no. 206/2025, as follows: "the basic unit of aquaculture, represented by a production capacity formed by the set of a land or a marine or freshwater area and the fishing assets located on it".

Fish farming developments are: bayou, pond, floating fishpond, reservoir in which aquaculture is practiced, recirculating aquaculture system and submerged aquaculture facilities.

On the other hand, the term "fishery" is not defined in Law no. 206/2025 although it is used. In this context, we consider that in the notion of "recreational fishing" in Law no. 206/2025, fishing, which is not defined, has the meaning in everyday speech (for details, see: <https://dexonline.ro/definitie/pescui/definitii>, last accessed: December 4, 2025), according to the norms of legislative technique (we have in mind the provisions of art. 36 paragraph (4) of Law no. 24/2000 on the norms of legislative technique for the elaboration of normative acts,

republished in the Official Gazette of Romania no. 260 of April 21, 2010, with subsequent amendments and additions), and thus, no distinction is made between the activity carried out in the natural environment or in fishing facilities. However, we cannot overlook the provisions of art. 37 para. (1) and (2) of Law no. 24/2000, in the sense that "in the normative language the same notions are expressed only by the same terms" [art. 37 para. (1) of Law no. 24/2000] and "if a notion or term is not established or may have different meanings, its meaning in the context is established by the normative act that establishes them, within the general provisions or in an annex intended for the respective lexicon, and becomes mandatory for the normative acts on the same subject" [art. 37 para. (2) of Law no. 24/2000]. However, we consider that both Law no. 206/2025 and G.E.O. no. 23/2008 are normative acts on the same subject, given that both activities, aquaculture and fishing, are managed by the same structure, namely the National Agency for Fisheries and Aquaculture, which is why we believe, on the one hand, that the terms used in these normative acts can only have the same meaning, and, consequently, the same legal definition, and, on the other hand, there was no need to define the terms in both normative acts, having the same meaning.

We consider all these aspects important in the context in which we find, in both normative acts, identical incriminations, as we will show below. The only difference between them lies in the field in which they apply, namely some in the field of aquaculture, others in the field of fishing. Thus, if the identical incriminated activity is carried out in the natural environment, the provisions of the Emergency Ordinance no. 23/2008 will apply, and if it is carried out in fishing facilities, the provisions of Law no. 206/2025 will apply.

2. Offences under Law No. 206/2025

We would like to address, first of all, the issue of incrimination containing the reference: "the following acts constitute contraventions (...) if they do not constitute a crime according to the criminal law". As we have shown on other occasions (M. Rotaru, *The Offence of Disturbing Public Order and Peace. Theoretical and Practical Aspects* in the volume of the scientific conference with international participation "Challenges and Strategies in Public Order and Public Safety", 11th edition, University Publishing House, Bucharest, 2025, ISSN 3119 – 9550 ISSN-L 3119 – 9550, pp. 20-25), the delimitation between contravention and crime can no longer be made by referring to the difference in social danger of the prohibited behaviours, given that social danger is no longer an element in the definition of crime. At this point, the differentiation between contravention and crime will be made through a comparative analysis of the norms in which they are described, in order to identify the elements of differentiation that can be ascertained in practice, elements of differentiation that can be located, for example, at the level of the material element or the immediate consequence.

In art. 72 of Law no. 206/2025, five behaviours are described that constitute contravention if they do not constitute a crime, as follows:

„a) the destruction or degradation through negligence of dams, dams and canals, of slopes and banks, of hydro technical installations related to fishing arrangements, if it does not constitute a crime according to criminal law;

b) the reduction through negligence of the water flow on natural or managed watercourses, if this endangers the existence of living aquatic resources within fishing arrangements, if it does not constitute a crime according to criminal law;

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- c) the destruction, degradation or negligent reduction of the perimeter protection areas of fish facilities, if it does not constitute a crime under criminal law; (...)
- f) the failure to install or the destruction of devices that prevent fish from entering water supply systems, irrigation, as well as hydropower installations that have fish facilities as a water source, if it does not constitute a crime under criminal law;
- g) the failure to install or the destruction of devices that prevent fish from entering water supply systems, irrigation, as well as hydropower installations, if it does not constitute a crime under criminal law”.

In the case of the behaviour under art. 72 letter a) of Law no. 206/2025, it is easy to differentiate the misdemeanour from the crime because, considering the provisions of art. 255 of the Criminal Code, which criminalizes the act of negligent destruction, dams, canals, embankments, banks and hydro technical installations are goods, in the sense of the material object of the crime of negligent destruction, but their destruction or negligent degradation is a crime, in the basic version, if it is committed by arson, explosion or by any other such means and if it is likely to endanger other persons or property, respectively, in the aggravated version, if the acts resulted in a disaster [according to art. 254 para. (2) of the Criminal Code, "disaster consists of the destruction or degradation of immovable property or of works, equipment, installations or components thereof and which resulted in the death or bodily injury of two or more persons"]. In the absence of the means shown above or of the specific immediate consequence, the act described in art. 72 letter a) of Law no. 206/2025 can only be a contravention.

We consider the reference, in the introductory part of this approach, to fish farming arrangements important in the context in which the behaviour described in art. 72 letter a) of Law no. 206/2025 is identically specified in art. 63 letter a) of G.E.O. no. 23/2008, both being contraventions if they are not crimes. Since the norm in art. 63 letter a) of G.E.O. no. 23/2008 refers to fish farming arrangements, these being specific to the field of aquaculture, not fishing, we propose *de lege ferenda* its repeal.

In the case of the behaviour described in art. 72 letter b) of Law no. 206/2025, different from the situation in letter a), the negligent reduction of the watercourse, thereby endangering the existence of living aquatic resources within aquatic facilities, could constitute a crime only if we also consider the crime of negligent destruction, living aquatic resources being goods, the act being committed by means of the nature of those described in the norm in art. 255 paragraph (1) or if the consequence in art. 255 paragraph (2) of the Criminal Code occurs.

The behaviour described in art. 72 letter b) of Law no. 206/2025 is identically specified in art. 63 letter c) of G.E.O. no. 23/2008, both being contraventions if they are not crimes. We consider that the norm in art. 63 letter b) of G.E.O. no. 23/2008 should not also refer to managed watercourses because these are specific to aquaculture. We thus propose, *de lege ferenda*, to repeal the reference in the norm to these.

In the case of the behaviour in art. 72 letter c) of Law no. 206/2025, the reduction has the value of rendering the goods provided by the legislator unusable. The arguments presented in the analysis of the norm in letter a) remain valid for the differentiation between a contravention and a crime, in the case of this behaviour.

The behaviour described in art. 72 letter c) of Law no. 206/2025 is identically specified in art. 63 letter d) of G.E.O. no. 23/2008, both being contraventions if they are not crimes. We consider that the norm in art. 63 letter d) of G.E.O. no. 23/2008 should *de lege ferenda* be repealed because fish facilities are specific to aquaculture.

In the case of the behaviour described in art. 72 letter f) of Law no. 206/2025, we note that the form of guilt with which it is committed is intention. Therefore, we consider that the act could be classified as the crime of destruction, according to art. 253 of the Criminal Code. From this perspective, we consider it difficult to differentiate between the contravention in question and the crime of destruction, as long as the act is not committed intentionally by arson, explosion or any other such means and if it is likely to endanger other persons or property, in which case it would be the crime of destruction, in one of the aggravated variants, more precisely the one in art. 253 para. (4) of the Criminal Code. Otherwise, we consider that the act described as a contravention would always fall within the content of the crime of destruction, as we cannot imagine any situation in which the act specifically committed would not be a crime.

The behaviour described in art. 72 letter f) of Law no. 206/2025 is also described as a contravention in art. 63 letter e) of G.E.O. no. 23/2008, with the mention that in this latter article, the reference is no longer made that the water source is from the fish farming facilities. However, since the legislator does not distinguish, in the above-mentioned article of the Emergency Ordinance no. 23/2008, between the water sources considered, we must not distinguish either. We will therefore consider both natural sources and fish farming facilities. However, this cannot constitute the will of the legislator, as there is now a distinct normative act for the regulation of aquaculture. We propose *de lege ferenda* the introduction into the content of the norm from art. 63 letter e) of the Emergency Ordinance no. 23/2008 of the natural source of water, that of natural fish habitats.

In the case of the behaviour in art. 72 letter g) of Law no. 206/2025, we note that the form of guilt with which it is committed is intention, as in letter f). The difference between the content of letter f) and letter g) is the failure to specify, in the case of the latter norm, the water source. Considering the arguments presented in the previous paragraph, the norm in letter g) also includes that in letter f). From this perspective, the norm in letter f) should be repealed, being redundant.

The other aspects specified in the discussion regarding the possibility or not of retaining a crime in the situation in question remain valid.

The behaviour described in art. 72 letter g) of Law no. 206/2025 is also described as a contravention in art. 63 letter e) of G.E.O. no. 23/2008. The aspects presented above regarding the need to supplement this latter norm remain valid.

In art. 73 para. (1) of Law no. 206/2025 we find the criminalization of the act of theft, as follows: "extracting fish, as well as water from fish farms without the consent of the fish farm administrator constitutes the crime of theft, provided for in art. 228 of Law no. 286/2009 on the Criminal Code, as subsequently amended and supplemented".

Fish and water from fish farms constitute movable property and may be the material object of the crime of theft. From the perspective of the direct active subject, in the case of this crime, the author can be any person who meets the general conditions of criminal liability. Criminal participation is possible in any of the forms.

The passive subject is the owner or holder of the fish farm, this being the one to whom the fish and water from the fish farm belong.

From the perspective of the material element, part of the *actus reus* of the crime, it is represented by the action of "extraction". This term is synonymous with "taking" (for details, see: <https://www.dictionardesinonime.ro/?c=extrage> , last accessed: December 5, 2025), which is the one that designates the material element in the case of the crime of theft, according to art. 228 para. (1) of the Criminal Code. For the act to be a crime, the condition that the extraction action be committed without the consent of the fish farm administrator must also be met.

From the perspective of the immediate consequence, we consider the change in the state of affairs of the respective movable assets, namely the fish and water coming from the fish facilities. The causal link does not have to be demonstrated, resulting from the materiality of the act. From the perspective of the *mens rea*, the form of guilt with which the act can be committed is intention, both direct and indirect. We affirm this in consideration of the provisions of art. 16 para. (6) of the Criminal Code. The motive is not an element on which the legal classification of the act in the crime of theft depends, but if it is specifically found, it will be taken into account when judicially individualizing the punishment.

Regarding the purpose, in the crime of theft, in accordance with the provisions of art. 228 paragraph (1) of the Criminal Code, for the existence of the crime, the purpose of unjustly appropriating the movable property of another must at least be pursued, if not achieved. However, in the case of the crime described in art. 73 para. (1) of Law no. 206/2025, the legislator does not make any clarification regarding the purpose. Under these conditions, in the absence of the purpose of unjust appropriation, the act cannot be theft. A solution for this aspect would be for the legislator to intervene to also introduce the purpose of unjust appropriation into the content of the norm in art. 73 para. (1) of Law no. 206/2025 or another solution would be to specify: "the extraction of fish, as well as water from fish farms without the consent of the fish farm administrator under the conditions of art. 228 of the Criminal Code". In a specific case, a person extracts fish from the fish farm but not to appropriate it, but to leave it on the shore to die. In this case, the act of that person cannot be classified as theft, but as destruction, leaving the criminalization provision in the above-mentioned article inapplicable. Being an intentional crime, in which the material element is represented by an action, the crime is susceptible to preparatory acts but these are not punished. The attempt is punished, according to the provision of art. 73 para. (2) of Law no. 206/2025. The crime is consummated when the immediate consequence has occurred.

We have a clarification to make, in the sense that for the punishment of the attempt, it was sufficient that in the content of art. 73 para. (2) to be specified that the attempt is punished. The reference that the punishment is carried out according to art. 232 of Law no. 286/2009, with subsequent amendments and completions was not necessary because it is not a specific formulation for the criminal law. Moreover, for example, in the content of art. 65 para. (2) of G.E.O. no. 23/2008, when the legislator wanted to criminalize the attempt expressly provided for this, in a concise manner.

The phrase "with subsequent amendments and additions" is not specific to criminal law either because it is redundant. The criminal law in force at the time of the commission of the

act will always apply, with the exception of the more favourable criminal law which will be extraactive.

Moreover, analysing the content of art. 74 para. (1) of Law no. 206/2025, we note that the legislator speaks about the application of the provisions of art. 112 of Law no. 286/2009, in their entirety, in order to subject to special confiscation “tools, fishing boats with their engines and tanks, means of transport, firearms and any other goods used to commit the offenses provided for in art. 228 and 229 of Law no. 286/2009, with subsequent amendments and additions”.

We consider that not all the provisions of art. 112 para. (1) of the Criminal Code are applicable in this context, but only those in letters b) and c).

In art. 112 para. (1) letters b) and c) of the Criminal Code it is stipulated that: "the following are subject to special confiscation: (...) b) goods that have been used, in any way, or intended to be used in the commission of an act provided for by criminal law, if they belong to the perpetrator or if, belonging to another person, the latter knew the purpose of their use; c) goods used, immediately after the commission of the act, to ensure the escape of the perpetrator or the preservation of the benefit or product obtained, if they belong to the perpetrator or if, belonging to another person, the latter knew the purpose of their use; (...)".

Also in the content of art. 74 para. (1) of Law no. 206/2025, there is a mention about "the offenses provided for in art. 228 and 229 of Law no. 286/2009. If the legislator specifies in art. 73 of Law no. 206/2025 what theft consists of, in the context of the normative act in question, the same thing does not happen with regard to the offense of aggravated theft, an act incriminated by the provisions of art. 229 of the Criminal Code. More precisely, if the act described in art. 73 para. (1) of Law no. 206/2025 is committed, for the purpose of unjust appropriation, during the night, the offense of aggravated theft will be deemed to have been committed, according to art. 229 para. (1) letter b) of the Criminal Code.

Thus, we propose to supplement the provisions of art. 73 with a new paragraph, which provides that if the act from paragraph (1) is committed under the conditions of art. 229 of the Criminal Code, it will represent aggravated theft.

Another aspect is that related to the content of art. 74 para. (2) of Law no. 206/2025. The legislator speaks about the confiscation of aquaculture products resulting from the commission of crimes, consisting of fish, eggs, other living creatures and aquatic products, however, instead of talking about the application of the provisions of art. 112 of the Criminal Code, as it would have been the case, the latter being provisions of substantive law in the field, the legislator refers to the provisions of art. 249 of Law no. 135/2010 on the Code of Criminal Procedure (published in the Official Gazette of Romania no. 486 of 15 July 2010, with subsequent amendments and completions), article in which we find the general conditions for taking precautionary measures. We propose *de lege ferenda* that reference to be made to the provisions of art. 112 of the Criminal Code.

Another aspect is that of the content of art. 74 para. (3) of Law no. 206/2025. The legislator specifies that, "in the situation where the owner is the author or, as the case may be, an accomplice in the commission of the offenses provided for in this law, the aquaculture products provided for in para. (2) shall be used in accordance with the law". We consider it pertinent to specify that aquaculture products shall not be returned to the author or participant in the offense for which he/she is accused, but *de lege lata* the legislator has lost sight of the

instigator status that the owner of the fishing facility may have. From the logical interpretation of the norm currently in force, using the *per a contrario* reasoning, it follows that aquaculture products provided for in art. 74 para. (2) of Law no. 206/2025 shall not be used in accordance with the law when the owner is the instigator in the commission of any of the offenses provided for by the analysed law. However, this aspect cannot be accepted. We propose *de lege ferenda* to supplement the provision in art. 74 para. (3) of Law no. 206/2025 as follows „(...) author or, as the case may be, instigator or accomplice (...)”.

We also return to the analysis of the provisions of the Emergency Ordinance no. 23/2008, in the sense that in art. 2 point 42 we find the definition of "fish theft" as "the criminal activity that consists of the theft of fish stock in whole or in part, by any means or methods, from fishing facilities". In the context in which the defined phrase is not found anywhere in the emergency ordinance, taking into account that "fishery development" is exclusively related to aquaculture, a field that is no longer regulated by the emergency ordinance in question, and given that the incrimination norm is currently found in art. 73 of Law no. 206/2025, we consider it appropriate *de lege ferenda* to repeal the provision in art. 2 point 42 of G.E.O. no. 23/2008.

3. Conclusions

We consider it appropriate to make legislative amendments and additions in each field of social life in order to regulate each activity as best as possible, so as to ensure the progress of society in general. We note that increased attention should be paid to the activity of drafting legal norms, with an emphasis on respecting the specific nature of the incrimination norms, taking into account the predictable nature that they must have. A solution should be found to avoid using the phrase "if it does not constitute a crime" because this would no longer leave it up to law enforcement agencies to establish the line of demarcation between a misdemeanour and a crime.

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RULES FOR RECOGNITION OF PROPERTY, PLANT AND EQUIPMENT IN FINANCIAL STATEMENTS IN ACCORDANCE WITH ACCOUNTING RULES OF IFRS FOR SME IN AZERBAIJAN

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Abstract: *Property, plant and equipment represent a critical component of enterprise activity and therefore occupy a central position in financial statements. This article presents a comparative analysis of the sections in which these assets are reported and the manner in which they are disclosed. Although the reporting forms and their required content are defined in the accounting rules aligned with the International Financial Reporting Standard for Small and Medium-sized Enterprises (IFRS for SMEs), the guidance lacks detailed instructions on how the information should be presented. The article highlights inconsistencies in reporting formats and issues arising from inaccurate translations of report titles that diverge from the original standards. It further examines the relationship between IFRS for SMEs and the forthcoming IFRS 18 “Presentation of Financial Statements,” which will replace IAS 1 in 2027. Using IFRS 18 as a reference, the study compares disclosure requirements and summarizes key sections related to property, plant and equipment through tabular analysis.*

Keywords: *IFRS, IFRS for SME, accounting rules, financial statements*

1. Introduction

According to the International Financial Reporting Standard for Small and Medium-sized Entities (IFRS for SMEs), the objective of financial statements is to provide information about the financial position, financial performance, and cash flows of an entity that is useful to users in making economic decisions. Moreover, financial statements reflect the outcomes of the management of resources entrusted to the entity. Referring to the conceptual framework of the IFRS for SMEs, the primary users of financial statements are investors, lenders, and other creditors. The identification of financial statement users is a significant topic of investigation. Some studies consider founders and investors as the primary users, while others include financial analysts (PricewaterhouseCoopers, 2007). Unlike the requirements of full IFRS, financial statements prepared under IFRS for SMEs require a **certain degree of reduced disclosure**. Each section of the Standard presents relevant topics that align with the general objectives of small and medium-sized enterprises (SMEs) and are appropriate for all users who benefit from these financial statements, except for individuals licensed in the securities market and entities whose securities are publicly traded on stock exchanges (including shareholders, creditors, borrowers, and employees) (Jafarov & Musayeva, 2022).

Financial statements do not merely reflect past events; they also provide the opportunity to analyze the entity's position based on comparative information.

According to Section 3, Paragraph 17 of the IFRS for SMEs, financial statements comprise the following:

1. A statement of financial position at the reporting date;
2. A statement of comprehensive income for the period, or separate statements of profit or loss and other comprehensive income;

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3. A statement of changes in equity for the reporting period;
4. A statement of cash flows for the reporting period;
5. Notes, including significant accounting policies and explanatory information.

Together, these components aim to provide a comprehensive and coherent picture of the financial health, performance, and resource management of SMEs, thereby enabling informed decision-making by a wide range of users.

2. Materials and methods

This study examines the presentation of financial statements under the IFRS for SMEs and the SME-adapted IFRS frameworks. The primary materials include accounting regulations issued in 2017 and 2019, focusing on the Statement of Financial Position and the Statement of Comprehensive Income. The analysis compares classification formats, income and expense aggregation, and terminology differences between the two frameworks. A qualitative approach was applied, using content analysis and regulatory comparison to identify structural discrepancies and alignment with simplified accounting principles. Supplementary examples from post-Soviet countries were considered to contextualize practical challenges in implementation.

The Statement of Financial Position is presented as an addendum to the final provisions of accounting regulations prepared in accordance with the IFRS for SMEs and the IFRS for SMEs adapted for small and medium-sized entities (SMEs). Under the IFRS for SMEs, the Statement of Financial Position (Appendix 1 to the accounting regulations prepared according to International Financial Reporting Standards) is presented in a single format, classifying assets and liabilities into long-term and short-term categories (Accounting Regulations in Accordance with IFRS, 2017). In contrast, under the IFRS for SMEs adapted for SMEs, the Statement of Financial Position (Appendix 1) can be presented in **two formats**: a) classification of assets and liabilities into short-term and long-term classes, and b) classification of assets and liabilities according to decreasing liquidity (Accounting Regulations in Accordance with IFRS for SMEs, 2019).

According to Section 4.4 of the IFRS for SMEs adapted for SMEs, enterprises are required to present short-term and long-term assets and liabilities in the Statement of Financial Position. In exceptional cases, information may be presented based on liquidity. Similarly, paragraph 96 of IFRS 18 permits the presentation of assets and liabilities according to their liquidity in exceptional cases. However, under the IFRS-compliant accounting regulations, the Statement of Financial Position is presented in only one format.

The sequence of information required in the Statement of Financial Position differs between IFRS 18 (paragraphs 103–104) and the SME-adapted IFRS (Section 4.2). While most of the items included are similar, IFRS 18 presents items in the order of long-term assets, short-term assets, and liabilities, whereas the SME-adapted IFRS presents them according to liquidity.

According to Section 4.2 of the SME-adapted IFRS, the minimum items required in the Statement of Financial Position include: cash and cash equivalents; trade and other receivables; financial assets; inventories; land, buildings, and equipment; investment property; intangible assets; biological assets; investments in subsidiaries; investments in jointly controlled entities; trade and other payables; financial liabilities; current tax liabilities and assets; deferred tax liabilities and assets; provisions; non-controlling interests presented separately within equity; and equity attributable to owners of the parent.

Under IFRS 18, paragraph 103, the Statement of Financial Position should include: land, buildings, and equipment; investment property; goodwill; intangible assets; financial assets; contract portfolios not covered by IFRS 17, paragraph 78; investments accounted for

using the equity method; biological assets under IFRS 41; inventories; cash and cash equivalents; trade and other receivables; assets classified as held for sale under IFRS 5 and those included in disposal groups; trade and other payables; provisions; financial liabilities; contract portfolios not covered by IFRS 17, paragraph 78; current tax assets and liabilities; deferred tax liabilities and assets; and liabilities included in disposal groups held for sale under IFRS 5. Paragraph 104 of IFRS 18 specifies that the Statement of Financial Position should also include non-controlling interests and issued share capital and reserves attributable to owners of the parent.

In practice, under the SME-adapted IFRS, the Statement of Financial Position can be prepared either according to decreasing liquidity or by classifying assets and liabilities into short-term and long-term categories. However, applying two formats for the Statement of Financial Position is inconsistent with the purpose of simplified accounting for small and medium-sized entities. This highlights a structural divergence between the regulatory flexibility intended for SMEs and the need for standardization and comparability in financial reporting.

Table 1. *Statement of Financial Position (Classification of Assets and Liabilities into Short-term and Long-term Categories)*

Section / Item No.	Name of Section / Item
ASSETS	
1	Long-term assets
10	Intangible assets
11	Land, buildings, and equipment
12	Investment property
13	Biological assets
14	Mineral resources
15	Investments accounted for using the equity method
16	Deferred tax assets
17	Long-term receivables
18	Other long-term financial assets
19	Other long-term assets

Source. State Statistical Committee of the Republic of Azerbaijan, updated 2025.

In the Statement of Financial Position prepared according to the classification of assets and liabilities into short-term and long-term categories, the section numbers corresponding to long-term assets in the chart of accounts are also indicated. In contrast, in the Statement of Financial Position presented according to decreasing liquidity, the chart of accounts section numbers are not provided, and assets are arranged based on their liquidity.

Under the simplified accounting framework for SMEs, the presentation of the Statement of Financial Position in two formats according to the SME-adapted IFRS, compared to a single format under the full IFRS framework, contradicts the concept of simplified accounting. This discrepancy highlights a structural tension between regulatory flexibility for SMEs and the objective of comparability and clarity in financial reporting. By providing multiple presentation formats, SMEs may gain flexibility in organizing their financial information, yet this can introduce inconsistencies that challenge stakeholders in interpreting financial health and performance. A relevant case can be observed in **Kazakhstan**, a post-Soviet country that has gradually adopted IFRS-based reporting for both large enterprises and SMEs. In Kazakhstan, SMEs operating under the simplified accounting regime are allowed to present financial statements in either long-term/short-term or liquidity-based formats. However, local regulatory authorities have reported that this dual-format approach has led to discrepancies in financial analysis by banks and investors, particularly in evaluating liquidity and solvency metrics.

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Consequently, many SMEs voluntarily adopt the long-term/short-term classification to ensure consistency and comparability with larger enterprises while aligning with national reporting guidelines. This example illustrates that while the SME-adapted IFRS framework provides flexibility, practical implementation in post-Soviet contexts such as Kazakhstan underscores the need for guidance and standardization to maintain reliability and usefulness of financial statements for decision-making by a broad set of users.

2.1. Statement of Comprehensive Income

Section 5 of the IFRS for SMEs adapted for SMEs has been translated under the heading “Statement of Comprehensive Income and Profit or Loss.” In the English version, it is presented as the “statement of comprehensive income and income statement.” However, in the accounting regulations prepared under the SME-adapted IFRS, it is titled “Statement of Comprehensive Profit and Loss.” The terminology “comprehensive profit and loss” does not accurately reflect the nature of the report, as the concept of comprehensive income exists, while the term “comprehensive profit” is not recognized. In contrast, the IFRS-compliant accounting regulations present it as the “Statement of Profit or Loss and Other Comprehensive Income.”

According to Section 5.2 of the SME-adapted IFRS, an enterprise must present its total comprehensive income for a given period in one of the following ways:

- a) **Single-statement approach:** In this case, the statement of comprehensive income presents all income and expense items recognized during the reporting period; or
- b) **Two-statement approach:** This involves a separate statement of profit or loss and a statement of comprehensive income. The profit or loss statement presents all income and expense items recognized during the reporting period, except for those included in other comprehensive income as permitted or required by the Standard.

Under the single-statement approach, all income and expense items recognized during the reporting period must be included in the statement of comprehensive income. The Standard provides specific treatments for certain items:

- a) **Correction of errors and changes in accounting policies** are presented as retrospective adjustments of prior periods rather than as part of current period profit or loss.
- b) **Four types of other comprehensive income** are recognized separately from profit or loss:
 - Gains or losses arising from foreign currency translation,
 - Certain actuarial gains and losses,
 - Certain changes in the fair value of hedging instruments,
 - Revaluation increases in property, plant, and equipment recognized under the revaluation model.

The statement of comprehensive income must include the following items:

- a) Revenues,
- b) Finance costs,
- c) Share of profit or loss of investments in subsidiaries and jointly controlled entities accounted for using the equity method,
- d) Tax expenses, subject to certain exceptions,
- e) Profit or loss,
- f) Total comprehensive income.

Additionally, the statement should separately present for each period:

- a) Profit or loss attributable to non-controlling interests and owners of the parent,
- b) Total comprehensive income attributable to non-controlling interests and owners of the parent.

In the two-statement approach, profit or loss is presented as the final line of the profit or loss statement, while the statement of comprehensive income begins with profit or loss and

separately presents items of other comprehensive income. According to Section 5.1 of the SME-adapted IFRS, expenses are aggregated based on their nature and function. Accordingly, in the accounting regulations under the SME-adapted IFRS, the Statement of Comprehensive Profit and Loss is grouped by both the nature and function of expenses. However, a significant critique is that the report's title does not align with the IFRS terminology, and the single- or two-statement approach is not consistently applied. The Statement of Comprehensive Profit and Loss is included as Appendix 2 in both the IFRS-compliant and SME-adapted IFRS accounting regulations. The statement can be presented in two formats, either based on the **nature of expenses** or their **function**. In the statement prepared according to the nature of expenses, depreciation related to long-term assets is explicitly presented. In contrast, in the function-based statement, depreciation related to long-term assets is included within cost of sales, selling expenses, administrative expenses, and other operating expenses, rather than being reported separately. Additionally, in the function-based statement, depreciation is also reflected under operating expenses by type of expense.

Table 2. Statement of Comprehensive Income (by Nature of Expenses)

Section (Item) / Account No.	Indicator Name
60	Main Operating Revenue
61 and 73	Other Operating Revenue
-	Increases (Decreases) in Work-in-Progress and Finished Goods Inventory
-	Capitalized Work Performed by the Organization
-	Used Material Inventories
-	Employee Expenses
-	Depreciation Expenses
-	Other Operating Expenses
73 and 61	Other Operating Expenses
62 and 74	Profit (Loss) from Discontinued Operations
-	Operating Profit (Loss)
63 and 75	Financial Profit (Loss)
64 and 76	Extraordinary Profit (Loss)
81	Share of Profit (Loss) in Subsidiaries and Joint Ventures
-	Profit (Loss) Before Tax
90	Income Tax
341	Net Profit (Loss) for the Reporting Period
-	Other Comprehensive Income

Source. State Statistical Committee of the Republic of Azerbaijan, updated 2025.

Table 3. Statement of Comprehensive Income (by Function of Expenses)

Section (Item) and Account No.	Indicator Name
60	Main Operating Revenue
70	Cost of Sales
-	Gross Profit (Loss)
61 and 73	Other Operating Revenue
71	Selling Expenses
72	Administrative Expenses
73 and 61	Other Operating Expenses
62 and 74	Profit (Loss) from Discontinued Operations
-	Operating Profit (Loss)
63 and 75	Financial Profit (Loss)
64 and 76	Extraordinary Profit (Loss)
-	Profit (Loss) Before Tax
90	Income Tax
341	Net Profit (Loss) for the Reporting Period
-	Other Comprehensive Income

Source. State Statistical Committee of the Republic of Azerbaijan, updated 2025.

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However, in the accounting regulations prepared under the SME-adapted IFRS, the statement of comprehensive income classified by **function of expenses** also provides information on operating expenses within the classification by nature of expenses. In this information, depreciation expenses are explicitly presented.

2.2.Statement of Cash Flows

Section 7 of the SME-adapted IFRS for SMEs covers the **statement of cash flows**. This section specifies the format in which the cash flow statement should be presented. The statement separately reports the movements of cash and cash equivalents according to **operating, investing, and financing activities**.

Table 4. Information to be presented in the Statement of Cash Flows

Operating Activities	Investing Activities	Financing Activities
Cash inflows from sale of goods and services	Payments for acquisition of land, buildings, equipment, intangible and other long-term assets	Cash inflows from issuance of shares and other equity instruments
Cash inflows from royalties, fees, commissions, and other income	Cash inflows from sale of land, buildings, equipment, intangible and other long-term assets	Payments to owners for purchase or redemption of company shares
Payments to suppliers for goods and services received	Payments to acquire equity or debt instruments of other companies or interests in joint ventures	Cash inflows from financial liabilities, loans, promissory notes, bonds, mortgages, and other short- and long-term borrowings
Payments to employees	Cash inflows from sale of equity or debt instruments and interests in joint ventures	Payments for repayment of borrowings
Corporate income tax and other tax payments	Cash advances and loans provided to other persons	Payments to reduce unpaid receivables under financial leasing agreements by lessees
Cash inflows and outflows from investments, loans, and similar contracts	Cash inflows from repayments of advances and obligations provided to other persons	

Source. State Statistical Committee of the Republic of Azerbaijan, updated 2025.

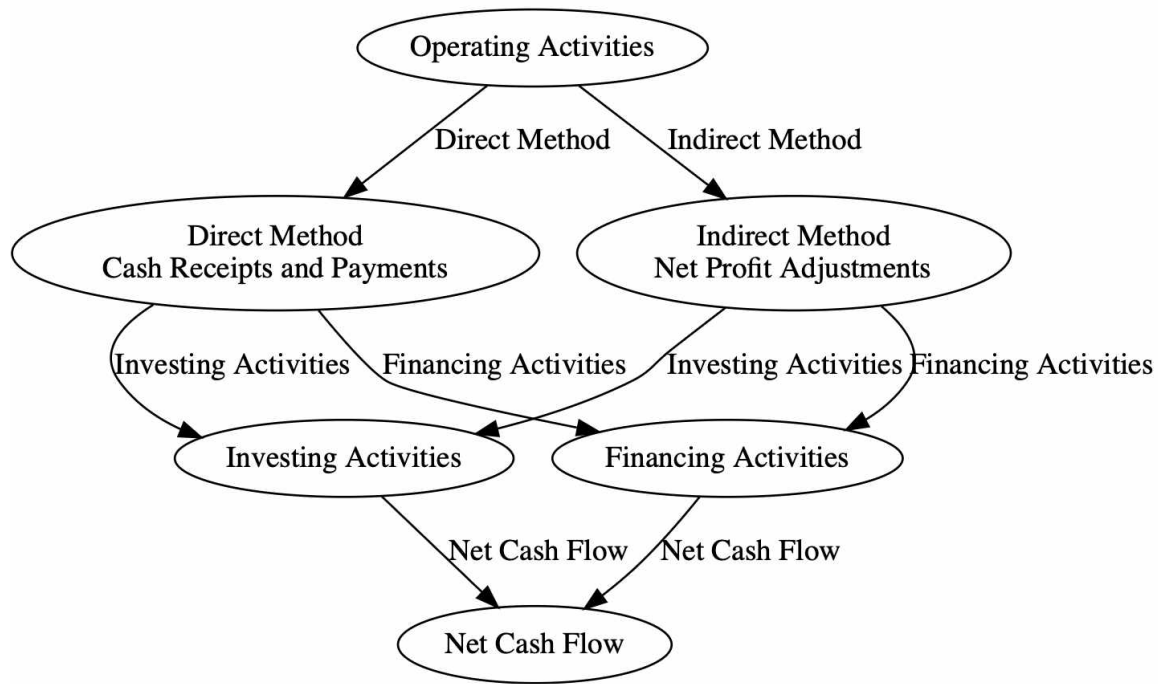
The Statement of Cash Flows can be prepared using two methods: **direct** and **indirect**. While the cash flow sections for investing and financing activities remain identical under both methods, the cash flows from **operating activities** differ. In the **indirect method**, the Statement of Cash Flows includes a line item for **depreciation and amortization** related to long-term assets. In contrast, the **direct method** does not provide explicit information about depreciation expenses. Under the **indirect method**, the operating activities section of the cash flow statement begins with the **net profit or loss** for the reporting period. Subsequently, depreciation and amortization expenses are added. The following sections reflect the changes in cash resulting from differences between the relevant line items in the current and previous period of the Statement of Financial Position, presented as increases or decreases in cash.

Table 5. Cash Flows from Operating Activities (Indirect and Direct Methods)

Cash Flow Statement (Indirect Method)	Cash Flow Statement (Direct Method)
Cash flows from operating activities	Cash flows from operating activities
Net profit or loss for the reporting period	Cash receipts from sales of goods and services
Adjustments for the following items:	Cash receipts from royalties, fees, and commissions
Non-controlling interest	Cash receipts from other income
Income tax expenses	Total cash inflows from operating activities
Depreciation and amortization expenses	Cash payments for goods and services
Losses (gains) related to investing activities	Payments to employees

Other expenses (income) related to financing activities	Cash payments for income taxes
Exchange rate differences (expenses/income)	Cash payments for other taxes
Interest expenses (income)	Cash payments for interest on operating activities
Bad debts expenses	Cash payments for other expenses
Income from overdue accounts payable	Total cash outflows from operating activities
Other non-cash transactions (expenses/income)	Net cash flow from operating activities
Net cash flows from operating activities before changes in working capital	
Changes in the following items:	
Decrease (increase) in inventories	
Decrease (increase) in trade receivables	
Decrease (increase) in other short-term assets	
Increase (decrease) in tax and other mandatory payables	
Increase (decrease) in trade payables	
Increase (decrease) in other short-term liabilities	
Income tax paid	
Interest paid	
Exceptional cash inflows and outflows related to operating activities	
Net cash flows from operating activities	Net cash flows from operating activities

Source. State Statistical Committee of the Republic of Azerbaijan, updated 2025.

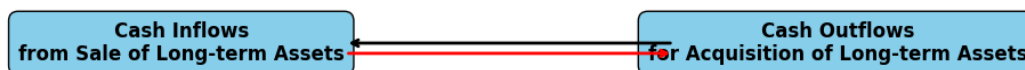


Source. State Statistical Committee of the Republic of Azerbaijan, trained in ML.

The differences between the direct and indirect methods of preparing the cash flow statement show that the indirect method contains more items and is less aligned with simple accounting principles. Typically, the indirect method is suitable for companies with a large number of transactions. However, for small and medium-sized enterprises, preparing the statement using the direct and simpler method reduces the information load for several line items. In both the direct and indirect methods, the “Cash Flows from Investing Activities” section of the cash flow statement includes items related to long-term assets.

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Investing Activities Cash Flow Structure



Source. Ministry of Economy of AR, trained in ML.

2.3. Statement of Changes in Equity and Profit and Loss and Retained Earnings Report

This report reflects the profit and loss for the reporting period, other comprehensive income, the impact of changes in accounting policies, and corrections of errors recognized during the period, as well as the amounts of investments contributed by capital owners, dividends paid, and other distributed funds. For SMEs under IFRS for SMEs, the Accounting Rules include Appendix 3, "Statement of Changes in Equity." This report also reflects information about revaluation reserves related to long-term assets. According to paragraph 12.30 of the SME IFRS-based Accounting Rules, when the revaluation model is applied to land, buildings, and equipment, the assets are recorded at their fair revalued amount, resulting in an increase or decrease in their value. In this case, account 331 "Revaluation Reserve" is used.

- If the value of land, buildings, and equipment increases, the entries are a debit to account 111 and a credit to account 331.
- If the value decreases, a credit is recorded in account 111, and if there is a prior credit balance in account 331 for the respective assets, a debit is made to account 331 up to that balance; the remaining amount is recorded as a debit to account 731 and a credit to account 112.

These entries also affect the statement of comprehensive income or loss.

4. Discussion

The adoption of IFRS for SMEs in Azerbaijan is firmly grounded in the national legal framework, particularly the Law of the Republic of Azerbaijan on Accounting, which empowers the Ministry of Finance to implement IFRS and IFRS for SMEs for domestic entities (IFRS Foundation, 2025a). Under this law, public interest entities, such as banks and large corporations, are mandated to prepare financial statements in accordance with full IFRS, whereas small and medium-sized enterprises (SMEs) may adopt IFRS for SMEs or simplified accounting rules (IFRS Foundation, 2025b). The Ministry of Finance has translated and officially published these standards, ensuring their legal validity for local reporting purposes (Rules for Accounting Based on IFRS for SMEs, 2019). Despite this formal adoption, practical implementation issues exist. The dual presentation formats for the Statement of Financial Position allowed under SME-adapted IFRS (long-term/short-term classification or liquidity-based classification) create inconsistency with the simplification objective of IFRS for SMEs (Jafarov & Musayeva, 2022). Furthermore, the incorrect translation of report titles, such as "Statement of Total Profit and Loss," undermines clarity and comparability with international terminology, which recognizes the concept of comprehensive income rather than comprehensive profit (Jafarov, 2020). Empirical studies indicate similar challenges in other post-Soviet countries. For instance, in Kazakhstan, SMEs allowed to present financial statements in multiple formats experienced discrepancies in liquidity and solvency analysis by banks and investors, highlighting the need for standardization (Hinke & Zborkova, 2013).

Local professional literature confirms that although IFRS for SMEs simplifies reporting requirements, limitations in professional competence and inconsistent audit practices reduce the reliability of financial statements in practice (Jafarov & Musayeva, 2022). Overall, the legal and regulatory framework supports IFRS for SMEs as a legitimate accounting system for Azerbaijani SMEs. However, the coexistence of multiple presentation formats and translation inconsistencies challenges the objectives of comparability, clarity, and simplification. Therefore, harmonizing reporting formats and standardizing terminology is essential to achieve the intended benefits of IFRS for SMEs (IFRS for SMEs, 2021).

5. Conclusions

The main purpose of developing and implementing the IFRS for SMEs (KOS IFRS) was to enable small and medium-sized enterprises (SMEs) to apply International Financial Reporting Standards in a simplified and practical manner. While the standards aim to reduce the complexity of reporting, several issues have been identified in their practical application. Notably, under the KOS IFRS-based accounting rules, the Statement of Financial Position can be presented in two formats, classification by short-term and long-term or by decreasing liquidity, whereas under full IFRS only a single format is prescribed. This dual-format approach conflicts with the principle of simplified accounting for SMEs, potentially leading to inconsistencies and difficulties in comparability across enterprises (Jafarov & Musayeva, 2022; IFRS for SMEs, 2021). Furthermore, Section 5 of the KOS IFRS has been translated as the Statement of Comprehensive Income and Profit or Loss. In English, it is presented as the Statement of Comprehensive Income and Income Statement, while the KOS IFRS rules label it as the Statement of Total Profit and Loss. This terminology is misleading because the concept of total profit or loss is not recognized in IFRS, and the proper term is comprehensive income (IFRS Foundation, 2025b). Misalignment between translation and international terminology can hinder accurate interpretation and reduce the usefulness of financial statements for stakeholders, including investors, creditors, and regulatory authorities. Based on these observations, several recommendations are proposed. It is necessary to harmonize the Statement of Financial Position by standardizing the presentation format to a single, simplified version aligned with IFRS for SMEs principles, which will reduce confusion and improve comparability. The report title should be corrected by revising the Statement of Total Profit and Loss to Statement of Profit or Loss and Other Comprehensive Income, in line with internationally recognized accounting terminology (IFRS Foundation, 2025b). Providing clear guidance for SMEs on the practical application of IFRS for SMEs, including examples of reporting and disclosure formats, will ensure consistent implementation. Targeted training programs for accountants and auditors of SMEs should be conducted to ensure proper understanding and application of KOS IFRS. Regulatory oversight should be strengthened to ensure SMEs follow standardized reporting practices and enhance the reliability of financial statements for all stakeholders.

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THE IMPACT OF ELECTORAL CONFLICT ON SOCIAL DEVELOPMENT: NIGERIA AS A CASE STUDY

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Abstract: *Electoral conflict has destroyed every aspect of Nigeria's existence including social development and democratic stability. The resort to violence and conflict to pursue political goals has been a steady occurrence in Nigeria's political landscape since independence. Fraudulent practices and ethnic and religious tensions have continued to sabotage the will of the electorates and have far-reaching consequences, including loss of lives, destruction of properties and displacement of people. The election of Nigeria in the fourth republic has been plagued by electoral conflict and unfortunately, the youths have been at the forefront of this electoral conflict. This paper explores the impact of electoral conflict on Nigeria's key social indicators such as education, healthcare, infrastructure, and community cohesion. It examines the root causes of electoral violence, including political manipulation, weak democratic institutions and ethno-religious tensions while analyzing their ripple effects on social progress. This paper in adopting a doctrinal methodology data collection method and relying on relevant statutory provisions and case laws will highlight the significant impact electoral conflict has on Nigeria's socio-economic development including undermining infrastructural development, political stability, economic development, and increasing religious tension etc. This research enriches the broader discourse on the need for robust democratic practices in governance and social development, offering valuable insights for legal professionals, political leaders, lawmakers, law students and social commentators alike.*

Keywords: *Conflict, Election, Social Development, Politicians, Legal Practitioners.*

1. Introduction

The account of elections in Nigeria can be traced back to the colonial period when the country was a British colony. The first election held in Nigeria was the 1951 general election, which was held under the Lyttleton Constitution (Chinwo, 2020). This election unveiled the beginning of a new era in Nigerian politics, as it was the first time that Nigerians were allowed to participate in the democratic process and elect indigenous leaders. The 1999

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general elections marked the beginning of the fourth republic in Nigerian politics, as it marked the end of military rule and the return to civilian democracy (Yagboyaju, 2003).

Since her embrace of civilian rule, Nigeria has held several general elections, including 2003, 2007, 2011, 2015, 2019, and 2023 elections. The conduct of elections in Nigeria has been marred by conflict and malpractices, undermining social development and democratic legitimacy. This is largely seen within the ambience of loss of democratic values and legitimacy, and potential social unrest hence this study focuses on electoral conflict and its impact on Nigerian's social development and extends to all electoral laws and regulations governing the conduct of elections in Nigeria. It examines the impact of electoral conflict on social development in Nigeria, focusing on the period between 1999 and 2023. By analyzing the historical context of Nigerian elections, this research aims to identify the root causes of electoral conflict and its effects on social development, ultimately providing recommendations for improving electoral integrity and promoting social cohesion. It also seeks to educate the electoral umpire and political gladiators on the areas of immediate concern to ensure credible and transparent subsequent elections that will impact positively on Nigeria's democratic practice.

1.2 Historical Overview of Nigeria's Electoral System and Conflict

Electoral politics and elections in Nigeria are often laced with fractious violence which often compromises the integrity of elections. The return to democracy in 1999 has multiplied rather than diminished the incidences of electoral violence in Nigeria (UNDP 2023). Conducting a free and fair Election seems like a delusion in Nigeria and there seems to be no hope for the electoral system of Nigeria. Political violence has become a stain on our democracy, and the political class has not relented in employing their thugs and loyalists to release mayhem during the election season in Nigeria.

Nigeria has always been ranked as one of the most violent Countries when it comes to elections and this speaks a lot about our values as a Nation. One recurring phenomenon in the unending saga of violence in the Nigerian democracy is electoral violence which began in the First Republic and continues till this present fourth Republic dispensation. Nigeria has witnessed about six elections, and all are characterized by violence before, during and after the election (UNDP 2023).

Nigeria's First Republic was plagued by conflicts, particularly during elections, due to the country's ethnically based federal regions (Nwalie, 2025). This led to an uneven distribution of power and resources, creating tensions among the Hausa-Fulani dominated Northern region, the Yoruba-dominated Western region, and the Igbo-dominated Eastern region. The political landscape was further complicated by ethnically based parties like the Northern People's Congress (NPC), the Action Group (AG), and the National Council of Nigerian Citizens (NCNC), which exacerbated regional and ethnic tensions.

Several key conflicts marked the First Republic: The Census Crisis (1962-1964): Disputes over census results sparked allegations of manipulation and regional tensions; the General Strike (June 1-13, 1964): A nationwide strike protested the government's handling of the census crisis and other issues, the General Election (December 1964): Violence, intimidation, and allegations of rigging marred the election, the Western Regional Election

(October 1965): Controversy and violence surrounding this election contributed to the collapse of the First Republic (Haruna, Md Nor, Ismail, Murni, 2023).

There was also remarkable electoral conflict during elections in the second republic ranging from violent intimidation, and allegations of widespread rigging. These conflicts ultimately led to a military coup which overthrew the government, marking the beginning of military rule in Nigeria (Moh'd, 2025).

There was widespread violence following allegations of fraud regarding the 1999 election that ushered in the presidency of Olusegun Obasanjo (Adebajo, 2022). It is estimated that more than 80 people died and similarly at least more than 100 people were killed during incidents of violence triggered by federal and state elections in 2003 and over 300 people lost their lives in connection to electoral violence four years later with pre-election violence alone claiming more than 70 lives (Adebajo 2022). Again in 2011, post-election violence led to the death of at least 800 people over three days of rioting in 12 states across northern Nigeria the worst case so far in the political history of Nigeria. The violence began with widespread protests by supporters of Muhammed Buhari following the reelection of President Goodluck Jonathan who is a Christian from the Niger Delta region of Nigeria (Orji and Uzodi, 2012).

Even the 1993 presidential election widely adjudged to be the freest in Nigeria and with no serious episodes of violence did not have a clean record as its annulment by Ibrahim Babangida-led military administration triggered public outcry and a wave of protest. Campaign for Democracy headed by then Beko Ransome Kuti estimated that over 100 peaceful demonstrators and passersby were gunned down by security agents who were supposedly trying to contain the violent offshoot of the July protest.

Ahead of the 2023 elections, candidates and leaders of 18 political parties agreed in September 2022 to sign a peace accord committing to a peaceful campaign but this did not stop the violence witnessed before, during and after the election (Election Watch, 2023). The 2023 election stands out as one of the most controversial in Nigerian political history considering the age-long track record of maladministration the outcome of which was expected (Ojiako, Umeasiegbu, Lawrence, and Okoye, 2023). The promises of Muhammed Buhari's administration to ensure free and credible elections turned out to be stage-managed as they were unable to correct the ills associated with the system. Attacks against voters, party faithful and INEC staff were prevalent during the 2023 election with Lagos State witnessing the worst incident as Mc Oluomo, a well-known thug in Lagos State and APC supporters were seen stopping people from voting and intimidating them just because they are Igbos or look like Igbos (Ayeni and Ayantoye, 2023).

Political violence in Nigeria during elections will never end because the politicians have mastered the act of using ethnicity and religion to divide the people.

1.3 Root Causes of Electoral Conflict in Nigeria

The orderly transfer of power from one government to another in accordance with democratic norms has been problematic in the Nigerian polity and electoral violence has become a clog in the wheel of democratic progress as violence always manifests during pre-election, the election and post-election period. Factors responsible for electoral conflict in Nigeria include but are not limited to the following.

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Electoral violence in Nigeria is primarily due to the perception of politics and political office as investment and as an avenue for the acquisition of extraordinary wealth through corruption which is otherwise not possible through any form of legitimate vocation and enterprise and because of these Nigerian politicians turn electioneering and elections into warfare in which violence, ethnic and other forms of primordial sentiments and prejudices are employed (Alemika, 2011).

Also, politics generally in Nigeria has been conducted with a certain amount of bitterness and it appears that a person belonging to a party becomes an enemy to the rival political party which is the opposition party. The attractiveness of public office engenders an investment mentality. Political investors and other major financiers of the political process for individuals seeking political office expend huge sums of money on the electoral process with expected returns therefore no amount is too much to use in instigating electoral violence even expending the lives of opponents and valueless youth (Anifowose, 1982).

Moreover, ineffective law enforcement encourages electoral conflict in Nigeria. None enforcement of law and non-adherence to same in the electoral process promotes violence during elections due to lack of political will by the political class. Political actors, players, party supporters and political thugs violate the laws that governs the rule of politicking with impunity due to the inability of the government and other law enforcement bodies to compel obedience and it is worthy to note that when the administrators of the political process are unwillingly to enforce the rules, a lot of opportunities are created for violence and if the law does not prevail then it is tantamount to the absence of rules governing the conduct of the elections (Olayiwola, 2014). The weak legal framework in Nigeria forms the fulcrum upon which the culture of violence is built and sustained resulting in violence, arson, and incessant killing. When the rule of law is weak, the judicial system becomes ineffective and there are ineffective penalties that make the probability of punishment of offenders low thus creating a fragile and corrupt system (Aiyede, 2007).

Furthermore, poverty is another factor that hastens the occurrence of electoral violence in Nigeria. The scourge of poverty in Nigeria is an incontrovertible fact that results in hunger, ignorance, malnutrition, disease, unemployment as well general human hopelessness. The massive poverty engulfs Nigerians and hence is a huge asset to Nigerian politicians. The alarming rate of unemployment gives the youth away as willing tools for the perpetration of violence with little financial inducement. The high spate of deprivation and human hopelessness of the Nigerian youth force them to take readily available job opportunities which perpetrate election violence and the endemic poverty situation easily plays the youths into the hands of the unscrupulous politicians who manipulate them by dangling irresistible baits for the youths to undertake electoral violence and more than often than not political violence is paid for and been used as a tool by prominent Nigerians to bolster their political and financial positions (Danjibo, and Oladeji, 2007). Rigging is also a predisposing factor that easily makes the entire process violent, and experiences of past elections reveal that subverting the electoral process through massive, organized fraud does engender violent upheaval, before, during and after an election. The use of political thugs by politicians to manoeuvre the electoral process in perceived unflavoured areas does cause violence if resisted by the opposition or the citizenry and when an unpopular candidate is

declared the winner of the election, violence always greets such announcement (Awojobi, 2022).

The media indulgence in a campaign of clumsy, mudslinging and defamation or slanderous attack on other political actors cannot be overlooked as well. The media's spread of sensational political and motivated opinions engenders violence by succumbing to the influence of selfish politicians to use their outfits as a propaganda launch pad (Awojobi, 2022). There is also the godfatherism father. The politics of godfatherism have been very popular in Nigeria since her independence. Politicians whom the constitution has ended their legitimate administration constitutes themselves a legion of kingmakers and deciders of who must be where politically (Agidi, 2022). These chosen political leaders become stooges in the hands of the past leaders as they reward them as agreed from the beginning. The politics of godfatherism make mediocrity rather than meritocracy become the parameters of recruiting leaders. Political thugs are recruited as agents by the leaders and their godfathers to carry out the bidding resulting in electoral violence. The godfathers have become a force to reckon with since the return of democracy in 1999 and they are the ones who finance, recruit and empower the political thugs who engage in electoral violence to satisfy the wishes of their sponsors (Aliyu, 2018).

2. Legal Framework Governing Elections in Nigeria

The major law that governs the electoral processes in Nigeria is the Constitution of the Federal Republic of Nigeria, 1999 Constitution. Sections 65, 106 131, and 177 thereof provide for the qualifications for candidate to be elected to various political offices in Nigeria. Qualification is a condition precedent for participating in any election as a candidate (Ikenna, 2024). The right to aspire to an elective office and participate in any election in Nigeria as a candidate is a right that is attached to citizenship. Consequently, sections 25, 26 and 27 of the Constitution of the Federal Republic of Nigeria 1999 provides that citizenship status may be acquired either by birth, registration or naturalization. Thus, any citizen of Nigeria, regardless of how his citizenship is acquired is qualified to run for election as a member of the National Assembly and the House of Assembly of a State. Only persons who are citizens by birth are qualified for election to the Offices of the President and Vice-President; Governor and Deputy-Governor of a State respectively.

Again, the Constitution prescribes different age limit for various offices to be contested in any general elections in Nigeria. Only candidates who attain the requisite age at the time of the election are qualified to participate in such elections. There are different age prescriptions for different elective offices under the Constitution. They are:

- For the Office of the President and Vice-President, the prescribed age is forty (40) years.
- For the Office of the President and Vice-President, the prescribed age is forty (40) years.
- For the Office of the Governor and Deputy-Governor, the prescribed age is thirty-five (35) years, and this also applies to election to the Senate.
- For membership of the House of Representatives and the State House of Assembly, the minimum age is thirty (30) years. However, Not Too Young to Run Act reduced the constitutional age.

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- The Act reduced the age of running for elective positions in the House of Assembly and House of Representatives from 30 to 25 years old, the Senate and Governorship from 35 to 30 years old, and President from 40 to 35 years old. Also, any person seeking to contest election in Nigeria, regardless of the elective office in issue must have a minimum educational attainment of, up to, at least, school certificate level or its equivalent.

The first category under the meaning ascribed to “School Certificate or its equivalent” is a Secondary School Certificate or its equivalent or Grade II Teacher’s Certificate, the City and Guilds Certificate. The second broad category of educational qualification stated in section 318 of the Constitution is “education up to Secondary School Certificate or its equivalent” (Ikenna, 2025). This category is different from the first because what is relevant under this category is only educational attainment up to Secondary School Certificate or its equivalent, and not, the certificate itself. What the Constitution prescribes is that such a candidate shall be qualified if he has been educated up to at least School Certificate level. Endorsing the provision, the Court of Appeal in (*Imam & Ors v Sheriff & Ors* (2005) held that what is necessary to meet the requirement is not evidence that the person passed the examination but evidence that the person was educated up to, at least, School Certificate level or its equivalent. In addition, no one is eligible to contest an election without first being a member of a political party; and sponsored by the same political party for the election. It is a mandatory constitutional requirement that only members of a political party are qualified to contest elections as was held in (*Onejeme v Azodo & Ors* 2005)

The Electoral Act, 2022 mandates the Commission to issue notice of election. In the words of the provisions, the Commission shall, not later than 360 days before the day appointed for holding of an election under this Act, publish a notice in each State of the Federation and the Federal Capital Territory- Stating the date of the election; and appointing the place at which nomination papers are to be delivered. The notice shall be published in each constituency in respect of which an election is to be held.

By the virtue of section 34(3) (a) of the Act, INEC is required to suspend elections for not more than 21 days in cases where a nominated candidate dies after commencement of an election but before the announcement of result and declaration of winner. The Act equally empowers INEC to review within 7 days declaration of election result and return where it determines it was not made voluntarily or contrary to the provisions of the law, regulations and guidelines, and manual for the election.

Furthermore, the Commission is mandated by the Act to maintain a National Electronic Register of Election Results which shall be a distinct database or repository of polling unit by polling unit result, including collated election results, of each election conducted by the Commission in the Federation, and the Register of Election Results shall be kept in electronic format by the Commission at its national headquarters, and which should be made available to any member of the public upon request and payment of prescribed fees

Unlike the Electoral Act, 2010, this Act expressly provides that to vote, the presiding officer shall use a smart card reader or any other technological device that may be prescribed by the Commission, for the accreditation of voters, to verify, confirm or authenticate the particulars of the intending voter in the manner prescribed by the Commission. In addition,

the Act clothes INEC with the discretion to prescribe method of transferring results including total number of accredited voters and results. Again, section 51 of the Act provides that the total number of accredited voters will become a factor in determining over-voting at election tribunals. Thus, where the number of votes cast at an election in any polling unit exceeds the number of accredited voters in that polling unit, the presiding officer shall cancel the result of the election in that polling unit.

Augmenting the constitutional provisions, section 84(12) provides that anyone holding a political office must vacate the position before he or she can be eligible to participate in a primary election, convention or congress of political parties either as a candidate or as a delegate. The authors argue that the import of this section is that political appointees are barred from participating actively during the convention of their respective political parties for the purpose of nominating candidates for elective positions nor be voted for, save that such appointee resigns prior to the convention or congress (Nwakoby, and Ihediuche, 2022)

INEC in exercising the powers conferred on it by the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Electoral Act 2022, issues guidelines for the conduct of elections into any elective office in Nigeria. The 2022 Regulations and Guidelines supersede all other regulations on the conduct of elections that have been issued by the Commission, and it shall remain in force until replaced by a new regulation or its amendment. In (*Air Commodore Yushau v INEC*, 2019) the court was emphatic that “the manual for the conduct of elections and their guidelines are meant to be obeyed.”

In the course of collation of results, an election result shall only be collated if the Collation Officer ascertains that the number of accredited voters agrees with the number recorded in the BVAS and votes scored by political parties on the result sheet is correct and agrees with the result electronically transmitted or transferred directly from the PU as prescribed in these Regulations and Guidelines.

However, where an election is postponed as a result of serious breach of the peace or natural disasters or other emergencies in line with section 24 of the Electoral Act, 2022, and it is ascertained that the total number of voters who collected their PVCs in the POs affected by the postponement is less than the margin by which the leading candidate is ahead of the second candidate in the election, indicating that the result of the election will not be affected by the outcome of polls in the PUs affected by the postponement, clause 59 provides that the Returning Officer shall make a return for the election in the constituency. Notwithstanding the INEC Regulations and Guidelines, in (*Obi & Anor v INEC & Ors*, 2023), the court held that by law, the INEC Regulations and Guidelines for the conduct of elections, 2022 is subordinate to the Electoral Act; where a provision of the Guidelines conflicts with the Act, the Act prevails. To make relevant the 2020 Police Act, section 126(3) creates offences on election day. Highlighting the gravitas of the acts, subsection (3) clearly provides that a person who contravenes any of the provisions of this section commits an offence and is liable on conviction to a fine of ₦100, 000 or imprisonment for a term of six months for every such offence. These offences make room for the relevance of the Police Act, 2020 in electoral processes. Section 4 (a) to (e) of the said Police Act 2020 provides as the primary functions of the Police Force in the conduct of election as follows:

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Prevent and detect crimes and protect the rights and freedom of every person in Nigeria as provides in the Constitution, the African Charter on Human and Peoples Rights and any other law, maintain public safety, law and order; protect the lives and property of all persons in Nigeria; enforce all laws and regulations without any prejudice to the enabling Acts of other security agencies; and discharge such duties within and outside Nigeria as may be required of it under this Act of any other law. Consequently, the Act empowers the Police to arrest, investigate and try a suspect or defendant alleged or charged with committing an offence, in this case, electoral offences, established by an Act of the National Assembly or under any other law. Police Act 2020 in its pro-activeness, the Act clothes the Police with the discretionary power to intervene for the purpose of preventing the commission of an offence.

2.2 Impact of Electoral Conflict on Social Development/Case Studies

Electoral violence has severe consequences on a country's development, as seen in Nigeria. The impacts of electoral conflict on social development include are multifaceted. Electoral violence leads to unstable security, disrupting public order, increasing internally displaced persons and refugees, and militarizing society. For instance, the 2007 elections in Nigeria saw a complete breakdown of law and order. This instability also leads to loss of lives, properties, and exposure to infectious diseases (Siibaway, Majialuwe, and Titigah, 2024). Electoral violence also breeds loss of lives and properties as was the case during the 2008 political violence in Jos Nigeria where over 500 people were killed, thousands displaced and properties worth billions of naira burnt down, looted and destroyed (Ugiagbe, 2010). In addition to the insecurity, there are attendant costs like increased security votes, and the resources spent on repairs of damaged infrastructure and resources could have been spent on human and social development and this adversely affects the social and economic well-being of the Country (Ugiagbe 2010).

Furthermore, human rights violations accompany electoral violence, with security agents harassing, abusing, and murdering citizens (Thompson Bobby Ugiagbe 2010). The 2023 presidential election saw violations of fundamental human rights, including threats and killings. This pervasive violence demoralizes the electorate, leading to disfranchisement and deprivation of citizens' rights. Elections are a significant financial burden, with costs associated with management, competition, and monitoring (Alihodzic, 2012). Electoral violence squanders resources, destroys communities, and has negative economic consequences. Many Nigerians lose jobs due to electoral violence, affecting the confidence of investors and relief organizations who provide aid to the refugees. They also face logistics and security challenges due to electoral violence and in the long run the crisis also affects the confidence of investors. Also, this it leads to lack of confidence in the electoral process and election management bodies contributes to voter apathy (Mataka and Nkandu, 2020). Nigerians have lost faith in INEC and politicians, leading to decreased participation in elections. Registration requirements also discourage voters, adding to the stress of everyday life. Nigerians have also lost confidence in the politicians who fail to work for the masses once they are elected hence the citizens will prefer to stay at home than stress themselves coming out to vote.

3. Legal Responses and Reforms

Effective electoral conflict resolution requires a multifaceted approach, incorporating existing legal mechanisms, recommendations for legal responses, and legal reforms. Existing Legal Mechanisms for Conflict Resolution. Electoral Laws and Regulations: Strengthening electoral laws is crucial in preventing and resolving electoral conflicts. This can be achieved by clarifying ambiguities, addressing loopholes, and ensuring that laws are up-to-date and relevant. Independent National Electoral Commission (INEC): Enhancing the capacity of INEC is vital in ensuring the integrity of the electoral process. This can be achieved through training, capacity building, and providing necessary resources.

Judicial Mechanisms: Establishing effective judicial mechanisms for resolving electoral disputes is essential. This can be achieved through the establishment of specialized electoral courts or tribunals (Adefemi, and Oyekunle, 2018).

4. Conclusions and Recommendations

The judiciary plays a vital role in ensuring the integrity of the electoral process, particularly in resolving conflicts that arise from elections. For the judiciary to effectively discharge this responsibility, its independence is paramount. This independence is guaranteed by the Nigerian Constitution, which provides that the judiciary should be free from external pressures and influences. However, the reality is that the judiciary's independence is often compromised by external interference, particularly from the executive and legislative arms of government. This interference can take many forms, including the manipulation of the appointment and removal processes of judges, as well as the non-compliance with court orders. Despite these challenges, it is essential that the judiciary asserts its independence and plays its role in resolving electoral conflicts. The laws governing electoral processes in Nigeria are sufficient, but the problem lies in their enforcement. The judiciary must ensure that the laws are applied impartially and that those who violate them are held accountable. By doing so, the judiciary can restore hope in the electoral process and promote democratic governance in Nigeria. As the third arm of government, the judiciary has a critical role to play in ensuring that the rule of law is upheld and that the rights of citizens are protected.

Based on the findings above, the following recommendations are hereby made: Alternative Dispute Resolution (ADR) Mechanisms: Promoting ADR mechanisms, such as mediation and arbitration, can provide a speedy and cost-effective means of resolving electoral disputes. Also, there should be creation of an Electoral Offences Commission: Establishing an Electoral Offences Commission can help to investigate and prosecute electoral offences, thereby deterring future occurrences.

There is need for the government to ensure rigorous Continuous Voter Education and Awareness: Educating voters on their rights and responsibilities can help to prevent electoral conflicts and promote peaceful elections. Moreover, there is need for reorientation: Implement a nationwide reorientation program to promote a culture of peace, tolerance, and democratic values among citizens, particularly youths. This reorientation program can include Civic education and voter awareness programs, Peace building and conflict resolution training, promoting interfaith and interethnic dialogue, Encouraging youth participation in democratic processes.

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CASE STUDY*

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DIGITAL MARKETS ACT – A NEW PARADIGM OF EUROPEAN COMPETITION LAW. DOCTRINAL PERSPECTIVES AND IMPLICATIONS FOR ROMANIA

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Abstract: *The adoption of Regulation (EU) 2022/1925 on digital markets, commonly known as the Digital Markets Act (DMA), marks a turning point in the development of European competition law. Faced with the challenges posed by the digital economy and the rise of global technology giants, traditional ex post competition law has proven insufficient to ensure the maintenance of effective competition. The DMA introduces an ex ante regulatory mechanism applicable to “gatekeepers” – digital platforms that hold a structurally dominant position and can distort competition before the occurrence of an actual abuse. This article analyzes the theoretical foundations of this new paradigm, the normative content of the DMA, and its implications for the Romanian legal order, addressing the relationship between regulation and competition, as well as the institutional challenges arising from its practical implementation.*

Keywords: *Digital Markets Act, competition law, gatekeeper, ex ante regulation, European Union, digital platforms, Romania.*

Introduction

The accelerated technological evolution of the past decade has generated a structural transformation of economic markets, requiring a profound reassessment of traditional legal instruments for the protection of competition. The economic dominance of major digital platforms – Google, Apple, Meta, Amazon, Microsoft, and ByteDance – has created an interconnected economic ecosystem in which control over data, algorithms, and digital infrastructure has become a decisive factor of market power.

In this context, the classical intervention mechanisms provided by Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) have proven insufficient to ensure the maintenance of effective competition. Investigation and sanctioning procedures, characterized by excessive duration and high evidentiary standards, have prompted a substantial legislative response: the adoption in 2022 of Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act).

Through this legislative act, the European Union established a new approach to competition regulation: an ex-ante intervention aimed at preventing structural imbalances, as opposed to the traditional ex post intervention, specific to sanctioning abuses of dominant positions (European Commission, 2023). The DMA directly targets digital platforms functioning as “gatekeepers” – indispensable intermediaries between businesses and

consumers, whose economic power enables them to unilaterally determine market access conditions.

The purpose of this study is to examine the implications of this normative shift on European competition law through a doctrinal and comparative analysis. In particular, it seeks to determine whether the DMA represents a logical extension of classical competition principles or, conversely, a new legal paradigm inaugurating a distinct stage in the architecture of European economic law. Furthermore, the effects on the Romanian legal order will be evaluated, particularly regarding the competencies of the Competition Council, as well as the institutional and legislative challenges arising from the direct application of the DMA in national law.

1. Theoretical and Normative Foundations of Ex Ante Intervention in the Digital Economy

General Premises on the Transformation of Competition in the Digital Economy

The digital economy has caused a profound structural shift in classical competitive mechanisms, affecting both market functioning and the legal instruments used to ensure effective competition. Multifunctional digital platforms, characterized by strong network effects, extreme economies of scale, and massive data accumulation, have generated forms of economic power that can no longer be evaluated solely through traditional competition law criteria, which are built around the concepts of relevant market, dominant position, and proven ex post abuse (Ibáñez Colomo, 2018).

In this context, European Union competition law has faced a structural tension between, on the one hand, the necessity of maintaining a legal framework based on economic freedom and minimal state intervention, and, on the other hand, the imperative to correct systemic dysfunctions in digital markets, which tend to self-consolidate in the absence of timely regulatory intervention (Ezrachi, 2016). Recent doctrinal analyses have highlighted that classic anti-trust interventions, even when accompanied by significant financial sanctions, fail to restore lost competition because market-locking effects become irreversible before administrative procedures are concluded (Monti, 2022). This economic reality explains the emergence of a new regulatory logic centered on prevention and structural control of dominant platform behaviors. The Digital Markets Act fits within this logic, establishing a methodological break from the exclusively repressive paradigm of traditional competition law.

Genesis of the Digital Markets Act and its European Normative Context

The adoption of Regulation (EU) 2022/1925 does not represent an isolated legislative act but is the result of a complex process of institutional and doctrinal reflection initiated within the European Union more than a decade ago. Documents such as the report Competition Policy for the Digital Era (Crémer, de Montjoye, Schweitzer, 2019), prepared at the request of the European Commission, explicitly signaled the need for a differentiated approach for digital markets, distinct from the classical antitrust toolkit.

In parallel, experience gained from major antitrust cases against global digital platforms highlighted the limitations of ex post intervention. Although the Commission's decisions (European Commission Decision AT.39740) in cases such as Google Search (Shopping), Google Android, or Amazon Marketplace established important precedents, they were criticized for the tardiness of remedies and the inability to prevent the irreversible consolidation of dominant positions.

Thus, the Digital Markets Act emerges as a normative response to a structural problem, rather than a mere extension of competition law. The regulation seeks to ensure the functioning of the EU digital internal market by imposing clear and uniform obligations on platforms controlling essential points of access between business users and consumers. From this perspective, the DMA may be characterized as a constitutional economic law instrument for the European digital market (Odudu, 2006).

The Concept of “Gatekeeper” as an Autonomous Legal Notion

One of the most innovative elements of the DMA is the introduction of the concept of “gatekeeper,” which does not fully overlap with the classical notion of a dominant undertaking under Article 102 TFEU. A gatekeeper is defined not only by its current economic power but also by its structural role as an unavoidable intermediary in digital ecosystems (Article 3 of Regulation (EU) 2022/1925).

The criteria for designating gatekeepers are formulated predominantly in quantitative terms, reflecting the European legislator’s choice for a normative presumption of economic power. This legislative technique aims to reduce legal uncertainty and accelerate public intervention, avoiding the complex economic disputes that characterize classical antitrust investigations (Jones, Sufrin, 2020).

From a doctrinal perspective, this approach has been interpreted as a form of objectification of market power, where the focus shifts from behavioral analysis to structural analysis. The gatekeeper is not sanctioned for what it has done, but is subject to a special legal regime because of its position within the structure of the digital market (Jenny, 2022).

Methodological Break with Classical Competition Law

The Digital Markets Act establishes a fundamental methodological shift, replacing the repressive paradigm with a preventive one. Instead of investigating whether a specific behavior produced anticompetitive effects, the DMA predefines which behaviors are incompatible with the fair functioning of digital markets (Articles 5–7 of the DMA).

This shift raises significant doctrinal questions regarding the legal nature of the DMA. Part of the doctrine argues that the regulation departs from competition law per se and approaches sector-specific regulation. Other authors, however, maintain that the DMA represents an internal evolution of competition law, adapted to a new economic context (Kosta, 2023). Regardless of the doctrinal classification adopted, it is indisputable that the DMA redefines the role of the state in the digital economy, establishing the principle that certain markets require permanent oversight and predetermined rules of conduct to prevent their capture by dominant actors.

2. The Regime of Obligations and Prohibitions Established by the Digital Markets Act: Legal Basis and Implications for Economic Freedom

The Normative Logic of Obligations Imposed on Gatekeepers

The legal regime established by the Digital Markets Act is distinguished by its imperative character and by the direct applicability of the obligations imposed, without the need for prior determination of a specific anticompetitive behavior. This legislative choice reflects the European legislator’s explicit intention to correct the structural asymmetries of digital markets and to prevent practices that, although seemingly neutral or even efficient in the short term, produce significant restrictive effects in the medium and long term.

The obligations imposed on gatekeepers are not designed as sanctions but as general conduct norms aimed at rebalancing economic relationships between platforms and business users. From a legal perspective, these can be characterized as special legal obligations, limiting the exercise of economic freedom in consideration of a major public interest, namely the maintenance of contestable and fair digital markets in the European Union (Monti, 2022).

The Prohibition of Self-Preferencing and the Principle of Platform Neutrality

One of the most relevant obligations imposed by the DMA is the prohibition of applying preferential treatment to a gatekeeper's own services or products on its operated platform. This rule targets practices whereby dominant platforms advantage their own ancillary services to the detriment of third-party offerings, distorting competition and affecting effective market access. Doctrinally, the prohibition of self-preferencing represents a normative extension of the case law developed under Article 102 TFEU, yet without imposing the burden of proving anticompetitive effects. The European legislator presumes that such behaviors are, by their nature, incompatible with the fair functioning of a digital market, particularly in the context of platforms with structural intermediary power (Ezrachi, 2022b).

This approach has generated intense debates regarding the compatibility of the DMA with the principle of freedom to organize economic activity. However, a systematic analysis of the regulation demonstrates that the restriction of economic freedom is proportional and justified by the necessity to prevent market capture by dominant actors, in a context where spontaneous competitive mechanisms are insufficient (Odudu, 2021).

Obligations Regarding Interoperability and Data Access

Another central pillar of the DMA consists of obligations concerning the interoperability of services and access to data generated by activity on gatekeeper platforms. These provisions aim to reduce user lock-in effects and facilitate migration to alternative services, thereby enhancing the contestability of digital markets.

From a legal standpoint, the interoperability obligation constitutes one of the most intrusive interventions of European law into the internal organization of private platforms. It requires not only significant technical adjustments but also a reassessment of intellectual property rights and trade secrets. Nevertheless, the DMA provides explicit safeguards designed to protect the security and integrity of services, as well as the confidentiality of personal data (Kosta, 2023). Doctrinal commentary has emphasized that these obligations reflect a functional conception of data, considered not exclusively as private economic assets but also as essential resources for maintaining competition in the digital economy (Ibáñez Colomo, 2018). In this sense, the DMA approaches the logic of "digital infrastructure regulation," analogous to regimes applied to public utility networks.

Freedom of Commercial Users and Combating "Lock-In" Practices

The DMA also enshrines the right of commercial users to promote and provide their products or services through alternative channels without being constrained by restrictive contractual clauses imposed by gatekeepers. This provision directly targets "lock-in" practices, which limit the economic autonomy of business partners and reduce competitive pressure on dominant platforms.

Legally, these norms can be interpreted as a concretization of the principle of contractual freedom within a context of structural power imbalance. The European legislator

implicitly recognizes that, in relationships between gatekeepers and commercial users, autonomy of will is often illusory, necessitating normative intervention to restore a minimal contractual equilibrium (Piperea, 2023).

This approach has significant implications for private law, as it relativizes the absolute character of contractual freedom in the digital environment, subjecting it to imperatives of economic public order.

Compatibility of the DMA with Fundamental Principles of EU Law

An essential aspect of the legal analysis of the DMA concerns its compatibility with the fundamental principles of EU law, particularly the freedom to conduct a business, enshrined in Article 16 of the Charter of Fundamental Rights of the European Union. The restrictions imposed on gatekeepers must be assessed in light of the principles of proportionality and necessity of intervention.

Analysis of these principles leads to the conclusion that the DMA establishes a reasonable balance between private economic interests and the public interest in maintaining a functional internal market. The regulation does not prohibit gatekeepers' economic activity but sets clear boundaries for its exercise, considering the systemic impact these actors have on the European digital economy (Jones, Sufrin, 2020).

3. Mechanisms for the Implementation and Control of the Digital Markets Act: The Role of the European Commission and Interaction with National Competition Law

Exclusive Competence of the European Commission and the Rationale for Centralized Enforcement of the DMA

A defining feature of the institutional architecture of the Digital Markets Act is the assignment of exclusive competence for its implementation and oversight to the European Commission (Article 1(5) of Regulation (EU) 2022/1925). This legislative choice represents a significant departure from the classical model of competition law, characterized by a decentralized enforcement system in which national competition authorities possess direct powers to apply EU law.

The centralization of DMA enforcement is justified by the inherently cross-border nature of core platform services and the risk of fragmentation of the internal market in the event of divergent national interpretations (Jones, Sufrin, 2020). The gatekeepers targeted by the regulation operate integrated digital ecosystems, and inconsistent application of ex ante obligations could generate additional distortions and legal uncertainty.

Doctrinally, this institutional solution reflects the transformation of the European Commission from a traditional antitrust authority into a true regulator of essential digital infrastructures (Monti, 2022). The Commission is no longer called solely to sanction individual violations but to exercise a continuous function of supervision, guidance, and correction of economic behaviors with systemic impact on the EU digital internal market.

Gatekeeper Designation Procedure and the Obligation of Compliance

The procedure for designating gatekeepers constitutes the premise for the effective application of the Digital Markets Act. Enterprises meeting the quantitative criteria set out in the regulation are required to notify the European Commission, which then assesses the legal conditions and adopts a formal designation decision (Articles 3–4 of the DMA).

This procedure is distinguished by its accelerated nature and by a significant reduction of economic discretion compared with investigations conducted under Article 102 TFEU (Ibáñez Colomo, 2018). Once designated, a gatekeeper is obliged to adopt concrete compliance measures and submit to the Commission a detailed report on the implementation of DMA obligations within a strictly defined timeframe (Article 11 of the DMA). Legally, this reporting obligation establishes a mechanism of supervised self-regulation, wherein primary responsibility for compliance is placed on the designated enterprise. Although this approach has been criticized for its potential impact on the right of defense, the regulation provides sufficient procedural safeguards, including the right to contest Commission decisions before the Court of Justice of the European Union (Article 263 of the TFEU).

Investigative Powers and Sanctioning Regime

The DMA grants the European Commission extensive investigative powers, including the right to request information, conduct inspections, and interview representatives of designated gatekeepers (Articles 21–23 of the DMA). These powers are exercised within a normative framework distinct from classical competition law, as the object of the investigation is the compliance with ex ante obligations, rather than the existence of a proven anticompetitive behavior. The sanctioning regime provided by the DMA is particularly severe, allowing fines of up to 10% of the undertaking's global turnover, and up to 20% in the case of repeated infringements (Article 30 of the DMA). In exceptional situations, characterized by systematic violations, the regulation permits the imposition of structural corrective measures, including the divestiture of certain economic activities (Article 18 of the DMA). Doctrinally, these measures mark an unprecedented intensification of public intervention in the digital economy. They raise fundamental questions regarding the limits of proportionality and the risk of transforming competition regulation into a coercive industrial policy instrument (Jenny, 2023).

Relationship Between the DMA and National Competition Law

Although the application of the DMA is centralized, the regulation does not exclude the role of national competition authorities, which may assist the Commission by providing information, expertise, and reporting potential infringements (Article 38 of the DMA). Furthermore, the DMA does not affect the application of national or EU competition law outside its specific regulatory scope.

This normative coexistence, however, generates risks of overlap and incoherence, particularly concerning the delineation between the ex-ante obligations under the DMA and the ex post analysis of anticompetitive behaviors (Ezrachi, 2022a). Administrative practice and case law of the Court of Justice will play a crucial role in clarifying these relationships.

Institutional Implications for Romania

For Romania, the Digital Markets Act entails a redefinition of the role of national authorities in the field of digital competition. The Competition Council is called upon to strengthen its analytical capacity and develop specialized skills in assessing digital markets, even though it does not have direct decision-making authority in the enforcement of the DMA (Competition Council, 2023). At the same time, national courts will be indirectly involved in applying the regulation, either by resolving related civil litigation or by interpreting and applying European norms within domestic legal relationships. This reality requires significant doctrinal and jurisprudential adaptation at the national level (Nițu, 2022).

4. Implications of the Digital Markets Act for Romania: Institutional Challenges and Prospects for Adapting National Law

Integration of the Digital Markets Act into the Romanian Legal Order

The application of Regulation (EU) 2022/1925 on digital markets does not, formally, require its transposition into national law, given the direct applicability of European regulations. Nevertheless, the effective integration of the DMA into the Romanian legal order demands substantial institutional and normative adaptation to ensure coherence between national competition law and the new ex ante European framework.

First, it is necessary to clarify the relationship between the DMA and Competition Law no. 21/1996, particularly regarding the competencies of the Romanian Competition Council. Although the DMA establishes a centralized enforcement mechanism under the exclusive authority of the European Commission, the role of national authorities is not merely marginal. On the contrary, they can provide relevant information, support the Commission's investigations, and ensure complementarity with the application of national rules in cases outside the scope of the DMA (Articles 38–39 of Regulation (EU) 2022/1925 on cooperation with national competition authorities).

In this context, Romanian law must avoid both the risk of unjustified overlapping of competencies and gaps in protection. A coherent approach requires recognizing the autonomous character of the DMA while leveraging the expertise of the Competition Council in analyzing digital markets, including through the development of specialized structures in platform economy and algorithmic analysis.

Impact on the Practice of the Competition Council

The application of the DMA will have an indirect but significant impact on the administrative and jurisprudential practice of the Romanian Competition Council. Even if the national authority is not competent to designate gatekeepers or impose DMA sanctions, it will need to calibrate its interventions under Articles 5 and 6 of Competition Law in light of the new obligations imposed at the European level.

In particular, concepts such as self-preferencing, discriminatory access to platforms, or abusive use of data will be reinterpreted in light of the standards set by the DMA. This leads to a marked trend of “Europeanization” of national practice, where the Romanian authority will need to take into account Commission decisions adopted under the DMA, even in cases not directly concerning gatekeepers (Chiriță, 2023).

This evolution raises the question of harmonizing methodologies for economic and legal analysis, as well as the professional training of personnel involved in competition law enforcement. Without adequate adaptation, there is a risk that national law could become either excessively dependent on EU law or insufficiently aligned with the realities of the digital economy.

Effects on the Business Environment in Romania

From the perspective of Romanian economic operators, the DMA can be seen both as a protective instrument and as a source of challenges. On one hand, small and medium-sized enterprises, as well as digital start-ups, could benefit from more equitable access to markets dominated by major online platforms, given that gatekeepers will be obliged to comply with strict rules on interoperability, transparency, and non-discrimination (Săvescu, 2023).

On the other hand, for Romanian enterprises operating as providers of complementary services on global digital platforms, compliance with new rules imposed on gatekeepers may generate indirect costs and legal uncertainties, particularly during the initial phase of regulation implementation. Additionally, some benefits of the DMA may be experienced with delay in Member States with lower levels of digital economy development, including Romania.

In this context, the Romanian state is called upon to adopt coherent public policies to support the capitalization of opportunities generated by the DMA, including through information, advisory, and institutional support measures for domestic enterprises.

Digital Markets Act and the Evolution of Romanian Competition Law: Future Law Perspectives

From a future law perspective, the DMA acts as a catalyst for a broader reconsideration of Romanian competition law in the digital context. Although a substantial amendment of Law no. 21/1996 is not required, updating analytical tools and the conceptual framework used by authorities and courts is advisable.

A possible direction for evolution is the strengthening of cooperation between the Competition Council, the National Authority for Management and Regulation in Communications, and other relevant authorities to address the challenges posed by digital platforms in an integrated manner. Furthermore, an in-depth doctrinal reflection is necessary on the relationship between ex ante regulation and ex post sanctioning, as well as on the compatibility of the DMA with traditional principles of economic freedom and autonomy of will. Ultimately, the impact of the DMA on Romanian law should not be assessed solely in terms of normative constraint but also as an opportunity to modernize competition law in accordance with the demands of a dynamic and interconnected digital economy.

Conclusions

The Digital Markets Act represents a profound structural shift in the architecture of European competition law, establishing a new normative paradigm oriented toward preventing competitive imbalances in the digital economy. By introducing an ex ante regime applicable to gatekeepers, the regulation transcends the traditional limits of ex post intervention and proposes a proactive approach aimed at ensuring contestability and fairness in digital markets.

From a doctrinal perspective, the DMA raises numerous conceptual challenges, including the redefinition of economic power, the relationship between regulation and competition, and the compatibility with classical principles of competition law. At the same time, the regulation reflects a clear political choice by the European Union to assert digital sovereignty and limit the economic power of major global platforms.

For Romania, the application of the DMA constitutes both an institutional challenge and a strategic opportunity. Adapting the practices of national authorities, supporting the business environment, and stimulating doctrinal reflection are essential conditions for harnessing the potential of this new legal instrument. In this respect, the Digital Markets Act can become a vector for modernizing Romanian competition law and for achieving deeper integration into the European legal dynamic.

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THE EMBODIED SPIRAL OF MEANING: REIMAGINING LEADERSHIP THROUGH SYMBOLIC, REFLECTIVE, AND SOMATIC INTEGRATION

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Abstract: *Contemporary organizations face a paradox: symbolic communication, digital information, and narrative complexity are rapidly increasing, while the lived experience of meaning, coherence, and embodied presence is diminishing. This paper introduces The Embodied Spiral of Meaning as a philosophical–organizational framework that reimagines leadership through the integration of symbolic, reflective, and somatic dimensions. Building on Cassirer’s Homo Symbolicus and extending it through Homo Cognoscens (reflective awareness) and Homo Somaticus (embodied presence), the paper develops the Symbolic Spiral of Leadership as an evolving field of meaning-making rather than a fixed competency set. Drawing on phenomenology, developmental theory, and contemporary leadership scholarship, it traces the shift from heroic, control-based models toward relational and embodied forms of leadership. The paper argues that leadership effectiveness depends on aligning symbolic coherence, reflective insight, and somatic grounding, and concludes that organizational evolution requires not more information but deeper integration of meaning and being.*

Keywords: *embodied leadership; symbolic management; Homo Symbolicus; organizational evolution; leadership development; well-being*

Introduction

Organizations today operate in an environment marked by accelerating technological change, hybrid work, and intensified uncertainty. The pandemic and the rapid rise of artificial intelligence have not only altered structures, processes, and communication formats; they have also brought to the surface what might be called the “reptilian” foundations of organizational life: basic survival-oriented patterns in culture, structure, and behavior. Against this backdrop, a central question arises: what are the realms of leadership and organizational evolution in this new landscape?

At first glance, contemporary organizations seem rich in meaning. They articulate visions, values, and missions; they invest in branding, narratives, and internal communication. Yet, at the same time, many leaders and employees report fragmentation, fatigue, and a sense of symbolic disconnection. Information expands, but meaning contracts. Digitalization, remote work, and hybrid communication have multiplied the symbolic codes through which organizational life is mediated – emails, metrics, dashboards, AI-driven reports – while reducing the density of embodied, co-present interaction.

This creates a paradoxical configuration in which doing and being begin to lose contact. Managers strive to sustain meaning through organizational mission and vision statements, but the lived experience of those meanings often fails to reach the everyday realities of work. As a result, organizations experience cognitive overload, cultural dissonance, and what might be called an *embodiment deficit*: it becomes increasingly difficult to feel in one’s body what the organization claims to stand for.

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This paper proposes that understanding this condition requires a shift in how leadership is conceptualized. Rather than treating leadership primarily as a set of cognitive competencies or behavioral styles, it suggests approaching leadership as a *symbolic-embodied field*: a dynamic interaction of symbolic narratives, reflective awareness, and somatic presence. To articulate this field, the paper develops the model of the Symbolic Spiral of Leadership, grounded in three anthropological figures: *Homo Symbolicus* (the meaning-maker), *Homo Cognoscens* (the reflective knower), and *Homo Somaticus* (the embodied being).

These three dimensions are not simply categories; they correspond to fundamental philosophical questions of human existence:

- How do we process and understand the world? (cognitive-reflective)
- How do we assign meaning to the world within and around us? (symbolic)
- How do we embody this meaning through presence and action? (somatic)

Their integration gives rise to an emergent figure, *Homo Integralis* – an integrated mode of leadership in which meaning, reflection, and embodiment cohere.

The aim of this paper is therefore twofold:

1. To propose a philosophical-organizational model of leadership evolution from primarily symbolic-cognitive paradigms toward embodied and integrative forms; and
2. To outline a conceptual framework for studying how this evolution manifests in organizational life, leadership development, and well-being.

1 Spiral of Integrated Leadership and Organizational Evolution

1.1 Shifts and Spiral Points in Leadership and Organizational Evolution

1.1.1 From Heroic Leadership to Relational and Embodied Forms

The history of leadership thought can be read as a series of qualitative spirals – moments in which meaning, practice, and consciousness undergo a fundamental reconfiguration. For much of the early 20th century, leadership was conceptualized in heroic, control-based terms. “Great man” theories (Carlyle, 1840; Galton, 1869) portrayed leaders as exceptional individuals endowed with superior traits and rational authority. Leadership symbolized stability, certainty, and top-down control; followers were primarily recipients of decisions made elsewhere.

Even later human-relations perspectives, which emphasized motivation and interpersonal skills, largely preserved the image of the leader as a benevolent figure positioned above others, guiding them from an elevated vantage point. Although the language softened, the underlying symbolic pattern remained: leadership as dominance, control, and rational supervision.

A major spiral point emerged in the late 20th century. Greenleaf’s (1970) concept of servant leadership inverted the traditional hierarchy by presenting the leader as one who serves first. Burns’ (1978) theory of transformational leadership reframed leadership as a process of mutual elevation through shared values and moral purpose. Subsequent work on authentic, humble, **and** emotionally intelligent leadership (e.g., Goleman, 1995; Owens & Hekman, 2012) further emphasized empathy, self-awareness, and relational presence.

These developments marked a symbolic inversion:

- from control to empowerment,
- from dominance to serving,
- from authority to authenticity,
- from certainty to reflection,
- from separation to relationality,
- from abstraction to embodiment.

In contemporary contexts shaped by digitalization and hybrid work, leadership is increasingly understood as distributed, co-created, and relational. The heroic figure of the single decisive leader gives way to a more human image: the leader as participant in a field of meaning, relationships, and embodied interaction. This historical transition provides the background for the Symbolic Spiral model.

1.1.2 Leadership as a Symbolic Function

This spiral in leadership theory can be fruitfully interpreted through Ernst Cassirer's notion of *Homo Symbolicus* – the human as a meaning-making being who inhabits symbolic worlds rather than merely reacting to physical stimuli. For Cassirer (1944), language, myth, art, and ritual are not decorative additions to reality; they constitute the frameworks through which reality becomes intelligible.

From this perspective, leadership is intrinsically symbolic. Before it becomes a set of techniques or results, leadership operates as a process of creating, sustaining, and transforming meaning. Leaders work with stories, metaphors, rituals, and values; they shape the symbolic environment in which organizational life unfolds. Jeffrey Pfeffer's work on symbolic management (Pfeffer, 1981) highlights how leadership actions often function less as technical interventions and more as visible gestures that stabilize uncertainty, affirm identity, or signal change.

Peter Drucker's (Drucker, 2006) description of the manager as a "social architect" reinforces this view. Managers design and maintain the cultural architecture – norms, expectations, and interpretive frames – within which people make sense of their work and relationships. Leadership, therefore, can be seen as a symbolic act that organizes experience and coordinates collective action.

Yet the same symbolic power that enables leadership to orient meaning (Schein E. H., 2010); (Schein & Schein, 2018) can also generate abstraction and distance. In contemporary organizations, symbolic content has multiplied: mission statements, value lists, dashboards, branding campaigns, and digital communication platforms create dense symbolic environments. As these symbols proliferate, they can become detached from the embodied realities of work, resulting in symbolic saturation and cognitive overload.

This tension invites a crucial question: What happens when leadership remains rich in symbols but poor in embodiment?

1.2 Theoretical Foundations: Developmental, Cultural, and Integral Perspectives

1.2.1 Graves' Spiral Dynamics and Developmental Complexity

Clare W. Graves' work, later developed as Spiral Dynamics (Beck & Cowan, 2005), conceptualizes human and organizational evolution as a sequence of expanding value systems and worldviews. Each level represents a distinct way of assigning meaning, managing complexity, and responding to life conditions.

Within this framework, leadership evolution can be understood as movement through increasingly complex symbolic and cognitive configurations. The transition from heroic to humble, from controlling to collaborative, mirrors broader cultural developments toward empathy, pluralism, and systemic thinking. Importantly, Spiral Dynamics suggests that higher levels of development are not only cognitively more complex but also potentially more integrated in terms of values and relational awareness.

1.2.2 Culture and "Tribes": Leadership as Stage-Shifting

Logan, King, and Fischer-Wright's (2008) Tribal Leadership adds a cultural lens by proposing that organizations naturally form into "tribes" bound by shared language and narratives. Leadership effectiveness, in this view, depends on the ability to shift the cultural

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stage of the tribe: to move from self-focused and competitive narratives toward more collaborative, purposeful, and trusting ones.

Here again, leadership is primarily a symbolic–cultural function. The leader works with the language through which people interpret themselves and others. Elevating the tribe’s stage means transforming the symbolic patterns that structure relationships and identity.

1.2.3 Wilber’s Integral Theory: All Quadrants, All Levels

Ken Wilber’s Integral Theory (Wilber, 2000) offers a multidimensional map for understanding leadership and organizational life. The AQAL framework (“all quadrants, all levels, all lines, all states, all types”) emphasizes that any phenomenon has at least four irreducible dimensions:

- **Interior–Individual (I):** thoughts, emotions, intentions, meaning, consciousness.
- **Interior–Collective (We):** culture, shared values, worldviews, meaning-making systems.
- **Exterior–Individual (It):** observable behaviors, skills, biological processes.
- **Exterior–Collective (Its):** social systems, structures, institutions, technologies.

Leadership, in this perspective, cannot be reduced to behavior or personality alone. It emerges at the intersection of subjective meaning, shared culture, observable action, and systemic structures. Development unfolds through levels of complexity (e.g., egocentric → ethnocentric → worldcentric → integral), and along multiple “lines” such as cognitive, emotional, interpersonal, moral, somatic, and spiritual development. Leaders may be advanced cognitively but underdeveloped somatically, or emotionally mature yet symbolically constrained.

Integral approaches thus resonate strongly with the Symbolic Spiral, which also insists that leadership be understood across symbolic (meaning), cognitive–reflective (understanding), and somatic (embodied being) dimensions.

1.3 The Symbolic Spiral of Leadership: Conceptual Framework

1.3.1 The Homo Triad: Symbolic, Reflective, and Somatic

Bringing these theoretical strands together, the Symbolic Spiral of Leadership conceptualizes leadership as an evolving interaction among three modes of human existence:

- *Homo Symbolicus* – the meaning-maker who constructs reality through symbols, narratives, and rituals.
- *Homo Cognoscens* – the reflective knower who interprets, questions, and reorients those symbolic systems.
- *Homo Somaticus* – the embodied being who senses, attunes, and inhabits meaning through the body.

These three are not stages to be passed through once and for all; they are dimensions that continually interact in a spiral movement. Each addresses a distinct philosophical question:

1. How do I process and understand the world? (cognitive–reflective)
2. How do I assign meaning to the world within and around me? (symbolic)
3. How do I embody this meaning through presence and action? (somatic)

The ongoing integration of these dimensions gives rise to *Homo Integralis* – a mode of leadership in which meaning, reflection, and embodiment mutually reinforce each other.

1.3.2 Homo Symbolicus: Leadership as Meaning Construction

In the organizational context, *Homo Symbolicus* appears where leaders act as constructors of shared meaning. Drawing on Cassirer (1944), we can say that leaders do not simply operate in a material environment; they inhabit and shape symbolic worlds. Vision

statements, cultural rituals, metaphors for change, and the everyday language used in meetings all contribute to a symbolic architecture that orients people's experience.

Leadership in this dimension includes:

- articulating purpose and identity,
- crafting narratives that make sense of uncertainty,
- designing rituals that embody values,
- curating the language through which success and failure are interpreted.

Symbolic leadership gives organizations psychological coherence and a sense of direction. Yet, as noted above, when symbols proliferate without deeper grounding, they risk becoming abstractions. The Symbolic Spiral therefore insists that symbolic activity must be complemented by reflective and somatic dimensions.

1.3.3 *Homo Cognoscens: Leadership as Reflective Awareness*

The second dimension, *Homo Cognoscens*, captures the capacity for critical awareness and double-loop learning (Argyris & Schön, 1996). Here leadership is not only about constructing meaning but also about examining how meaning is constructed. Leaders ask:

- Do our narratives still correspond to lived experience?
- Which assumptions shape our strategies and relationships?
- How do our symbolic systems include or exclude different perspectives?
- What values are genuinely enacted, rather than merely proclaimed?

This reflective dimension draws on Schön's (1983) notion of the *reflective practitioner*, who engages in ongoing inquiry into their own practice. It is the hinge that connects symbolic expression with embodied awareness (Paul, 2021). Without reflective alignment, symbolic leadership can drift into cynicism or manipulation; with it, symbolic systems become more ethically grounded and responsive to reality.

1.3.4 *Homo Somaticus: Leadership as Embodied Presence*

The third dimension, *Homo Somaticus*, refers to the human being as a sensing, moving, and relational body. Merleau-Ponty's (1962) phenomenology emphasizes that perception and cognition are rooted in bodily experience; Gendlin (1978) speaks of the "felt sense" as a pre-conceptual bodily knowing that guides meaningful action. Porges (2022) views the somatic dimension of human being and doing in the polyvagal theory.

In leadership, the somatic dimension includes:

- grounded presence and nervous system regulation,
- emotional awareness and self-management,
- relational attunement and resonance,
- authenticity expressed through congruent gestures and behavior,
- the capacity to sense subtle dynamics in teams and contexts.

Leadership becomes not only a matter of *what* is said, but *how* it is lived in posture, tone, timing, and relational rhythm. In this sense, embodiment is not an add-on practice but a foundational condition for trust and coherence.

1.3.5 *Homo Integralis and the Embodied Spiral*

When *Homo Symbolicus*, *Homo Cognoscens*, and *Homo Somaticus* interact as one system, they generate the field of *Homo Integralis* – leadership as embodied meaning. In this integrative mode:

- Symbols provide meaning (vision, values, narratives).
- Reflection provides understanding (awareness, critique, ethical orientation).
- Embodiment provides coherence (alignment between words, actions, and being).

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Leadership then appears as a spiral movement rather than a static identity. Leaders cycle through symbolic construction, reflective examination, and embodied integration. Over time, this rhythm deepens coherence between what the organization proclaims and how it is actually lived.

2 Main Title (Results)

2.1 From Meaning to Embodiment in Organizational Evolution

2.1.1 The Gap Between Symbolic Articulation and Lived Reality

Many contemporary organizations have invested heavily in the symbolic dimension: values lists, mission statements, leadership messages, and corporate storytelling. Yet, a recurring pattern emerges in practice:

- Symbolic overload – values and narratives accumulate faster than they can be enacted.
- Cognitive saturation – information flows multiply, but integration lags behind.
- Embodiment deficit – people understand organizational meaning cognitively but do not feel it somatically.
- Cultural dissonance – proclaimed values diverge from experienced behavior and emotional climate.

The Symbolic Spiral of Leadership suggests that meaning becomes truly transformative only when it is embodied. The movement from meaning to embodiment requires conscious integration of symbolic, reflective, and somatic dimensions.

2.1.2 Reconnecting Symbolic and Somatic Realities

Organizational theory has often treated symbolic and somatic realities separately. Symbolic approaches focus on culture, vision, and discourse; somatic approaches arise in discussions of well-being, mindfulness, and stress management. Yet, organizational evolution depends precisely on their convergence. Symbols shape meaning; bodies anchor meaning in experience.

Graves' developmental view supports this convergence. Higher stages of organizational evolution involve not only greater cognitive complexity but also richer emotional and embodied coherence. When symbolic meaning aligns with somatic reality – when people can feel in their bodies what the organization stands for – cultures become more resilient and trustworthy.

In practical terms, reconnecting symbolic and somatic dimensions involves:

- noticing when organizational narratives produce tension or dissonance in the body;
- allowing embodied feedback (fatigue, anxiety, enthusiasm) to inform reflective sense-making;
- adjusting symbolic messages to be more congruent with lived realities;
- creating spaces where people can speak from experience, not only from role.

2.1.3 Organizational Functions Across Three Dimensions

The Symbolic Spiral clarifies how the three dimensions correspond to core organizational functions:

- Symbolic dimension → identity and meaning
 - vision, values, cultural narratives, collective stories;
- Cognitive dimension → reflection and adaptation
 - learning systems, inquiry, strategic sensing, feedback loops;
- Somatic dimension → presence and well-being
 - trust, emotional regulation, psychological safety, embodied climate.

Organizations thrive when these three systems operate not as separate domains but as an integrated field. Strategic change, for example, becomes more sustainable when new narratives (symbolic) are co-constructed through dialogue (cognitive) and supported by practices that regulate stress and build trust (somatic) (Shusterman, 2008).

2.1.4 Embodied Leadership in Practice

Insights from teaching, coaching, and organizational observation (Edmondson, 2019) show that leaders make different decisions when they reconnect with their felt sense. Ricoeur (1992) discusses these symbolic and embodied fields in his work “Oneself as Another”.

In leadership development sessions, when participants are invited to pause, inhabit their bodies, and notice sensations before responding, they often shift from automatic reactivity to more grounded and ethical choices.

Similarly, teams that integrate brief somatic practices – such as collective breathing, attention to posture, or embodied check-ins – report higher levels of trust and psychological safety. Hybrid meetings become less draining when leaders intentionally cultivate presence rather than treating interaction as a purely cognitive exchange.

These patterns indicate that organizational evolution is not merely structural or strategic; it is experiential. The Embodied Spiral of Meaning provides a language for understanding and designing these experiences.

2.2 Implications for Leadership Development and Organizational Learning

2.2.1 Beyond Cognitive Mastery

Most leadership programs still emphasize cognitive mastery: frameworks, models, analytical tools, and strategic thinking. While these are necessary, they activate only part of human leadership capacity. The Symbolic Spiral suggests that leadership development must expand to include:

- Symbolic literacy – understanding how meaning is created, communicated, and culturally encoded.
- Reflective intelligence – the capacity to examine assumptions, narratives, and systemic patterns.
- Somatic awareness – the ability to sense, regulate, and embody presence in relational contexts.

These three forms of intelligence underlie *Homo Integralis*. Without them, leaders struggle to navigate complexity or sustain meaning under pressure.

2.2.2 Reflective and Somatic Pedagogies

Educational design that aims to cultivate integrated leadership needs to go beyond lectures and case studies. It should incorporate reflective and somatic pedagogies (Shusterman, 2021), such as:

- grounding and centering practices;
- mindful pauses and embodied awareness exercises;
- reflective journaling and inquiry-based dialogue;
- movement-based inquiry and somatic metaphor work;
- embodied storytelling, where values are expressed through gesture and presence;
- decision-making processes that explicitly engage the felt sense.

Such pedagogies invite learners to engage with leadership not only as an intellectual topic but as a lived experience. They support the alignment of symbolic language with embodied integrity.

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2.2.3 Organizational Development as Tri-Dimensional Integration

From an organizational perspective, development initiatives often focus on strategy, structure, or culture design. The Symbolic Spiral suggests that durable transformation depends on tri-dimensional integration:

- Symbolic: clarification and renewal of narratives, values, and purpose.
- Cognitive: creation of learning infrastructures – feedback systems, reflective spaces, and cross-level dialogue.
- Somatic: cultivation of emotional climate, trust, and well-being as strategic priorities.

Organizations that attend to all three dimensions tend to display greater resilience and adaptive capacity. They can hold complexity without collapsing into chaos or rigid control because meaning, reflection, and embodiment support each other.

Conclusions

Leadership today stands at a threshold. Digital acceleration, hybrid communication, and existential uncertainty have undermined the sufficiency of traditional foundations such as symbolic authority, rational control, and purely cognitive dominance. At the same time, the proliferation of organizational narratives and information flows has intensified a sense of fragmentation and disembodiment.

The Embodied Spiral of Meaning proposed in this paper offers a conceptual framework for reimagining leadership and organizational evolution. It brings together Homo Symbolicus, Homo Cognoscens, and Homo Somaticus as interdependent dimensions of human existence that must be integrated rather than prioritized in isolation. Leadership becomes an ongoing movement between meaning, reflection, and embodiment – a spiral rather than a straight line.

In this view, the next stage of leadership evolution is not upward into further abstraction, but inward toward deeper coherence between meaning and being. Symbols remain essential, but they must be continually tested through reflective inquiry and grounded in embodied presence. Reflection remains vital, but it must be connected to lived experience, not only to conceptual analysis. Somatic awareness becomes not a peripheral wellness practice but a central capacity for ethical, relational, and sustainable leadership.

For organizations, this implies that evolution is an experiential process. Values cannot remain at the level of discourse; they must be enacted in emotional climate, relational rhythm, and everyday gestures. Strategic adaptability cannot rely on data alone; it must include reflective insight and somatic sensing. Well-being cannot be outsourced to HR; it must be woven into the ways leaders inhabit their roles and relationships.

By articulating leadership as a symbolic–reflective–somatic field, the Embodied Spiral of Meaning offers both a philosophical lens and a practical orientation. It invites leaders, educators, and organizations to treat integration itself as a form of wisdom: the capacity to unite meaning, reflection, and embodied presence in the ongoing creation of organizational life.

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THE INTERVENTION IN LIBYA: LEGAL CONSIDERATIONS AND THE FIRST DECADE AFTER GADDAFI

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Abstract: *The 2011 international intervention in Libya constitutes a pivotal case in contemporary debates on the use of force, humanitarian intervention, and the Responsibility to Protect (R2P). Authorized by United Nations Security Council Resolutions 1970 and 1973, the intervention was justified as a necessary measure to prevent imminent mass atrocities against civilians, particularly in the city of Benghazi. While the operation was widely regarded as legally grounded and normatively legitimate in its initial phase, its long-term consequences have generated sustained legal, political, and ethical controversy. This article provides a comprehensive analysis of the Libyan intervention by examining its legal basis, operational implementation, and the first decade following the collapse of the Gaddafi regime. It argues that although the intervention likely succeeded in averting an immediate humanitarian catastrophe, it failed to ensure sustainable post-conflict stabilization. The absence of a coherent strategy for institutional reconstruction, security sector reform, and political reconciliation contributed to prolonged state fragmentation, civil conflict, and regional destabilization, particularly in the Sahel. By situating the Libyan case within broader debates on R2P and collective security, the article highlights the risks associated with ambiguous Security Council mandates and premature international disengagement. It concludes that future humanitarian interventions must integrate a robust “Responsibility to Rebuild” in order to reconcile civilian protection with long-term peace and governance.*

Keywords: *Libya, intervention, protests.*

Introduction

The 2011 intervention in Libya represents one of the most controversial episodes in the post-Cold War evolution of international law governing the use of force. Conducted under the authorization of the United Nations Security Council (UNSC) and framed as a humanitarian intervention grounded in the doctrine of the Responsibility to Protect (R2P), the Libyan case was initially celebrated as a landmark moment for the protection of civilians. However, more than a decade later, Libya remains mired in political fragmentation, armed conflict, and institutional collapse, raising profound questions about the legality, legitimacy, and long-term consequences of the intervention.

This article examines the Libyan intervention from a legal and political perspective, focusing on three interrelated dimensions: (1) the context and escalation of violence that precipitated international action; (2) the legal basis of the intervention, with particular emphasis on UNSC Resolutions 1970 and 1973 and the role of R2P; and (3) the immediate and longer-term consequences of regime collapse, with special attention to the first decade following the

fall of Muammar Gaddafi. By situating the Libyan case within broader debates on humanitarian intervention and post-conflict responsibility, the article seeks to assess whether the intervention fulfilled its stated objectives and what lessons it offers for future international action.

Chapter I: Context of the Libyan Crisis (February–March 2011)

1. The Arab Spring and the Outbreak of Protests

The uprising in Libya must be understood within the wider regional wave of political unrest known as the Arab Spring. Beginning in late 2010 in Tunisia and rapidly spreading across North Africa and the Middle East, these protests were driven by grievances related to authoritarian governance, corruption, economic stagnation, and social inequality (Anderson, 2011). In Libya, demonstrations erupted in mid-February 2011, particularly in the eastern city of Benghazi, historically marginalized by the Gaddafi regime.

Initially, the protests were largely peaceful and echoed demands seen elsewhere in the region: political reform, accountability, and an end to decades of autocratic rule. However, Libya's political structure—characterized by the absence of strong state institutions, political parties, or a professional national army—rendered the situation especially volatile (Vandewalle, 2012). Unlike Tunisia or Egypt, Libya lacked institutional buffers capable of managing a transition through negotiation or elite compromise.

2. Escalation into Armed Conflict

The regime's response to the protests was swift and violent. Security forces and loyalist militias employed live ammunition, heavy weaponry, and air power against demonstrators and opposition-held areas. Reports from international organizations and media outlets documented indiscriminate attacks on civilians, mass arrests, and the use of mercenaries (Human Rights Watch, 2011).

As violence escalated, opposition groups began to arm themselves, leading to the rapid militarization of the uprising. By late February 2011, Libya had effectively descended into a non-international armed conflict. The regime's rhetoric further intensified international concern: Muammar Gaddafi publicly vowed to hunt down opponents "house by house," a statement widely interpreted as signaling an imminent large-scale massacre, particularly in Benghazi, which had become the de facto center of the rebellion (Kuperman, 2013).

3. Fears of Mass Atrocities and Crimes Against Humanity

The prospect of mass atrocities played a decisive role in shaping international responses. United Nations officials, regional organizations, and Western governments warned that the situation in Libya met the threshold for crimes against humanity. The combination of explicit threats by regime leaders, the demonstrated use of disproportionate force, and the collapse of internal restraints on violence created a sense of urgency within the international community (Bellamy, 2011).

These concerns were reinforced by the memory of past failures to prevent atrocities, most notably in Rwanda and Srebrenica. Against this backdrop, Libya was framed as a test case for the international community's willingness to act decisively to protect civilians when a state manifestly fails to do so. This framing would prove crucial in the subsequent legal justification for intervention.

Chapter II: The Legal Basis of the Intervention

1. United Nations Security Council Resolution 1970 (26 February 2011)

The first formal international response came with the adoption of UNSC Resolution 1970 on 26 February 2011. Acting under Chapter VII of the UN Charter, the Security Council unanimously adopted a set of coercive but non-military measures aimed at curbing violence and pressuring the Libyan regime.

Resolution 1970 imposed a comprehensive arms embargo, prohibiting the supply of weapons and military assistance to Libya. It also introduced targeted sanctions, including travel bans and asset freezes, against key members of the Gaddafi regime. Most notably, the resolution referred the situation in Libya to the International Criminal Court (ICC), marking only the second such referral by the Security Council after Darfur (Akhavan, 2011).

Importantly, Resolution 1970 did not authorize the use of force. Instead, it reflected an initial preference for diplomatic, legal, and economic pressure. The ICC referral underscored the gravity of the alleged crimes and signaled that individual criminal responsibility would be pursued. However, the rapid deterioration of the situation on the ground soon led many states to conclude that these measures were insufficient to prevent mass civilian casualties.

2. United Nations Security Council Resolution 1973 (17 March 2011)

As Gaddafi's forces advanced toward Benghazi in March 2011, the Security Council adopted Resolution 1973, which constituted the central legal basis for the subsequent military intervention. The resolution was adopted with ten votes in favor and five abstentions (China, Russia, Germany, India, and Brazil), reflecting significant divisions within the Council.

Resolution 1973 authorized member states "to take all necessary measures" to protect civilians and civilian-populated areas under threat of attack, while explicitly excluding "a foreign occupation force of any form on any part of Libyan territory." It also established a no-fly zone over Libya and strengthened the arms embargo (UNSC, 2011).

The phrase "all necessary measures" has long been interpreted in Security Council practice as authorizing the use of force. In this case, the mandate was framed narrowly around civilian protection, rather than regime change. Nevertheless, the resolution provided the legal foundation for extensive air operations against Libyan government forces.

3. The Role of NATO and the Responsibility to Protect (R2P)

Following initial strikes by a coalition of states, operational command was transferred to NATO, which launched Operation Unified Protector in late March 2011. NATO's declared mission consisted of three elements: enforcing the arms embargo, maintaining the no-fly zone, and protecting civilians.

The intervention was widely presented as the first explicit application of the Responsibility to Protect doctrine to justify military action. R2P, endorsed by the UN General Assembly in 2005, rests on the premise that sovereignty entails responsibility, and that when a state manifestly fails to protect its population from genocide, war crimes, ethnic cleansing, or crimes against humanity, the international community has a responsibility to act collectively (Evans, 2008). In the Libyan case, proponents argued that all three pillars of R2P were engaged: the Libyan state had failed in its protective role; peaceful means had been exhausted; and military intervention was necessary and proportionate to prevent mass atrocities (Bellamy & Williams, 2011). Critics, however, would later argue that the implementation of Resolution 1973 stretched the civilian protection mandate beyond its intended scope.

Chapter III: The Fall of the Gaddafi Regime

1. Military Developments and the Collapse of State Authority

Following the adoption of UNSC Resolution 1973, military operations intensified rapidly. Airstrikes conducted under NATO command systematically targeted Libyan government forces, command-and-control centers, air defense systems, and armored units threatening opposition-held areas. Although the official mandate emphasized civilian protection, the degradation of regime military capabilities had the indirect effect of tilting the balance of power decisively in favor of rebel forces.

By the summer of 2011, opposition groups, loosely coordinated and supported by NATO airpower, advanced westward from Benghazi toward Tripoli. The fall of the capital in August 2011 marked the effective collapse of central authority. Regime institutions disintegrated, and loyalty-based security structures fragmented almost overnight. Unlike other authoritarian regimes in the region, the Libyan state was highly personalized around Muammar Gaddafi, lacking autonomous bureaucratic or military institutions capable of surviving his removal (Vandewalle, 2012).

This institutional fragility would prove decisive in shaping Libya's post-conflict trajectory. While the immediate military objective of neutralizing the regime's capacity to attack civilians was achieved, the destruction of remaining state structures left a profound governance vacuum.

2. The Death of Muammar Gaddafi

On 20 October 2011, Muammar Gaddafi was captured near his hometown of Sirte while attempting to flee following the city's fall to rebel forces. He was subsequently killed under circumstances that raised serious concerns regarding extrajudicial execution and violations of international humanitarian law. Although the exact sequence of events remains contested, multiple investigations suggested that Gaddafi was alive at the time of capture and died shortly thereafter while in the custody of opposition fighters (Amnesty International, 2012).

From a legal perspective, Gaddafi's death underscored a critical tension inherent in the intervention. While the UNSC mandate did not authorize regime change or the targeted killing of political leaders, NATO operations had created the conditions that made the regime's collapse—and Gaddafi's death—inevitable. This outcome fueled later accusations that the intervention had exceeded its legal mandate and transformed a civilian protection mission into a de facto operation of regime change (Kuperman, 2015).

3. The National Transitional Council and the End of NATO Operations

In the immediate aftermath of the regime's collapse, the National Transitional Council (NTC) emerged as the provisional governing authority. Recognized by numerous states and international organizations, the NTC pledged to guide Libya toward democratic elections, constitutional reform, and national reconciliation.

NATO formally concluded Operation Unified Protector on 31 October 2011, declaring that its mandate under Resolution 1973 had been fulfilled. From a narrow legal standpoint, the intervention was thus brought to an orderly close. However, the international community's disengagement occurred at a moment when Libya's internal security situation was highly unstable and the capacity of transitional authorities remained extremely limited.

The absence of a robust post-conflict stabilization or peacebuilding mission—whether under UN or regional auspices—would soon emerge as one of the most consequential shortcomings of the intervention.

Chapter IV: The First Decade Post-Gaddafi (2011–2021)

1. Institutional Vacuum and the Absence of a Unified State

The collapse of the Gaddafi regime did not result in the emergence of a cohesive post-revolutionary state. On the contrary, Libya entered a prolonged period of institutional vacuum. The country lacked a unified national army, an effective police force, and functioning judicial institutions. Instead, security was exercised by a patchwork of revolutionary militias organized along local, tribal, ideological, and regional lines (International Crisis Group, 2013).

These militias, initially celebrated as liberators, quickly became autonomous power centers. Attempts by transitional authorities to disarm, demobilize, and reintegrate fighters proved largely unsuccessful. In many cases, militias were instead incorporated into nominal state structures while retaining their independent command chains, thereby further undermining state coherence (Lacher, 2015).

2. Political Fragmentation and Competing Claims to Legitimacy

Political fragmentation deepened as transitional processes stalled. Although Libya held elections for a General National Congress in 2012, political polarization and institutional weakness prevented effective governance. By 2014, the country had fractured into two rival centers of power.

In western Libya, a government based in Tripoli claimed legitimacy and later evolved into the UN-recognized Government of National Accord (GNA). In the east, the House of Representatives (HoR), operating from Tobruk, aligned itself with forces led by General Khalifa Haftar. Each authority claimed constitutional legitimacy, maintained separate security forces, and received backing from different international actors.

This duality of governance effectively institutionalized Libya's division. Repeated attempts at political reconciliation, including UN-mediated agreements, failed to achieve durable implementation due to mutual distrust, external interference, and the absence of enforcement mechanisms (UNSMIL, 2019).

3. The Role of Armed Groups and the Rise of Extremist Actors

The prolonged security vacuum created fertile ground for extremist organizations. Between 2014 and 2016, the Islamic State exploited the chaos to establish a territorial foothold, particularly in the coastal city of Sirte. The group capitalized on local grievances, porous borders, and the collapse of state authority to recruit fighters and conduct attacks.

Although ISIS was eventually defeated territorially in 2016 by Libyan forces supported by U.S. airstrikes, its rise illustrated the broader regional consequences of Libya's instability. Even after its territorial defeat, extremist cells remained active, continuing to pose a security threat at both national and regional levels (Wehrey, 2017).

4. Migration and the Humanitarian Crisis

One of the most visible and enduring consequences of Libya's post-2011 instability has been its transformation into a primary transit hub for irregular migration toward Europe. The collapse of border controls, law enforcement institutions, and judicial oversight created an

environment in which human smuggling and trafficking networks flourished. Migrants from Sub-Saharan Africa, the Horn of Africa, and parts of the Middle East increasingly relied on Libyan routes to reach the Mediterranean, often under extremely dangerous conditions.

Numerous reports by international organizations documented widespread human rights abuses against migrants and asylum seekers in Libya, including arbitrary detention, torture, forced labor, sexual violence, and extortion (Amnesty International, 2017; UNHCR, 2018). Detention centers, frequently operated by militias nominally affiliated with state authorities, became sites of systematic abuse. These practices highlighted the broader erosion of the rule of law and raised serious concerns regarding the complicity of local actors benefiting from migration control arrangements with external partners.

From a legal perspective, the humanitarian crisis exposed a paradox: while the 2011 intervention had been justified primarily on civilian protection grounds, the post-conflict environment subjected both Libyan civilians and foreign migrants to sustained patterns of violence and exploitation. This outcome contributed to growing skepticism regarding the capacity of military intervention alone to deliver durable human protection outcomes.

5. External Involvement and the Internationalization of the Conflict

As internal fragmentation deepened, Libya increasingly became the arena for a complex proxy war involving regional and global powers. Competing external interventions, often justified by counterterrorism, ideological alignment, or strategic interests, exacerbated instability and undermined diplomatic efforts.

On one side, Turkey and Qatar provided political, military, and logistical support to authorities in Tripoli, including assistance to armed groups aligned with the Government of National Accord. On the opposing side, Egypt, the United Arab Emirates, and France supported the eastern-based authorities and the Libyan Arab Armed Forces led by Khalifa Haftar. Russia's involvement, particularly through private military contractors associated with the Wagner Group, further internationalized the conflict (Wehrey, 2020).

These interventions violated, in practice if not always formally, the arms embargo imposed by the UN Security Council. The resulting militarization entrenched divisions and reduced incentives for compromise among Libyan actors. International mediation efforts, led primarily by the United Nations Support Mission in Libya (UNSMIL), were repeatedly undermined by the strategic calculations of external sponsors.

The Libyan case thus illustrates how humanitarian interventions can evolve into prolonged proxy conflicts when post-intervention governance structures remain weak and external actors pursue divergent agendas.

6. Economic Fragmentation and the Centrality of Oil

Libya's economy, overwhelmingly dependent on hydrocarbon revenues, was profoundly affected by post-2011 instability. Oil infrastructure—including fields, pipelines, and export terminals—became strategic assets contested by rival factions. Armed groups repeatedly blockaded production facilities to extract political concessions or financial gains, leading to dramatic fluctuations in output (International Monetary Fund, 2019).

The fragmentation of economic governance mirrored political divisions. Competing claims over control of the Central Bank and the National Oil Corporation further complicated revenue management and public spending. As a result, inflation rose, public services deteriorated, and living standards declined sharply for much of the population.

These economic dynamics reinforced conflict incentives. Control over oil infrastructure provided leverage both domestically and internationally, while the absence of transparent revenue-sharing mechanisms undermined trust between rival authorities. The Libyan case demonstrates how economic reconstruction is inseparable from political and security stabilization in post-conflict contexts.

Chapter V: Arguments in Favor of the Intervention, Critiques, and Lessons Learned

1. Arguments Supporting the Intervention

Proponents of the 2011 intervention emphasize its immediate humanitarian rationale. At the time of UNSC Resolution 1973, there was widespread concern that Libyan government forces were poised to carry out large-scale atrocities in Benghazi. Subsequent analyses suggest that NATO's intervention likely prevented an imminent assault that could have resulted in significant civilian casualties (Bellamy, 2015).

Supporters further argue that the intervention aligned with the emerging normative framework of the Responsibility to Protect. Libya was widely perceived as a case in which a state had manifestly failed to protect its population, peaceful measures had been exhausted, and timely military action offered the best available means of averting mass violence. From this perspective, the intervention represented a principled application of collective security mechanisms rather than unilateral coercion.

Finally, advocates contend that the intervention demonstrated the continued relevance of the UN Security Council as the central authority for authorizing the use of force, thereby reinforcing the legal framework governing international peace and security.

2. Legal and Political Critiques

Despite these arguments, the intervention has been subject to sustained criticism. One central concern relates to the interpretation of the mandate provided by Resolution 1973. Critics argue that NATO exceeded the resolution's civilian protection mandate by pursuing military objectives that effectively ensured regime change, despite the absence of explicit authorization to remove Gaddafi from power (Kuperman, 2013).

This perception was particularly salient among states that abstained from the vote, including Russia and China, which later cited the Libyan case as evidence of mandate abuse. The resulting erosion of trust within the Security Council has been widely identified as a key factor behind subsequent deadlock on crises such as Syria.

Another major critique concerns the absence of a comprehensive post-conflict strategy. While significant resources were devoted to military operations, comparatively little attention was paid to institution-building, security sector reform, or national reconciliation. This omission contributed directly to the prolonged instability that followed and highlighted the limitations of narrowly framed humanitarian interventions.

3. Responsibility to Rebuild and the Limits of R2P

The Libyan experience has fueled renewed debate over the concept of a "Responsibility to Rebuild" as an integral component of R2P. Scholars argue that protecting civilians during active hostilities is insufficient if international actors disengage immediately after regime collapse, leaving societies vulnerable to renewed violence and state failure (Evans, 2014).

In this sense, Libya exposed a structural weakness in the implementation of R2P: while the doctrine emphasizes prevention and reaction, it remains underdeveloped in terms of post-conflict obligations. Without sustained international engagement, the normative promise of R2P risks being undermined by outcomes that fall short of durable peace and human security.

Regional Impact: Libya and the Destabilization of the Sahel

The destabilization of Libya following the 2011 intervention had profound consequences beyond its borders, particularly in the Sahel region. The collapse of Libyan state authority facilitated the uncontrolled spread of weapons, ammunition, and experienced fighters across porous borders into neighboring countries such as Mali, Niger, and Chad. These dynamics significantly altered regional security balances and contributed to the escalation of conflicts far from Libya itself.

One of the most direct consequences was observed in Mali, where Tuareg fighters who had previously served in Gaddafi's security forces returned home heavily armed. Their involvement played a decisive role in the 2012 rebellion in northern Mali, which was subsequently exploited by jihadist groups linked to al-Qaeda. Similar patterns emerged in Niger and Chad, where arms trafficking and militant mobility intensified pre-existing security challenges (Lacher, 2013).

From a legal and policy perspective, these spillover effects raise critical questions about the scope of responsibility associated with international intervention. While UNSC Resolution 1973 was territorially limited to Libya, the regional consequences of state collapse underscore the interconnected nature of security in fragile regions. The Libyan case thus illustrates how the failure to stabilize a post-intervention state can generate secondary crises that undermine regional and international peace and security.

Conclusions

The 2011 intervention in Libya stands as a defining moment in the evolution of international norms governing the use of force, humanitarian intervention, and civilian protection. Legally grounded in United Nations Security Council Resolutions 1970 and 1973, and politically justified through the doctrine of the Responsibility to Protect, the intervention initially appeared to mark a successful convergence of legality and legitimacy. In the immediate term, it arguably achieved its core objective: preventing an imminent assault on civilian populations, particularly in Benghazi.

However, the longer-term trajectory of Libya compels a more critical and nuanced assessment. The collapse of the Gaddafi regime, while welcomed by many Libyans and external actors, resulted in the near-total disintegration of state institutions. The absence of a unified security apparatus, effective governance structures, and a shared political vision transformed Libya into a fragmented and contested political space. Over the subsequent decade, this fragmentation manifested in prolonged civil conflict, humanitarian crises, economic decline, and persistent foreign interference.

From a legal standpoint, the Libyan intervention exposed ambiguities inherent in Security Council mandates authorizing "all necessary measures." While such language provides operational flexibility, it also creates space for divergent interpretations that can undermine trust among major powers. The perception that NATO exceeded its civilian protection mandate by facilitating regime change contributed directly to later paralysis within

the Security Council, most notably in relation to the Syrian conflict. In this sense, Libya had consequences not only for the country itself, but for the functioning of collective security mechanisms more broadly.

Normatively, Libya represents both the high point and the Achilles' heel of the Responsibility to Protect. It demonstrated that the international community can act swiftly and decisively when mass atrocities appear imminent. At the same time, it revealed the doctrine's limitations when intervention is not accompanied by sustained post-conflict engagement. The failure to operationalize a meaningful "Responsibility to Rebuild" undermined the protective gains achieved during the intervention and left Libya vulnerable to renewed violence and state failure.

Ultimately, the Libyan case suggests that humanitarian intervention cannot be evaluated solely on the basis of immediate outcomes. Legal authorization and moral intent, while necessary, are insufficient in the absence of long-term political, institutional, and economic strategies. Future interventions must grapple more seriously with the post-conflict phase, recognizing that the responsibility to protect civilians does not end when hostilities cease, but extends to the creation of conditions in which sustainable peace and governance can emerge.

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THE EDUCATIONAL DIMENSION AND THE ROLE OF STUDENTS IN QUALITY ASSURANCE PROCESSES

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Abstract: *Within the framework of European policies for Quality Assurance in Higher Education, promoted at supranational level by ENQA, Students participation is considered a structural element of university evaluation and continuous improvement processes. In addition to meeting regulatory requirements, such participation has a clear educational value, constituting a formative experience capable of developing skills relevant to the academic citizenship and future professionalism of the students involved. This paper analyses Students participation in quality assurance systems, taking the European Standards and Guidelines as a reference and proposing the Italian case of the Self-Assessment, Evaluation and Accreditation (AVA) procedures devised by ANVUR (National Agency for the Evaluation of Universities and Research Institutes) as an example of the national implementation of European policies. The focus is on the role of Students Evaluation Experts (SEV), understood as active participants in situated learning, co-responsibility and Peer training. The contribution adopts a theoretical framework oriented towards a reflective-experiential approach based on the analysis of active representation practices, Peer Training courses and feedback activities, which show how the involvement of Students in QA processes can promote the development of transversal skills such as critical thinking, evaluation skills, institutional communication and the assumption of responsibility in the organizations where they work. In conclusion, the contribution proposes interpreting Quality Assurance processes as learning environments and university governance as an advanced pedagogical space, in which Students participation contributes to the construction of a European culture of quality based on awareness, participation and skills development. Finally, the article proposes a reflection that recognizes Quality Assurance processes as learning environments and university governance as an advanced educational space, promoting a culture of quality based on informed participation, skills development and shared responsibility.*

Keywords: *Educational Accountability; educational dimension; Students participation; Peer Training; Quality Assurance; Students Assessment Experts*

1. Introduction

In the contemporary context of higher education, Quality Assurance (QA) systems have gradually established themselves as central devices for regulating, monitoring and improving the educational and organizational processes of university institutions. This statement cannot be understood without reference to the broader framework of reform initiated at European level since the Bologna Process, which promoted the construction of the European

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Higher Education Area as a shared space for cooperation, comparability and mutual trust between national systems. In this scenario, quality has not been conceived exclusively as a technical requirement or procedural compliance, but as a structural dimension of university policies, aimed at ensuring transparency, accountability and social legitimacy of institutional action towards internal and external stakeholders.

The adoption of *the Standards and Guidelines for Quality Assurance in the European Higher Education Area* (ESG) represented, in this perspective, a decisive step towards the definition of a common language and shared principles on quality, focusing on a systemic approach based on continuous improvement and the active participation of the actors involved. The ESG, developed within the framework of policies promoted by ENQA and the main European organizations in the sector, have progressively contributed to redefining quality not as a static outcome, but as a dynamic and reflective process, closely linked to the ability of institutions to learn from their own practices and adapt to changes in the social, economic and cultural context (ENQA, 2015).

Within this regulatory and cultural framework, the significant role of Students participation in QA processes has become increasingly clear in recent years. Students are now recognized as individuals who can contribute significantly to the design, evaluation and monitoring of educational provision, not only as recipients of educational services, but also as bearers of an irreplaceable experiential perspective for understanding teaching and learning processes.

This recognition, formally enshrined in the ESG in their 2015 revision, has fostered a gradual evolution in the role of Students, who are increasingly seen less as 'customers' of the university system and more as co-responsible actors in internal and external evaluation mechanisms.

Alongside the procedural dimension of participation, however, a particularly important perspective is opening for Educational Sciences and for educational reflection in a broad sense, namely the possibility of interpreting Quality Assurance processes as learning contexts and Students participation as an intentional educational experience. In this light, QA can be seen not only as a set of guarantee and control tools, but as a complex educational environment in which reflective practices, decision-making processes and dynamics of individual and collective empowerment are intertwined. This interpretation makes it possible to overcome a reductive view of quality as mere regulatory compliance, instead enhancing its formative and transformative potential.

The involvement of Students in governance bodies and active assessment mechanisms activates situated learning processes that foster the development of transversal and professional skills that are difficult to acquire through curricular pathways alone. Participation in QA processes requires and, at the same time, promotes data reading and interpretation skills, critical thinking, communication skills in complex institutional contexts, and the assumption of responsibility in decision-making processes.

In this sense, QA can be understood as an advanced Training environment, capable of significantly impacting the personal, civic and professional development of the students involved, in line with a conception of learning as an experiential and reflective process (Kolb, 2014).

In the Italian context, the Self-Assessment, Evaluation and Accreditation (AVA) system and the policies promoted by ANVUR have progressively strengthened the role of Students in evaluation and accreditation processes, recognizing their contribution both internally, through participation in the self-assessment activities of degree programs, the Joint Teacher-Students Committees and the Quality Assurance Committees, and externally, through their involvement in the Evaluation Expert Committees. This is the context in which the figure for the Students Evaluation Expert (SEV) fits in, assuming a particularly significant role not only at the operational level, but also at the educational and Training level. Students who develop assessment skills through direct experience in QA processes function as mediators between the university institution and the Students community, as well as facilitators of Peer Training courses. The SEV experience highlights how structured and informed participation in university governance produces transferable learning that can also be used in non-academic professional contexts. The organizational, evaluative, communicative and ethical skills that emerge from such experiences are relevant not only for the effective functioning of quality systems, but also for the *employability* of graduates and the formation of critical, aware and responsible citizens who are able to act within complex organizations. In this perspective, Peer Training practices (Campanella, 2025) and active representation workshops play a strategic role in transforming Students participation from occasional or merely formal experience in intentional educational pathways.

These mechanisms help to strengthen a culture of quality based on shared responsibility, reflection and informed participation, promoting a deeper internalization of the principles underlying QA systems and greater awareness of their pedagogical value.

This contribution fits within this theoretical and institutional framework and aims to analyze the educational dimension of Students participation in Quality Assurance processes, with particular attention to the role of SEVs as educational actors and as a strategic resource for university governance. Through a reflective-experiential approach, which integrates the analysis of practices with the author's direct experience in national and international evaluation contexts, the article aims to show how QA systems can be interpreted as learning devices and as privileged spaces for the development of professional and civic skills, contributing to the construction of a genuinely participatory culture of quality.

2. Students' participation as an educational experience in governance processes

From a pedagogical perspective, Students participation in quality assurance processes can be interpreted as a form of situated learning that develops within the context of university governance. In this context, the bodies and mechanisms responsible for quality are not exclusively technical forums for decision-making, control and reporting, but gradually take on the function of informal educational environments, in which learning takes shape through direct involvement in evaluative, reflective and deliberative practices. Academic governance thus becomes a space in which Students observe, participate and engage with institutional actors with distinct roles, languages and responsibilities.

Within these contexts, Students are called upon to develop complex skills relating to the understanding of organizational processes, the interpretation of data and the critical evaluation of teaching practices. Participation in the work of the Joint Teacher-Students Committees, Quality Assurance Officers and Evaluation Units promotes the acquisition of

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transversal skills related to reading institutional documents, analyzing self-evaluation reports, formulating proposals for improvement and mediating between sometimes divergent demands. These skills are particularly relevant in a university education focused on developing responsibility, institutional awareness and active citizenship, helping to strengthen the role of Students as co-responsible participants in decision-making processes. In this context, providing feedback to Students involved in Quality Assurance processes is particularly important. Sharing the decisions taken, the actions undertaken and the results obtained make it possible to highlight the impact of Students' contribution, strengthening the sense of belonging to the academic community and the perception of the effectiveness of participation. The availability of structured and comprehensible feedback encourages informed and motivated participation, transforming involvement in QA mechanisms into an educational experience that can influence both the quality of decision-making processes and the evolution of university governance.

When accompanied by appropriate Training and clearly defined roles, Students participation also helps to promote a culture of quality based on shared responsibility. In this perspective, the role of Students in Quality Assurance processes has been progressively recognized and strengthened in the evolution of national and European models, moving from forms of episodic consultation to modes of active and participatory involvement. As Refrigeri (2017) observes, the participatory approach to evaluation is based on the recognition of Students as individuals capable of contributing significantly to the co-design and continuous updating of internal QA processes. This approach values Student's contribution not only in terms of information, but also as an intentional learning experience, capable of generating reflective learning and evaluative skills (Carci, 2023).

The involvement of Students in governance processes raises the broader issue of *Students voice* in evaluation mechanisms. The growing attention paid to this dimension by higher education institutions testifies to a progressive recognition of the value of Students participation not only as a right, but also as a strategic resource for educational and organizational innovation. *Students Voice* represents an opportunity for Students to express their opinions, proposals and evaluations of their educational experience in a structured way, contributing to the construction of quality systems that are truly participatory and oriented towards continuous improvement (Carci, 2023).

The perception that Students develop towards Quality Assurance processes, sometimes characterized by a distance from direct educational experience, can be interpreted considering the concept of quality culture. As highlighted by Del Gobbo (2021), the term 'culture' refers to a complex set of shared values, norms and practices that define quality not as a mere system of procedures, but as the collective responsibility of the entire academic community.

In this context, Quality Assurance is called upon to move beyond a formal or regulatory compliance-oriented approach and become a dynamic and participatory process capable of engaging Students, teachers and technical-administrative staff in a process of shared reflection and organizational learning. In this sense, QA contributes to the definition of institutional policies and strategies, the management of resources and processes, and the monitoring of results, with the aim of creating public value and responding effectively to the needs of society and the world of work.

Understood as a tool for collective awareness and learning, Quality Assurance strengthens the link between the University and society and guides the University towards a vision of sustainable institutional and human development, within which university governance is configured as a context of shared learning, in which quality is built through continuous dialogue between Students, teachers and governing bodies.

3. Students Evaluation Experts as educational mediators

Within Quality Assurance systems, the role of Students Evaluation Experts (SEVs) represents a significant evolution in the role of Students in university governance processes. SEVs are Students who, through continuous involvement in QA mechanisms and participation in specific Training courses, acquire advanced skills in assessment, organization and communication. This experience enables them to function as mediators between the Students community and institutional structures, extending their role beyond the scope of formal assessment and contributing to the educational dimension of quality processes.

SEVs actively participate in internal and external evaluation processes, contributing to the critical reading of evidence, the analysis of results and the formulation of shared judgements. Through these activities, they develop skills that include the ability to operate in multidisciplinary contexts, to take on decision-making responsibilities and to communicate effectively with different interlocutors. These skills are relevant not only to the functioning of quality systems, but also to the professional Training of the Students involved, as they promote the development of a reflective attitude and a systemic view of complex organizations.

A central element of the SEV's role is *Peer training*. Through active representation workshops, training meetings and support activities, SEVs contribute to the training of new Students representatives, facilitating understanding of quality assurance processes and promoting informed and responsible participation. *Peer Training* practices allow for the dissemination of evaluation skills within the students community, strengthening the sustainability of quality systems and promoting the continuity of good practices over time.

The author's experience in national and international evaluation contexts, such as the accreditation procedures promoted by ANVUR, participation in the activities of the European Students' Union and involvement in international evaluations on behalf of agencies such as FIBAA, shows how the role of SEVs contributes to strengthening the educational dimension of Quality Assurance. Exposure to heterogeneous models of governance and evaluation promotes the development of a comparative and critical vision, which is useful both for the improvement of institutional processes and for the personal and professional growth of Students.

From this perspective, SEVs can be interpreted as facilitators of quality and as a strategic resource for their respective universities. Their actions contribute to making quality assurance processes more understandable, participatory and improvement-oriented, promoting a culture of quality that recognizes the educational value of participation and the centrality of the skills developed through the evaluation experience.

4. Educational dimension of Quality Assurance Processes

Students' participation in quality assurance processes can be interpreted as a complex educational experience, capable of generating meaningful learning that transcends the

immediate goal of improving study programs. When Students are involved in a structured way in self-assessment, monitoring and review activities, they meet organizational and decision-making practices that require critical processing of information, understanding of institutional mechanisms and assumption of responsibility towards the academic community. From this perspective, Quality Assurance is a situated learning context in which skills emerge from the interaction between experience, reflection and action.

Typical QA activities, such as analyzing teaching data, reading self-assessment reports, participating in joint committees and engaging with teachers and governance structures, encourage the development of methodological and docimological skills. These skills relate to the ability to interpret quantitative and qualitative indicators and to understand the relationships between educational objectives, learning outcomes and teaching organization. The literature highlights how these skills represent an essential dimension of contemporary university education, as they promote the development of critical thinking and institutional awareness (Refrigeri, 2017; Kivistö & Pekkola, 2017).

In addition to the evaluative dimension, participation in Quality Assurance processes promotes communication and interpersonal skills that are central to both university governance and professional contexts. The students involved are called upon to interact with different interlocutors, to mediate between often divergent demands and to translate technical information into language accessible to the Students community. This continuous exercise in institutional communication contributes to the development of negotiation skills, active listening and feedback, strengthening the role of the students as an active and aware participant in the decision-making process. In this sense, Students participation in Quality Assurance processes takes on an educational value that extends to the development of transferable skills that can be used in professional careers. The skills developed through evaluation experience, such as the ability to work in a team, manage complex processes and take on responsibility, are consistent with the skills required in contemporary work contexts. Making this educational dimension visible means recognizing the contribution of QA not only to the quality of study programs, but also to the overall educational mission of the University, understood as a space for the integral formation of the person and the development of civic and professional skills (Refrigeri & Palladino, 2019; OECD, 2020).

5. The role of students in peer training methodology

Within Quality Assurance processes, SEVs play a key role in systematically connecting the assessment dimension with the Training dimension. The experience gained by SEVs in university governance contexts and assessment mechanisms allows them to position themselves between the institution and the Students community, promoting the circulation of knowledge, understanding of processes and the dissemination of assessment skills. From this perspective, *Peer Training* is a privileged educational strategy for making Students participation not only more widespread, but also more informed, competent and sustainable over time. *Peer Training* is a learning method based on sharing experiences and valuing knowledge gained in informal and non-formal contexts. Through their direct involvement in Quality Assurance processes, SEVs acquire operational and interpretative knowledge that is difficult to convey through formal or documentary means alone.

Peer Training allows this implicit knowledge to be transformed into explicit knowledge that can be communicated and negotiated within the Students community, thus strengthening Students' ability to interpret their role in QA bodies and to act in an informed and responsible manner. This is the direction taken by the active representation workshops and *Peer Training* activities conducted by the author, which took place in Florence on 9 December 2025. These Training initiatives provided opportunities for reflective discussion on concrete cases of simulated evaluation processes and analysis of institutional practices, promoting a deeper understanding of the logic governing university governance. Through these tools, participating Students were able to acquire conceptual and operational tools useful for overcoming a purely bureaucratic view of quality assurance processes, developing instead an approach oriented towards continuous improvement and institutional co-responsibility.

The author's direct experience as a Students representative and SEV highlights how Peer Training also contributes significantly to strengthening the sense of efficacy perceived by the Students involved. The opportunity to understand how decision-making processes work, to observe how evaluations are translated into concrete improvements, and to recognize the impact of one's own contribution encourages greater motivation to participate and consolidates a sense of responsibility towards the academic community. In this sense, *Peer Training* is not limited to the transmission of technical or procedural skills, but promotes attitudes of active citizenship, institutional commitment and critical awareness, in line with the literature that interprets quality as a participatory and shared culture (Fondazione CRUI, 2012; Mortari et al., 2021). The educational relevance of the role of SEVs is also particularly clear in international evaluation contexts, where comparison with different models of Quality Assurance encourages the development of a reflective and comparative approach. Involvement in Evaluation processes promoted by bodies such as ANVUR, the European Students' Union and FIBAA allow SEVs to meet diverse approaches to governance and quality assessment, broadening their interpretative and methodological repertoire. These experiences fuel critical reflection on practices adopted at national and international levels and enable the transfer of learning gained in Students Training courses, strengthening the educational dimension of participation.

This circularity between evaluation experience, critical reflection and Peer Training is one of the key elements in consolidating the pedagogical value of Quality Assurance processes. As Training mediators, SEVs help to make QA more accessible and understandable, promoting a culture of quality based on informed participation, shared responsibility and recognition of the skills developed through experience. In this perspective, *Peer Training* is not an ancillary activity, but a strategic tool for integrating the evaluation dimension with the educational mission of the university.

6. Accountability, feedback and learning organizational

A key element in fully enhancing Students participation in Quality Assurance processes is the ability of universities to ensure effective closure of the feedback cycle. The structured and transparent feedback of assessment results to the Students involved is, in fact, an essential condition for QA processes to be interpreted as opportunities for organizational learning. In this perspective, the data collected and the assessments expressed are not confined to a descriptive or certifying function but become cognitive tools through which to understand

institutional dynamics, reflect on the practices adopted and guide future decisions.

In this context, accountability cannot be reduced to mere formal fulfilment or an exercise in external reporting but must be understood as an educational practice that makes responsibilities, decision-making processes and the effects of the choices made visible. When institutions communicate the results of evaluations and the improvement actions taken in a clear and accessible manner, they help to strengthen Students' trust in the Quality Assurance system and legitimize their participation. The ability to observe the link between the contribution made and the decisions taken allows Students to give meaning to their participation, transforming it into an experience of reflective learning and civic empowerment.

The literature on the subject highlights how transparency and feedback are essential elements in promoting a sustainable and shared culture of quality. In particular, the documents produced by ANVUR emphasize the importance of making the results of evaluation processes visible and systematically monitoring the implementation of improvement actions to avoid the risk of purely symbolic participation (ANVUR, 2024). Similarly, the European Students' Union highlights how Students' involvement can only be effective if there are clear and timely feedback mechanisms in place, capable of demonstrating the concrete impact of *Students Voice* on decision-making processes (ESU, 2023).

In this context, monitoring the effects of Students participation practices plays a strategic role in the development of organizational learning. Systematic observation of the educational and organizational outcomes of QA activities provides insight into the extent to which participation contributes not only to the improvement of study programs, but also to the development of the skills of the Students involved. An empirical approach based on the analysis of experiences and critical reflection makes it possible to avoid the risk of self-referentiality and to produce useful evidence for guiding governance policies in a more conscious and informed manner (Refrigeri & Palladino, 2019).

Furthermore, feedback encourages the development of a metacognitive perspective in Students, who are called upon to reflect not only on the results of assessments, but also on the processes through which these results are constructed and used. In this sense, participation in Quality Assurance processes encourages Students to move beyond a linear and passive view of their role and place themselves within a circular learning process that involves the entire academic community. Students are no longer merely recipients of decisions, but conscious actors in a complex system in which quality emerges from the interaction between assessment, action and reflection.

Understood in this way, accountability contributes to redefining the relationship between the institution and Students, promoting a more inclusive governance oriented towards collective learning. QA thus becomes a space in which reporting is intertwined with training, and feedback is used as a pedagogical lever to strengthen the culture of quality, shared responsibility and a sense of belonging to the university community.

7. Conclusions and future perspectives

Considering European policies for Quality Assurance in Higher Education, as outlined by the European Standards and Guidelines and promoted by ENQA, this paper proposes a reinterpretation of Quality Assurance processes as learning environments in which Students

participation takes on a structural pedagogical value. From this perspective, QA is not exclusively a tool for regulation and control, but a Training device capable of combining institutional improvement and the development of individual skills. Placing Students at the centre of Quality Assurance processes means recognizing them as active participants and co-responsible for the improvement of study programs.

The structured involvement of Students in self-assessment, evaluation and accreditation processes allows for the integration of experiential perspectives on the organization of teaching and teaching-learning processes into decision-making mechanisms, generating concrete added value for the quality of educational provision. In this sense, Students participation contributes not only to the transparency and effectiveness of QA systems, but also to their ability to truly focus on continuous improvement.

At the same time, the analysis highlights how participation in Quality Assurance processes has a direct educational impact on the Students involved, promoting the development of particularly important personal and transversal skills. Assessment skills, critical thinking, data reading and interpretation, institutional communication, collaborative work and responsibility emerge as significant learning outcomes, gained through experiences of university governance and fully consistent with the profiles required in contemporary professional contexts.

In this context, the role of Students Evaluation Experts is a strategic resource for universities, as they can mediate between the evaluation and educational dimensions. Through Peer Training and feedback practices, SEVs contribute to the dissemination of a culture of participatory quality, strengthening the sustainability of QA systems and the sense of shared responsibility within the academic community.

Finally, fully recognizing the educational value of Students participation implies a rethinking of institutional policies: investing in the Training of the Students involved, formalizing roles, ensuring the effective closure of feedback cycles and systematically monitoring the educational outcomes of participation are essential conditions for democratic, sustainable and learning-oriented quality. In this direction, Quality Assurance can become a real driver for the improvement of study programs and the development of Students' transversal skills, strengthening the role of the University as a responsible and generative educational community.

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STRENGTHENING THE LINK BETWEEN PRE-UNIVERSITY EDUCATION AND HIGHER EDUCATION IN ALBANIA: STRATEGIC APPROACHES AND GOOD PRACTICES

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Abstract: *The transition from pre-university to higher education is a critical phase that shapes students' academic success and long-term development. In Albania, bridging this gap is essential for creating a more coherent, inclusive, and responsive education system. Among the most promising strategies are those that focus on building concrete bridges of cooperation between secondary schools and higher education institutions. Formal cooperation agreements and joint initiatives between these institutions significantly improve students' awareness of academic pathways and career opportunities. Likewise, regular collaborative activities—such as co-designed workshops, mentoring programs, and shared academic projects—not only enhance mutual understanding of curricular expectations but also contribute to smoother student transitions. To support these efforts, adopting a benchmarking approach—drawing on successful models from comparable countries—can provide practical direction. The centers are jointly supported by schools, universities, and local authorities, and play a vital role in aligning educational pathways with labor market needs and higher education demands. This paper explores these strategic approaches and highlights good practices that foster alignment between competencies, programs, and institutional cultures. By reinforcing these links, Albania can enhance student preparedness, reduce dropout rates, and foster a more integrated academic journey for future generations.*

Keywords: *Cooperation between secondary and higher education; Career Center model; Student transition; Benchmarking approach.*

1 Formal School–University Partnerships and Agreements

Establishing formal partnerships between secondary schools and higher education institutions is a foundational step in strengthening the education pipeline. Such partnerships typically involve cooperation agreements or official frameworks that commit schools and universities to work together on student preparation and orientation (Center for American Progress, 2010, p. 15; European Training Foundation, 2023, p. 22). Formal agreements create accountability and regularity in collaboration—for instance, by scheduling annual orientation days, teacher exchange programs, or joint curriculum reviews (Conley, 2007, pp. 45–46; Kintrea, St Clair, & Houston, 2015, p. 118). They also signal to students and parents that there is a continuous pathway linking the secondary and tertiary levels, encouraging more students to see higher education as an accessible and supported goal (Institute of Education Sciences, 2022, p. 9; Organisation for Economic Co-operation and Development [OECD], 2020, pp. 33–34).

1.1 Improving student awareness of pathways

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Research indicates that formalized partnerships can significantly enhance the information and guidance available to students about university pathways (Center for American Progress, 2010, p. 12; Symonds, Schwartz, & Ferguson, 2011, pp. 25–26). By breaking down the institutional silos between K–12 and higher education, partnerships expose secondary educators, students, and families to college expectations and opportunities they might otherwise overlook (Conley, 2007, p. 45; Kintrea, St Clair, & Houston, 2015, p. 118). For example, a policy analysis by the Center for American Progress noted that “formal agreements for partnership can expose educators, students, and parents to college and career preparation opportunities,” thereby supporting students’ academic and professional growth (Center for American Progress, 2010, p. 14). In the Albanian context, where families may be unfamiliar with university application processes or new fields of study, having high schools and universities jointly hold information sessions or college fairs can greatly improve awareness (Halimi & Zogaj, 2023, p. 7; Institute of Education Sciences, 2022, p. 9). Such initiatives ensure that students receive timely guidance on course selection in high school (aligned with university prerequisites), scholarship and financial aid options, and the long-term career implications of different academic tracks.

Many universities worldwide maintain “feeder school” partnerships or adopt-a-school programs; these formal ties often lead to dedicated admissions advising for the partner schools’ graduates, priority opportunities in bridge courses, or even dual-enrollment programs allowing high-achieving secondary students to take introductory college courses (European Commission, 2022, p. 41; Organization for Economic Co-operation and Development [OECD], 2020, pp. 55–56). The overarching goal is to institutionalize a continuity of guidance: rather than leaving the gap between high school and university to be navigated by students alone, the institutions on both sides actively collaborate to guide students across that gap.

From a policy perspective, Albania’s education authorities can encourage such partnerships by providing frameworks and incentives (World Bank, 2022, p. 19). One approach could be developing a national scheme where each public university is paired with several pilot secondary schools in its region to develop joint transition programs. Over time, successful practices from these pilots (such as improved university enrollment rates or reduced first-year attrition from those schools) could be scaled up. International experience underscores that when secondary and postsecondary institutions coordinate their efforts, it leads to better alignment of curricula and reduces the need for remedial coursework at university (European Training Foundation [ETF], 2023, p. 27; Organization for Economic Co-operation and Development [OECD], 2020, pp. 60–61). In the United States, for example, some state-wide K–16 partnerships focus on faculty collaboration to adjust teaching standards and expectations on both sides, thereby addressing college readiness gaps before students graduate high school (Conley, 2007, pp. 52–53). Applying a similar ethos in Albania—through formal school-university agreements—would formalize the currently informal or ad-hoc collaborations and ensure that every student benefits from a guided transition plan.

1.2 Engaging multiple stakeholders

Effective partnerships often extend beyond just schools and universities to include local government and community organizations (European Training Foundation [ETF], 2023, p. 22;

United Nations Educational, Scientific and Cultural Organization [UNESCO], 2021, p. 18). Municipalities can play a coordinating role, especially in Albania's context of decentralizing certain educational services (Halimi & Zogaj, 2023, p. 7; Municipality of Tirana, 2023, p. 11). As will be discussed in a later section, the Municipality of Tirana has piloted a career guidance center that connects with local schools—exemplifying how local authorities can bolster these partnerships with resources and additional outreach (Institute of Education Sciences, 2022, p. 9; RisiAlbania, 2021, p. 5). Likewise, employers and vocational training providers can be brought into the fold via these agreements, to ensure that the guidance provided aligns with labor market realities (Organisation for Economic Co-operation and Development [OECD], 2020, pp. 60–61; World Bank, 2022, p. 19). In summary, formal cooperation agreements lay the groundwork for a network of support around students. They create a strategic linkage between secondary and tertiary levels of education, within which various collaborative programs and activities can then be implemented.

2. Collaborative Activities for Smoother Transitions

While formal agreements provide the framework, it is the practical collaborative activities that directly impact students' transition experience (Organization for Economic Co-operation and Development [OECD], 2020, p. 58; Symonds, Schwartz, & Ferguson, 2011, p. 30). A range of joint initiatives can be undertaken by secondary schools and universities (often in partnership with career centers or local organizations) to help students navigate the academic, social, and emotional leap to higher education. Here we discuss several types of such activities and their proven benefits: orientation and campus visits, mentoring and counseling programs, joint curriculum projects, and career exploration events.

2.1 University orientation programs and campus visits

Inviting secondary students to universities for tailored orientation programs is a powerful way to make the unfamiliar campus environment more approachable (European Commission, 2022, p. 41; European Training Foundation [ETF], 2023, p. 22). Many good practices can be drawn from neighboring countries. In Slovenia, for example, universities routinely host information days for high schoolers, where students visit campus, attend sample lectures, and meet faculty and current undergraduates (University of Nova Gorica, 2022, p. 3). These visits allow prospective students to ask questions about academic life, compare different fields of study, and visualize themselves in the university setting. Such interactions not only spark students' interest in particular disciplines but also clarify the level of rigor and self-directed learning expected at university (Conley, 2007, pp. 52–53; Organization for Economic Co-operation and Development [OECD], 2020, pp. 58–59). In Albania, universities could collaborate with education offices to ensure every Grade 12 student has the chance to attend at least one on-campus event or open day. These could be scheduled during the academic year or in the summer before enrollment. By familiarizing students with lecture halls, labs, libraries, and campus facilities, these visits reduce anxiety and build a sense of belonging, which is linked to better adjustment and persistence in the first year of studies (Symonds, Schwartz, & Ferguson, 2011, p. 30).

2.2 Mentoring and counseling initiatives

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Another effective practice is pairing students with mentors or providing enhanced counseling during the transition (European Training Foundation [ETF], 2023, p. 23; Rashidi & Nura, 2020, p. 15). Mentoring can take the form of university students or alumni mentoring high school seniors, or academic staff from universities acting as advisors to cohorts of secondary students interested in their field. Personalized support and one-on-one coaching have been shown to improve confidence and agency in students from under-represented backgrounds as they prepare for university (Kintrea, St Clair, & Houston, 2015, p. 119). For instance, programs in the UK that trained university students to coach college applicants found that mentees were more confident and had higher university retention once enrolled (Symonds, Schwartz, & Ferguson, 2011, p. 32). Albanian institutions could implement a “near-peer” mentoring scheme: recent high school graduates now in university could return to their alma maters for occasional Q&A sessions or online mentoring, guiding students on study strategies, application essays, or simply sharing how they overcame the transition challenges. In addition, strengthening the role of school counselors is key. Where available, school counselors can coordinate with university career centers to get up-to-date information on programs and admission criteria, which they then relay to students (Institute of Education Sciences, 2022, p. 10). The importance of this is underscored by Slovenia’s policy, where Article 24 of the Labour Market Regulation Act mandates that lifelong career orientation services be provided as a preventive measure to “pupils, secondary-school students, university students and their parents” as part of the education system (Slovenian Ministry of Labour, 2019, p. 8). This integrated approach, treating career and academic guidance as a continuum across educational levels, ensures that students’ questions and concerns are addressed well before they step onto a university campus.

2.3 Joint academic projects and curriculum alignment

Schools and universities can also collaborate through academic initiatives that align curricular content and standards (Conley, 2007, p. 46; Organization for Economic Co-operation and Development [OECD], 2020, pp. 57–58). A promising approach seen elsewhere is to create “vertical” professional learning communities involving secondary teachers and university faculty in key subject areas (such as math, science, or language). In the U.S., the Wyoming School–University Partnership is one example where high school and college faculty meet to examine student work and discuss curricular expectations in subjects like mathematics and writing, ultimately developing a shared language of instruction and clarifying academic standards needed for college-level work (Symonds, Schwartz, & Ferguson, 2011, p. 33). Participants in that initiative reported that these collaborations produced common terminology and clearer alignment between high school exit skills and college entry expectations, which is exactly the “missing middle ground” often blamed for freshman difficulty (Conley, 2007, pp. 50–51). For Albanian educators, establishing similar joint workshops could help address the known gaps—for example, if university professors note that first-year students struggle with academic writing or research skills, they could work with high school teachers to introduce more of those skills in the senior year of secondary school. Some Albanian universities have already begun to introduce bridging courses (in math or language) for first-year students who need extra help; however, a better solution is to push that preparation earlier into the secondary

level through collaboration, thereby reducing the need for remedial courses (World Bank, 2022, p. 20). Joint academic projects can also involve students directly. For instance, a university might invite high school students to participate in a simplified research project or a science competition judged by university faculty (European Training Foundation [ETF], 2023, p. 24). Such experiences challenge students to apply their school knowledge in a more advanced context and make the academic transition more gradual. Importantly, when secondary and tertiary educators jointly plan these activities, it builds professional respect and understanding—high school teachers gain insight into higher-order skills their students will need, and university faculty better appreciate the constraints and opportunities in today’s high school curriculum (European Commission, 2022, p. 42).

2.4 Career exploration and guidance events

A crucial aspect of smoothing the school-to-university transition is helping students clarify their goals and how higher education connects to those goals (Marope, Wells, Hazelkorn, & Lee, 2013, p. 21; Organisation for Economic Co-operation and Development [OECD], 2020, pp. 59–60). To this end, collaborative career guidance events are very effective. In Slovenia, a multi-partner initiative called Career Day (Karierni dan) was developed by the National Education Institute in cooperation with the Employment Service and the Chamber of Commerce, targeting secondary students and their parents (Slovenian National Education Institute, 2021, p. 12). This annual event brings pupils into workplaces or invites professionals to schools, introducing promising professions and fields of study (European Training Foundation [ETF], 2023, p. 26). By seeing real-world applications of various university courses (for example, visiting an engineering firm or a hospital), students can make more informed decisions about which university program to pursue. Joint career orientation fairs – involving schools, universities, and employers – could address this mismatch by guiding students toward in-demand careers and the educational paths to reach them (RisiAlbania, 2021, p. 5). Encouragingly, there are already initiatives in Albania moving in this direction: for example, an annual Professions Fair in Tirana, where universities and companies jointly present career pathways to youth (Municipality of Tirana, 2023, p. 9). By coordinating such events nationally (possibly under the Ministry of Education and in partnership with municipalities and the private sector), Albania can ensure that career guidance is embedded into the transition process. These events should actively involve parents as well, since family support is often decisive in whether a student pursues higher education (United Nations Educational, Scientific and Cultural Organization [UNESCO], 2021, p. 18). Slovenia’s Youth Guarantee career guidance project explicitly included events for parents as part of its outreach, and over 60 parent-focused activities were organized to help families understand higher education and career planning (Slovenian Ministry of Labour, 2019, p. 8). Albanian schools and universities could emulate this by hosting joint parent nights that explain university application procedures, costs, and long-term benefits of higher education, thereby addressing any parental concerns that might otherwise discourage students from enrolling.

In summary, collaborative activities operationalize the school–university link on the ground. They turn the abstract concept of cooperation into tangible experiences that prepare students academically and inform them about their futures (Symonds, Schwartz, & Ferguson, 2011, p. 34). By implementing a combination of orientations, mentoring, joint curriculum

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efforts, and career exploration events, Albania's educational stakeholders can greatly ease the transition for students. Notably, these efforts also contribute to equity: first-generation college students or those from under-resourced schools benefit immensely from additional guidance and early exposure, leveling the playing field in university access (Kintrea, St Clair, & Houston, 2015, p. 120; Rashidi & Nura, 2020, p. 16). As new research from the U.K. has shown, supported transitions not only improve retention but also help diversify university populations by giving all students—regardless of background—the tools to succeed (Symonds, Schwartz, & Ferguson, 2011, p. 35).

3 Benchmarking Good Practices: The Career Center Model in Slovenia

A valuable case study is Slovenia's Career Center model, which demonstrates how structured cooperation between secondary and higher education can be achieved at a systemic level (European Commission, 2022, p. 43; European Training Foundation [ETF], 2023, p. 27). Over the past decade, Slovenia has developed a network of career guidance centers that serve youth across different education stages, effectively acting as a bridge between schools, universities, and the labor market (Slovenian Ministry of Labour, 2019, p. 9; University of Primorska, 2021, p. 6).

In Slovenia's model, career centers are established at universities (and complemented by services in public employment offices) with the mandate to assist both current university students and prospective students from secondary schools (European Training Foundation [ETF], 2023, p. 28). These centers are typically staffed by career counselors who have expertise in education pathways, career planning, and labor market trends. They operate as a one-stop hub for guidance services: high school students can come to the centers (or access their online resources) to get information on study programs, admission criteria, student life, and scholarship opportunities (University of Nova Gorica, 2022, p. 4). At the same time, these centers engage in outreach, going into secondary schools to run workshops or invite classes to visit the university. The integration of services is codified in policy—Slovenia's law explicitly supports lifelong career orientation for pupils through to university level, underlining that guidance is a continuous process (Slovenian Ministry of Labour, 2019, p. 10). One hallmark of the Slovenian approach is the involvement of parents and community in career guidance. The career centers routinely organize sessions not just for students but also for their parents, acknowledging that familial support and understanding are key to smooth transitions (United Nations Educational, Scientific and Cultural Organization [UNESCO], 2021, p. 19). By demystifying higher education for families, the centers help create a supportive environment around the student. Additionally, career centers in Slovenia coordinate with local employers and incorporate labor market information into advising. This means a student in secondary school doesn't just hear about "what it's like to study engineering" but also what careers an engineering degree can lead to, and what skills employers are seeking. Such information is crucial for aligning educational pathways with economic opportunities (Marope, Wells, Hazelkorn, & Lee, 2013, p. 22; Organisation for Economic Co-operation and Development [OECD], 2020, pp. 61–62).

3.1 Activities and initiatives

The range of activities undertaken by career centers in Slovenia illustrates how multifaceted the support can be. According to a recent national report, a youth-oriented career center project (as part of the EU's Youth Guarantee) in 2019–2020 achieved extensive outreach, including 400 career events in schools, 61 parent-focused activities, and over 1,100 individual counseling sessions for students deciding on their future studies (Slovenian Ministry of Labour, 2019, p. 11). Activities commonly include career workshops delivered inside secondary schools (often co-planned with school counselors), where topics like choosing a university program, managing the transition, and planning one's career are discussed interactively (Slovenian National Education Institute, 2021, p. 13). There are also company visits arranged for students to see workplaces related to fields of study—for example, visits to tech firms for those interested in IT, or hospitals for those considering medicine. Notably, the center engages the broader social environment by working with employers to identify their needs and then helping match students and graduates to those opportunities (European Training Foundation [ETF], 2023, p. 29). In effect, the Career Center acts as a broker between secondary education, higher education, and employment (University of Primorska, 2021, p. 7).

3.2 Joint support and funding

The success of Slovenia's model is partly due to its multi-stakeholder support. The career centers are jointly supported by educational institutions and government (and often local authorities) (European Commission, 2022, p. 44). For instance, university-based centers may receive funding from the Ministry of Education for their student services, while special projects like the Youth Guarantee career workshops were co-funded by the Ministry of Labour and the European Social Fund (Slovenian Ministry of Labour, 2019, p. 12). Local municipalities also play a role—in Slovenia's case, career guidance is considered part of community services. This is evidenced by the fact that 12 regional career centers operated under the Employment Service and provided guidance not only to unemployed youth but also to school students as a preventive measure (Employment Service of Slovenia, 2020, p. 6). The shared ownership of these centers ensures sustainability and relevance: schools trust the services because they are developed in collaboration with school authorities, universities see them as tools for better-prepared entrants, and local governments view them as investments in human capital development (United Nations Educational, Scientific and Cultural Organization [UNESCO], 2021, p. 20).

In practice, this means career centers can facilitate communication: for example, a high school counselor can directly refer a student to the university career center for specialized advising on a field of interest, or a career center counselor might sit down with school staff to discuss trends in student preferences or skills gaps observed. The coordination is systemic rather than ad-hoc.

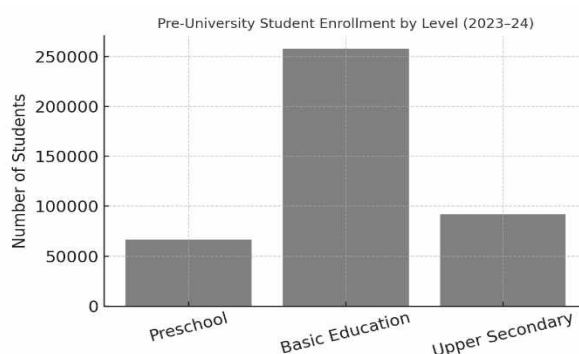
3.3 Lessons for Albania

Adopting a similar career center model in Albania could substantially reinforce the pre-university to university link (European Training Foundation [ETF], 2023, p. 30; Halimi & Zogaj, 2023, p. 8). According to the Institute of Statistics of Albania (INSTAT), Albania's pre-university education system enrolled over 416,000 students in the 2023–2024 academic year, with a significant portion concentrated in basic education (grades 1–9) (INSTAT, 2024, p. 5). However, the system has experienced a steady decline in enrollment, particularly in upper

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secondary education. This trend is visualized in Figure 1, which illustrates the distribution of students across educational levels for Albania. Adopting a similar career center model in Albania could substantially reinforce the pre-university to university link. According to INSTAT, Albania's pre-university education system enrolled over 416,000 students in the 2023–24 academic year, with a significant portion concentrated in basic education (grades 1–9). However, the system has experienced a steady decline in enrollment, particularly in upper secondary education. This trend is visualized in Figure 1, which illustrates the distribution of students across educational levels.

Figure 1. *Pre-University Student Enrollment by Level in Albania (2023–2024)*



Source: (Institute of Statistics of Albania [INSTAT], 2024, p. 5)

Currently, some Albanian universities have career offices or centers, but these typically focus on helping enrolled students transition out to the job market (World Bank, 2022, p. 21). Opening up these centers to serve secondary students (perhaps starting in their final two years of high school) would fill a notable gap in guidance. There are positive signs: Albania's recent Youth Guarantee Implementation Plan (2023–2024) has recognized the need for career orientation, resulting in the approval of a national Career Orientation Guide in October 2023 to standardize counseling for youth (Institute of Education Sciences, 2022, p. 11). Building on this, the country could establish pilot career centers in major universities with dedicated staff to liaise with surrounding secondary schools. By institutionalizing career centers that bridge secondary and tertiary education, Albania can ensure that every student has access to professional guidance in making one of the most important decisions of their young life.

4 Toward an Integrated Transition Framework for Albania: Recommendations

Drawing on the analysis above, several strategic actions emerge for strengthening the link between pre-university and higher education in Albania. These recommendations aim to create a more seamless transition framework, incorporating both policy-level changes and on-the-ground practices.

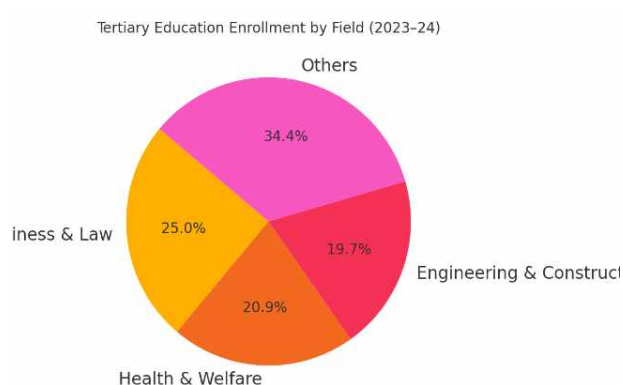
Institutionalize School–University Partnerships: The Ministry of Education (in coordination with the Ministry of Youth and other relevant bodies) should develop a formal program encouraging partnerships between secondary schools and universities (Center for American Progress, 2010, p. 15; Organization for Economic Co-operation and Development [OECD], 2020, pp. 57–58). This could involve a network of cooperation agreements where

each university is linked with a set of high schools. Measurable targets—such as number of joint events per year or percentage of students receiving counseling—can be set to ensure these agreements lead to action. By formalizing partnerships, schools and universities will be accountable for maintaining communication. As seen in practice, when such formal partnerships exist, students benefit from early and concrete exposure to higher education options (Kintrea, St Clair, & Houston, 2015, p. 119; Symonds, Schwartz, & Ferguson, 2011, p. 34). The government can facilitate this by providing guidelines or toolkits on partnership activities and perhaps modest funding for joint initiatives (European Commission, 2022, p. 43).

Expand Career Guidance Centers and Services: Albania should establish dedicated career guidance centers or offices that serve secondary school students in addition to youth in tertiary education (European Training Foundation [ETF], 2023, p. 31; Halimi & Zogaj, 2023, p. 9). This could be achieved by expanding the mandate of existing university career centers (where they exist) or setting up new centers in regional education directorates. The Slovenian model demonstrates that having an impartial, well-resourced center focused on counseling yields significant outreach—tens of thousands of youths reached through workshops and counseling—and ensures consistency in the quality of guidance (Slovenian Ministry of Labour, 2019, p. 12). In Albania, leveraging the momentum of the Youth Guarantee and recent Career Orientation Guide (2023), authorities could standardize the training of career counselors and embed them in schools and universities (Institute of Education Sciences, 2022, p. 12).

Ultimately, every secondary student—whether in a general high school or a vocational school—should have access to a career counselor or center by the time they are making post-secondary choices. Student choices at the tertiary level reflect both traditional preferences and emerging labor market demands. As shown in Figure 2, Business & Law remains the most popular field, accounting for approximately 25% of enrollments, followed closely by Health & Welfare and Engineering-related disciplines (Institute of Statistics of Albania, 2024:6).

Figure 2. *Distribution of Tertiary Education Enrollment by Field of Study (2023–2024)*



Source: (Institute of Statistics of Albania [INSTAT], 2024, p. 6)

Mentoring and Transition Support Programs: It is recommended to implement structured transition support programs at the school level, starting in 12th grade and extending into the first year of university (Conley, 2007, pp. 48–49; Symonds, Schwartz, & Ferguson, 2011, p. 36).

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This might include a peer-mentoring system where university students (especially alumni of the same high school) mentor current high school seniors. Additionally, universities could deploy “transition coaches”—staff or trained senior students—to check in with first-year students who come from partner schools. The logic is to create a continuum of support: the same mentor or counselor who advised a student in high school could remain a point of contact as that student enters the university (European Training Foundation [ETF], 2023, p. 32). Supported transitions have been evidenced to improve not only enrollment but also student retention and success in higher education (Rashidi & Nura, 2020, p. 17). By proactively addressing academic or personal challenges that new university students face (often due to adjustment issues), mentors can help reduce first-year dropout. Given that Albania’s tertiary education enrollment has been declining in recent years—with a 13% decrease in student numbers from 2016 to 2021 (World Bank, 2022, p. 22)—it is crucial not only to get more students into university but to help them persist once there. A combination of mentorship, orientation modules (e.g., summer bridge courses), and ongoing counseling can significantly mitigate the shock of transition.

Parental and Community Engagement: Schools and universities should jointly host information sessions for parents about higher education pathways, financial planning for university, and the long-term benefits of completing tertiary education (United Nations Educational, Scientific and Cultural Organization [UNESCO], 2021, p. 21). This is particularly important in Albania, where first-generation university students might come from families unfamiliar with higher education. As noted, Slovenia’s approach included dozens of events specifically for parents, which is credited with building broader support for students’ choices (Slovenian Ministry of Labour, 2019, p. 13). Involving local businesses and alumni in these community sessions can further reinforce the message—for example, successful professionals from the community can share how their university education contributed to their career, thus highlighting the value of higher education (Marope, Wells, Hazelnorn, & Lee, 2013, p. 23). The Open Government Partnership in Albania and various youth initiatives could be tapped to sponsor or promote such community dialogues about education-to-career pathways (Municipality of Tirana, 2023, p. 10; RisiAlbania, 2021, p. 6).

Career Exploration and Work-Based Learning in Secondary Education: To align education with labor market needs—and keep students motivated to pursue further education—secondary schools should integrate more career exploration and even work-based learning opportunities with the support of universities and employers (European Training Foundation [ETF], 2023, p. 33; Organization for Economic Co-operation and Development [OECD], 2020, pp. 62–63). This might include expanding job shadowing programs, internships, or project-based collaborations that involve both a school teacher and a university representative in mentoring the student. Albanian schools, especially vocational schools, could replicate this by leveraging university industry networks (University of Nova Gorica, 2022, p. 5). For instance, a technical high school could coordinate with the nearest polytechnic university to send students to engineering firms for short observations, with preparation and debrief facilitated by university staff. These experiences make classroom learning more relevant and help students formulate concrete goals (“I want to study IT at X university because I saw how it leads to a career in software development”). Importantly, they also address the issue of mismatched

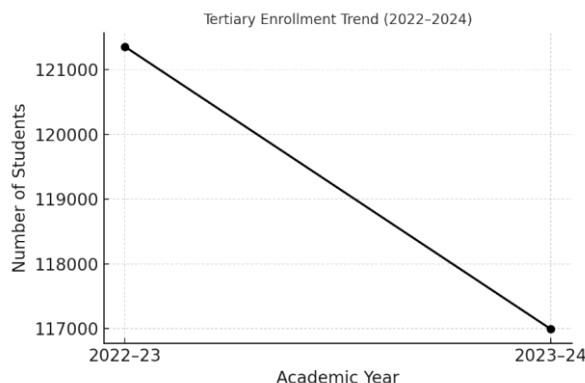
expectations—students often enter university programs without a clear idea of the careers they lead to, sometimes resulting in dissatisfaction or dropout (Conley, 2007, pp. 50–51; Symonds, Schwartz, & Ferguson, 2011, p. 37). Early career exploration can prevent such misalignments by ensuring students choose fields that genuinely interest them and meet their aspirations.

Implementing the above recommendations will require coordination, resources, and a shift toward a more student-centric, pathway-oriented mindset in education policy (United Nations Educational, Scientific and Cultural Organization [UNESCO], 2021, p. 22). However, the payoff can be substantial. By strengthening the link from secondary to tertiary education, Albania stands to gain a higher tertiary enrollment rate, lower university dropout rates, and graduates who are better equipped for the demands of the economy (World Bank, 2022, p. 24). These measures are not just about individual student success—they are about building national human capital and stemming brain drain. Every student successfully guided from high school into and through higher education is more likely to become an active, skilled participant in Albania’s social and economic development.

Conclusions

Despite efforts to expand higher education access, enrollment in Albanian universities has decreased from 121,352 in 2022–2023 to 116,994 in 2023–2024—a 3.6% drop (Institute of Statistics of Albania [INSTAT], 2024, p. 7). This is visualized in Figure 3, underscoring the urgent need for stronger school–university partnerships and early intervention strategies to reverse this trend.

Figure 3. *Trend in Total Tertiary Education Enrollment in Albania (2022–2024)*



Source: (Institute of Statistics of Albania [INSTAT], 2024, p. 7)

This line graph presents the declining trend in overall student enrollment in higher education institutions over the last two academic years.

Bridging the gap between pre-university and university education is a strategic imperative for Albania’s education system. By implementing formal partnerships, collaborative transitional programs, and borrowing proven models like Slovenia’s career centers, Albania can create a seamless continuum from secondary school to higher education. Such an integrated approach ensures that students are not left to navigate the leap to university alone, but rather cross that bridge with awareness, preparation, and support. The good practices discussed – from joint school-university workshops to career mentoring and orientation centers – collectively contribute to a more student-focused transition framework. This framework

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aligns curricula and expectations across education levels, involves multiple stakeholders (educators, families, employers, and authorities) in student guidance, and keeps an eye on the ultimate goals: student success in higher education and relevance to the labor market.

Strengthening the secondary–tertiary link will yield multifaceted benefits. At the individual level, students who are better prepared and informed enter university with greater confidence and realistic expectations, which research shows improves their academic performance and likelihood of degree completion. We can expect to see fewer students making ill-informed program choices or dropping out due to academic shocks. At the institutional level, universities will receive cohorts of freshmen who have the prerequisite skills and motivation, easing the pressure on remedial instruction and improving overall retention and graduation rates. Secondary schools, on the other hand, will be able to bolster their prestige and appeal by demonstrating higher rates of graduates progressing to and succeeding in university. On a societal level, a smoother pipeline to higher education means a more qualified workforce and citizens who are better equipped to contribute to innovation and economic growth. This aligns with Albania’s aspirations to increase tertiary education attainment and curb the exodus of young talent.

In conclusion, by reinforcing partnerships and adopting targeted transition interventions, Albania can turn the vulnerable gap between high school and university into a strong link that propels students forward. The approaches outlined in this paper – cooperation agreements, joint activities, career center models, and comprehensive guidance – are mutually reinforcing pieces of a strategy that places the student’s journey at the center. As Albania looks to the experiences of others and to its own pilot initiatives, it is clear that the time is ripe to institutionalize these good practices. The result will be a more integrated education system in which students seamlessly move from one stage to the next, fully supported to achieve their potential in higher education and beyond. This investment in the educational continuum is ultimately an investment in Albania’s future, ensuring that each new generation is better prepared, better informed, and better connected to contribute to the country’s development.

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THE IMPACT OF THE EUROPEANIZATION PROCESS ON NATIONAL PUBLIC POLICY-MAKING: BETWEEN ADMINISTRATIVE ADAPTATION AND RESILIENCE

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Abstract: *This paper examines the Europeanization of public policy-making and its impact on national administrative systems, with a particular focus on Romania. Drawing on theoretical frameworks of Europeanization, policy transfer, and institutional adaptation, the study analyzes both mechanisms of influence and patterns of administrative resistance. The research identifies how EU institutions, top-down directives, and horizontal governance processes shape national policies, while highlighting the challenges of balancing European requirements with domestic priorities. Comparative insights reveal the interplay between administrative capacity, institutional culture, and political dynamics in determining the success of adaptation. The paper concludes by discussing implications for public administration reform, emphasizing capacity-building, stakeholder involvement, and evidence-based policy-making, and outlines future research directions for understanding long-term Europeanization processes.*

Keywords: *Administrative Adaptation, Europeanization, Public Policy, Policy Transfer*

1. Introduction

Over the past decades, the process of Europeanization has profoundly transformed the way national public policies are formulated, implemented, and evaluated across the member states of the European Union. This process, understood as the domestic adaptation to European integration dynamics, has generated significant shifts in the institutional and administrative frameworks of national governments. Europeanization operates not only through formal legal and regulatory mechanisms but also through informal norms, policy learning, and transnational cooperation. While Europeanization often fosters greater administrative coordination and convergence, it also brings challenges that expose the limits of national adaptation. Public administrations must reconcile European policy requirements with domestic political, cultural, and institutional contexts. This tension frequently produces a dual process: on one hand, administrative adaptation to supranational governance standards; on the other, various forms of resistance or selective implementation aimed at preserving national autonomy.

The relevance of studying this dynamic lies in its implications for both governance and policy effectiveness. Understanding how Europeanization shapes national public policy-making helps identify best practices, potential obstacles, and areas where reforms are most needed. Moreover, it provides valuable insights for policymakers, scholars, and practitioners

concerned with strengthening administrative capacity, enhancing policy coherence, and promoting efficient governance across multilevel systems.

Historically, the European Union has introduced a wide range of policies that require adaptation at the national level, including environmental regulation, social policy, regional development, and economic governance. Each policy area presents unique challenges for member states, depending on their institutional capacity, administrative culture, and political priorities. By examining these variations, the paper highlights how Europeanization does not produce uniform outcomes but rather a spectrum of adaptation strategies and resistance mechanisms.

Recent developments, such as the EU's Green Deal, the Digital Agenda, and post-pandemic recovery programs, have intensified the need for effective coordination between EU institutions and national administrations. These initiatives underscore the growing complexity of policy-making in a multilevel governance system, where national authorities must integrate European priorities while maintaining responsiveness to local needs. Studying this interaction is therefore crucial for both theoretical understanding and practical policy-making.

Furthermore, the paper situates the discussion within the broader debates on administrative modernization and governance reforms in Europe. By analyzing cases where European directives and regulations have been successfully implemented versus cases marked by resistance or partial compliance, the study seeks to uncover the factors that facilitate or hinder effective policy transfer. This analysis also contributes to the literature on institutional learning, policy adaptation, and the role of administrative culture in shaping the Europeanization process.

This study adopts a mixed methodological approach, combining qualitative analysis of EU policy documents, national legislation, and administrative reports with comparative case studies of selected member states. By examining both the mechanisms of adaptation and the sources of resistance, the paper seeks to provide a comprehensive overview of the challenges and opportunities faced by national administrations in the context of European integration.

Ultimately, this paper contributes to the ongoing debate on the balance between supranational influence and national sovereignty, highlighting the conditions under which Europeanization can lead to effective policy convergence and when domestic constraints may limit its impact. The findings are intended to inform future reforms in public administration and to support evidence-based policy-making at both the national and European levels.

2. Theoretical Framework: Europeanization and Public Policy (Extended Version)

2.1 Concept and Dimensions of Europeanization

Europeanization refers to the process through which European Union (EU) rules, norms, and practices influence national policies, institutions, and administrative structures (Borzel & Risse, 2003). It encompasses both formal adaptation to EU law and informal changes in governance patterns, policy priorities, and political behavior. Scholars generally identify three main dimensions of Europeanization: institutional, policy, and political (Radaelli, 2003). The institutional dimension relates to the structural and procedural alignment of national administrations with EU standards, while the policy dimension addresses the adoption of EU-driven policy goals. The political dimension focuses on changes in domestic political dynamics

resulting from EU integration. These dimensions are interrelated and often influence one another, producing complex patterns of adaptation in national contexts. Europeanization can also be understood as a process of social learning, where national actors adopt practices observed in other member states or recommended by EU institutions. It is not a uniform or linear process; instead, it varies depending on the political, economic, and cultural context of each member state. The degree of Europeanization often depends on domestic institutions' flexibility, administrative capacity, and willingness to engage with EU norms. Moreover, Europeanization interacts with other global influences, including international organizations and transnational networks, which can amplify or moderate its impact. Finally, Europeanization is increasingly multidimensional, affecting policy content, administrative structures, and even public attitudes toward governance and European integration.

2.2 Europeanization and Administrative Adaptation

Administrative adaptation occurs when national public administrations adjust their structures, procedures, and capacities to meet the requirements of EU policies and regulations (Knill & Lenschow, 2001). Adaptation can be top-down, driven by EU directives and regulations, or bottom-up, influenced by domestic actors who voluntarily incorporate EU norms to achieve legitimacy or access funding. For instance, member states often reform regulatory agencies or introduce new monitoring mechanisms to comply with EU environmental or economic governance standards. Successful adaptation requires not only legal compliance but also the development of administrative capacity, inter-ministerial coordination, and policy learning (Borzel, 2002).

Administrative adaptation is also influenced by the complexity and specificity of the EU policy in question. Policies with clear procedural guidelines are easier to implement than those requiring discretionary judgment. In many cases, adaptation entails changes in staffing, training, and institutional culture to align with EU expectations. Furthermore, collaboration between ministries, local authorities, and supranational bodies becomes crucial for effective policy implementation. The process often leads to incremental reforms rather than radical institutional overhaul, reflecting the need to balance EU requirements with domestic realities.

2.3 Models of Policy Transfer and Institutional Change

Policy transfer is a core mechanism of Europeanization, representing the process by which knowledge, practices, and institutions are adopted across different levels of governance (Dolowitz & Marsh, 2000). Three main models are commonly discussed: coercive transfer, where EU directives impose mandatory changes; voluntary transfer, driven by domestic actors seeking policy innovation; and lesson-drawing, where national administrations selectively adopt practices based on perceived effectiveness. Institutional change often follows these transfers, leading to new governance structures, hybrid administrative arrangements, or the modernization of public services. These models help explain the variation in how EU policies are implemented across member states.

2.4 Resistance and Inertia in National Administrations

Despite pressures to adapt, national administrations frequently exhibit resistance or inertia due to institutional, cultural, or political factors (Borzel & Risse, 2012). Resistance may

take the form of delayed implementation, selective compliance, or reinterpretation of EU norms to fit domestic contexts. Inertia can also arise from deeply embedded bureaucratic routines, limited resources, or competing policy priorities. Understanding these dynamics is essential for analyzing why some EU-driven reforms succeed while others fail. The interaction between adaptation and resistance highlights the dual nature of Europeanization: it is simultaneously a force for convergence and a process mediated by national specificities.

Resistance can manifest at multiple levels, including political leadership, bureaucratic agencies, and local administrations. Cultural attitudes and historical administrative practices often reinforce reluctance to fully comply with EU requirements. Political considerations, such as upcoming elections or public opinion, may also slow down or modify implementation. Additionally, the complexity of EU rules can create confusion or misinterpretation, inadvertently increasing resistance. Some member states adopt a “minimal compliance” strategy, implementing directives only to the extent necessary to avoid penalties. These patterns illustrate that resistance is not always overt opposition but often subtle, strategic negotiation of EU demands.

Inertia is equally significant and often interacts with resistance, creating persistent gaps between EU expectations and national implementation. Organizational rigidity, hierarchical decision-making, and lack of cross-sectoral coordination contribute to slow adaptation. Resource constraints, both financial and human, limit the ability of administrations to engage in meaningful reforms. Moreover, overlapping competencies between ministries or levels of government can generate delays or inconsistent policy application. Institutional memory and established routines may prevent innovative solutions, even when EU guidelines encourage reform. Finally, understanding the interplay between adaptation, resistance, and inertia is critical for designing effective mechanisms that promote policy convergence while respecting national administrative contexts.

3. The Europeanization of Public Policy-Making

3.1 Mechanisms of Influence: Top-Down, Bottom-Up, and Horizontal Processes

Europeanization affects national policy-making through multiple mechanisms that operate at different levels of governance. Top-down mechanisms involve directives, regulations, and recommendations issued by the EU, which compel national administrations to adjust their policies and administrative procedures (Knill & Lenschow, 2001). Bottom-up mechanisms refer to domestic actors’ voluntary adoption of EU standards to gain legitimacy, access funding, or enhance policy efficiency (Borzel, 2002). Horizontal processes involve cross-national learning and networking between member states, enabling policy diffusion without direct EU coercion (Dolowitz & Marsh, 2000).

These mechanisms often interact, creating complex policy dynamics. For example, a member state may adopt EU environmental standards (top-down) while simultaneously engaging in knowledge exchange with neighboring countries (horizontal) and innovating locally to meet domestic priorities (bottom-up). The effectiveness of each mechanism depends on institutional capacity, political will, and administrative culture. Recognizing the interplay between these mechanisms is crucial for understanding why some policies converge rapidly at the EU level while others remain unevenly implemented.

Top-down influence is often reinforced through monitoring, reporting requirements, and the threat of sanctions in case of non-compliance. Bottom-up processes can generate innovation as local solutions are scaled up or adapted by other member states. Horizontal networks, including professional associations and expert groups, facilitate the dissemination of best practices across national boundaries.

3.2 The Role of EU Institutions in Shaping National Policies

EU institutions, including the European Commission, European Parliament, and European Council, play a central role in shaping national public policy (Borzel & Risse, 2012). The European Commission acts as a policy initiator and guardian of the treaties, monitoring compliance and providing technical guidance to member states. The European Parliament influences policy indirectly through legislative scrutiny and budgetary control, while the European Council sets strategic priorities and policy orientations. These institutions collectively create both incentives and pressures for national adaptation, ranging from financial support to formal enforcement mechanisms. Additionally, EU agencies and networks facilitate policy learning and knowledge exchange, often acting as intermediaries between supranational norms and domestic administrations. By offering expertise, training programs, and coordination platforms, these institutions enhance administrative capacity and foster convergence. However, national governments retain significant discretion in implementing EU policies, which can lead to selective adoption or reinterpretation of EU norms based on local political and institutional contexts.

EU institutions also shape policy agendas by prioritizing specific sectors such as climate change, digital transformation, or social inclusion. Policy harmonization initiatives help reduce discrepancies in regulations across member states, facilitating the functioning of the single market. Regular dialogue between national and EU officials ensures that domestic feedback is considered, creating a dynamic interaction between national priorities and European objectives.

3.3 Policy Coordination and Governance Mechanisms in the EU

Effective policy-making in the EU relies on coordination across multiple levels of governance. Mechanisms such as Open Method of Coordination (OMC), intergovernmental committees, and sectoral councils encourage member states to align national strategies with EU objectives (Radaelli, 2003). Coordination reduces policy fragmentation, facilitates policy learning, and ensures consistency in implementation across countries.

Furthermore, governance mechanisms are increasingly network-based, involving collaboration among ministries, agencies, local authorities, and supranational actors. This multilevel approach allows for greater flexibility and innovation, but it also requires robust administrative capacity and clear communication channels. Policy coordination is particularly important in areas such as environmental protection, economic governance, and social policy, where transnational challenges cannot be effectively addressed by individual member states alone. Effective coordination also depends on transparent information-sharing and joint monitoring systems that track progress across states. Coordination mechanisms help anticipate conflicts between national and EU objectives, allowing for timely adjustments. Multi-level governance strengthens the legitimacy of EU policies by involving a broader range of stakeholders in decision-making processes.

3.4 Administrative Capacity and Policy Coherence

Administrative capacity is a critical factor in ensuring that Europeanization translates into effective national policy implementation (Knill & Lenschow, 2001). Capacity encompasses human resources, institutional structures, expertise, and financial means. Member states with strong administrative capacity are more likely to implement EU policies efficiently, maintain policy coherence, and engage in proactive policy learning.

Policy coherence requires alignment between EU objectives and national priorities, as well as coordination across different policy areas and levels of government. Weak administrative capacity can result in fragmented implementation, delays, or inconsistent compliance. Furthermore, capacity building often involves both structural reforms, such as creating new agencies or units, and cultural changes, such as enhancing inter-ministerial cooperation and adopting new managerial practices. Ultimately, the degree of administrative capacity shapes how EU policies are translated into tangible outcomes at the national level, influencing the overall effectiveness of European integration.

Investments in training and professional development are essential to enhance the skills and knowledge of civil servants. Digital tools and information systems can improve coordination, data management, and monitoring of EU policy implementation. Strong administrative capacity also allows for proactive engagement with EU institutions, enabling member states to influence policy development rather than merely reacting to directives.

4. Between Adaptation and Resistance: Comparative Insights

4.1 Patterns of Administrative Adaptation

Administrative adaptation to Europeanization is neither uniform nor automatic; it varies according to institutional, political, and cultural contexts (Borzel & Risse, 2003; Bărbulescu, 2015). Some member states adopt a compliant approach, aligning their policies closely with EU norms, while others pursue strategic adaptation, selectively implementing regulations that match national priorities (Knill & Lenschow, 2001). Adaptation may involve structural reforms, creation of specialized agencies, or procedural changes to meet reporting and monitoring obligations.

Successful adaptation often relies on proactive engagement with EU institutions, policy learning from other member states, and investments in administrative capacity. In addition, the use of digital tools and inter-ministerial coordination mechanisms facilitates smoother policy implementation. Comparative studies show that countries with strong bureaucratic traditions and centralized governance tend to adapt more systematically, whereas fragmented administrative structures may slow down or complicate adaptation processes. Romanian research emphasizes that administrative culture and political stability significantly influence the speed and effectiveness of adaptation (Popa & Marinescu, 2018).

Institutional learning is a key component of adaptation, as national administrations adjust their procedures based on feedback from EU monitoring reports and peer reviews. Policy networks, both domestic and transnational, support knowledge sharing and help domestic actors interpret complex EU regulations. The pace of adaptation is often shaped by political cycles; governments facing elections may prioritize short-term political gains over long-term administrative reforms, affecting compliance with EU directives.

Adaptation can also be incremental, where minor adjustments accumulate over time to produce significant convergence with EU norms. This gradual process often reflects the interplay between top-down EU pressures and bottom-up domestic initiatives (Schimmelfennig & Sedelmeier, 2005).

4.2 Forms and Causes of Resistance

Resistance to Europeanization can take multiple forms, including passive compliance, selective implementation, or outright refusal to adopt EU recommendations (Borzel, 2002; Bărbulescu, 2015). Causes of resistance include political opposition, limited administrative capacity, domestic institutional inertia, or perceived conflicts with national sovereignty. Cultural norms, bureaucratic habits, and the prioritization of domestic interests also shape how policies are implemented or ignored. Resistance may manifest through delays in transposing directives, partial adoption of EU standards, or reinterpretation of regulations to fit national contexts. In some cases, domestic actors resist due to lack of incentives or fear of negative socio-economic impacts. Romanian scholars note that administrative fragmentation and insufficient professional training often amplify resistance to EU policies (Popa & Marinescu, 2018; Iancu, 2017). Resistance can also emerge from political actors who perceive European policies as threats to national sovereignty or as undermining domestic political agendas. These actors may use legislative, judicial, or bureaucratic tools to slow down or block policy implementation. Organizational culture within public administrations can reinforce resistance, especially when established routines conflict with new EU-driven requirements. In such cases, change management and professional development are crucial to overcoming entrenched habits. External shocks, such as economic crises or social unrest, may exacerbate resistance, as governments prioritize immediate domestic concerns over EU-aligned reforms. Understanding these dynamics is essential for designing strategies that promote effective policy compliance.

4.3 Balancing European Requirements and National Priorities

Policymakers face the challenge of reconciling EU-level objectives with domestic political, social, and economic priorities (Radaelli, 2003). Balancing these often competing demands requires flexibility, negotiation, and careful prioritization within national administrations. Mechanisms such as stakeholder consultations, inter-ministerial coordination, and adaptive policy design help mitigate conflicts between European requirements and national strategies. Successful balancing is facilitated by the development of domestic expertise capable of interpreting EU rules in light of local contexts. National governments may strategically frame European obligations to gain political support or justify reforms domestically. Romanian studies underline that alignment between national strategies and EU policies depends on both administrative professionalism and political commitment (Bărbulescu, 2015; Iancu, 2017).

Strategic framing allows policymakers to communicate EU requirements in ways that resonate with domestic audiences, facilitating public acceptance and smoother implementation. National parliaments play a critical role in mediating between EU mandates and domestic priorities, often influencing the timing and scope of policy adoption. Long-term policy coherence requires institutionalized mechanisms, such as inter-ministerial committees, permanent advisory boards, and continuous policy evaluation, which help reconcile EU directives with national strategic goals (Bărbulescu, 2015; Popa & Marinescu, 2018).

5. Conclusions and Policy Recommendations

5.1 Summary of Main Findings

The analysis of Europeanization processes and administrative adaptation highlights several key patterns. First, adaptation is highly context-dependent, influenced by political, institutional, and cultural factors (Borzel & Risse, 2003; Bărbulescu, 2015). While some countries pursue full compliance with EU norms, others strategically adopt selective reforms, balancing EU requirements with domestic priorities (Knill & Lenschow, 2001).

Second, resistance is a persistent feature of national administrations, shaped by organizational culture, political opposition, and limited administrative capacity (Borzel, 2002; Iancu, 2017). Resistance manifests in partial implementation, delays, or reinterpretation of EU directives, leading to uneven Europeanization outcomes.

Third, balancing European requirements with national priorities requires flexibility, negotiation, and institutional mechanisms that ensure coherence. Strategic framing, stakeholder consultations, and inter-ministerial coordination have proven effective in mitigating conflicts between EU mandates and domestic agendas (Radaelli, 2003; Popa & Marinescu, 2018).

Romanian experiences show that administrative professionalism and political commitment are critical for successful adaptation. Without these factors, reforms may be superficial or inconsistent, reducing their long-term impact (Bărbulescu, 2015). Incremental adaptation combined with institutional learning allows administrations to internalize EU norms over time, improving compliance and policy coherence (Schimmelfennig & Sedelmeier, 2005). Overall, the interplay between top-down European pressures and bottom-up domestic initiatives shapes the effectiveness of Europeanization processes, highlighting the importance of context-specific strategies.

5.2 Implications for Public Administration Reform

Europeanization processes offer valuable lessons for public administration reform. Adaptation requires investment in administrative capacity, professional training, and effective governance structures (Knill & Lenschow, 2001; Bărbulescu, 2015). Reform strategies should focus on enhancing institutional coordination, promoting policy coherence, and creating mechanisms for continuous monitoring and evaluation.

Strategic communication and framing of EU obligations are essential to secure public and political support for reforms. Romanian scholars emphasize that stakeholder involvement and inter-ministerial collaboration increase the likelihood of successful implementation of EU-driven policies (Popa & Marinescu, 2018; Iancu, 2017). Administrative reforms should also address sources of resistance, such as bureaucratic inertia, fragmented structures, and insufficient expertise. Measures like capacity-building programs, change management initiatives, and knowledge-sharing networks can reduce resistance and improve adaptation. Emphasizing evidence-based policy-making ensures that reforms are aligned with both EU standards and domestic needs, reducing policy conflicts and enhancing legitimacy. Digitalization of administrative processes can improve efficiency, transparency, and reporting compliance, which are key requirements of European governance. Long-term reforms should integrate lessons from comparative European experiences, adapting best practices while considering national political and institutional contexts.

5.3 Future Research Directions

Despite extensive research on Europeanization, several areas remain underexplored. Comparative studies examining the interaction between domestic political dynamics and EU pressures can provide deeper insights into the mechanisms of adaptation and resistance (Borzel & Risse, 2003). Further research is needed to assess the effectiveness of institutional reforms and capacity-building initiatives across different member states. This includes examining how administrative culture and professionalization influence policy implementation and compliance. Romanian scholars have highlighted the need for longitudinal studies that track the evolution of administrative adaptation over time, particularly in post-accession countries (Bărbulescu, 2015; Popa & Marinescu, 2018). Such studies could inform the design of more effective reforms and policy interventions.

Future research should investigate the role of digital governance tools in facilitating EU policy compliance and reducing administrative resistance. Cross-sectoral studies analyzing interactions between national and local administrations can reveal challenges in multi-level governance and policy coherence. Evaluating the impact of political cycles, stakeholder participation, and policy framing strategies can provide practical guidance for policymakers seeking to improve Europeanization outcomes.

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LEGAL GOVERNANCE: A STRATEGIC MANAGEMENT TOOL FOR ORGANISATIONAL SUSTAINABILITY

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Abstract: *In an era characterised by regulatory complexity, technological disruption, and societal demand for transparency, legal governance emerges as a key managerial function that transcends traditional compliance. This paper explores the integration of legal governance within strategic management as a mechanism for achieving organisational sustainability. Drawing on theories of governance, stakeholder management, and institutional resilience, it argues that legal governance is not merely a reactive legal function but a proactive strategic tool. By embedding legal principles within the culture, decision-making, and operations of organisations, managers can transform law from a constraint into a catalyst for sustainable growth.*

Keywords: *legal governance, management, compliance, sustainability, organisational ethics, corporate responsibility*

1. Introduction

The boundaries between law and management are increasingly blurred in the twenty-first century. While legal frameworks traditionally defined the constraints within which managers operated, contemporary governance models recognise law as an active driver of strategic decision-making. In this context, legal governance refers to the systematic integration of legal principles, compliance mechanisms, and ethical standards into the managerial processes that shape organisational behaviour. This article examines how legal governance can serve as a strategic management tool that fosters sustainability, legitimacy, and long-term value creation. It posits that the most resilient organisations are those that treat legal governance as an enabler of strategic foresight rather than a bureaucratic obligation.

In an increasingly complex regulatory and technological landscape, organisations can no longer afford to treat law as an external constraint imposed from above. Instead, legal governance has become a central element of strategic management, shaping how organisations anticipate risks, allocate resources, innovate responsibly, and build trust with stakeholders. The shift toward a knowledge-driven, data-intensive economy means that legal norms—especially those relating to data protection, competition, sustainability, and corporate accountability—now exert a direct influence on business models and managerial decision-making.

Legal governance encompasses more than mere compliance. It involves cultivating an organisational capacity to interpret legal obligations proactively, internalise them into corporate culture, and translate them into operational procedures that support ethical and sustainable practices. This requires a reconceptualisation of the relationship between law and

management: rather than occupying separate domains, they are deeply intertwined, each informing and reinforcing the other.

At the heart of this relationship lies the movement toward anticipatory governance, which encourages organisations to foresee emerging legal trends and societal expectations. Companies that adopt this forward-looking posture are better equipped to manage uncertainty, adapt to regulatory changes, and mitigate reputational risks. Legal governance thus functions as both a *protective mechanism*—guarding against non-compliance—and an *enabling device*—facilitating market access, competitive differentiation, and operational continuity.

Furthermore, the integration of legal principles into strategic management contributes directly to organisational sustainability. As consumers, employees, regulators, and investors increasingly demand transparency, accountability, and ethical conduct, organisations must demonstrate that their internal processes align with societal values. Legal governance provides the framework through which this alignment is achieved. It ensures that strategic decisions are grounded in legitimacy, reducing vulnerabilities while strengthening stakeholder relationships.

This article argues that legal governance should be understood as a strategic capability, one that enhances organisational resilience by embedding ethical and legal reasoning into everyday decision-making. Through this lens, law is not the endpoint of managerial action but a foundational resource that shapes sustainable innovation, risk culture, and long-term competitive advantage.

2. Conceptual Foundations

2.1. From Compliance to Legal Governance

Compliance is often viewed as a narrow, rule-based process — reactive, static, and primarily focused on avoiding sanctions. Legal governance, by contrast, adopts a broader managerial perspective: it incorporates legal awareness, ethical leadership, and strategic alignment. The transition from compliance to governance reflects the shift from what organisations must do to how they choose to do it responsibly. This evolution parallels the maturation of corporate governance since the Cadbury Report (1992), which linked transparency, accountability, and ethical management to organisational legitimacy. Legal governance thus becomes a subset of corporate governance, centred on ensuring that legal integrity permeates strategic planning, decision-making, and culture.

This transition from compliance to legal governance represents more than an administrative refinement: it signals a paradigm shift in organisational thinking. Whereas compliance focuses on adherence to externally imposed rules, legal governance embeds legal reasoning into the very architecture of organisational strategy. It transforms legal norms into managerial tools, enabling organisations to navigate complexity through foresight, ethical judgment, and institutional coherence.

In this expanded framework, compliance becomes only one component of a larger governance ecosystem. Legal governance integrates three interdependent dimensions:

1. Legal Awareness – cultivating the capacity of managers and employees to understand how legal principles shape organisational risks, opportunities, and responsibilities.
2. Ethical Leadership – promoting a leadership style that recognises the normative implications of strategic decisions and actively fosters a culture of integrity.

3. Strategic Alignment – ensuring that legal considerations are embedded in planning processes, performance metrics, and organisational objectives.

By linking these dimensions, legal governance shifts attention from minimum legal thresholds to principled organisational behaviour. This is increasingly essential in an environment where stakeholders judge organisations not merely by whether they obey the law, but by whether they embody fairness, accountability, and social responsibility.

The evolution mirrors the broader development of corporate governance since the Cadbury Report (1992), which marked a turning point in recognising that transparency, accountability, and ethical conduct are prerequisites for organisational legitimacy. Just as corporate governance expanded the understanding of managerial responsibility beyond financial performance, legal governance expands the understanding of legal responsibility beyond compliance checklists. It encourages organisations to internalise legal and ethical considerations in a way that reinforces trust and credibility.

In this sense, legal governance emerges as a subset and extension of corporate governance. It emphasises that legal integrity must be interwoven with strategic planning, operational management, and organisational culture. Decisions regarding innovation, risk management, data use, human resources, stakeholder engagement, or sustainability all carry legal implications. When organisations treat legal governance as a strategic function rather than a defensive mechanism, they cultivate resilience, reduce vulnerabilities, and enhance long-term value creation.

Ultimately, the movement from compliance to legal governance reflects a shift toward responsible autonomy: organisations are expected not only to obey the law, but to demonstrate an ongoing commitment to lawful purpose, ethical behaviour, and societal expectations. This transformation positions legal governance as an essential managerial capability in the pursuit of sustainable and legitimate organisational growth.

2.2. Theoretical Underpinnings

Legal governance draws conceptually on stakeholder theory (Freeman, 1984), institutional theory (DiMaggio & Powell, 1983), and systems thinking. Each emphasises that organisations exist within complex legal, social, and ethical ecosystems. Effective governance requires not only adherence to rules but alignment with stakeholder expectations and societal norms — the essence of sustainability in modern management.

The intellectual foundations of legal governance are deeply rooted in a constellation of management theories that emphasise the interdependence between organisations and their broader environments. Stakeholder theory (Freeman, 1984) fundamentally challenges the shareholder-centric view of the firm by asserting that long-term success depends on the organisation's ability to balance and respond to the interests of multiple constituencies — including regulators, employees, customers, communities, and civil society. From this perspective, legal governance becomes a mechanism through which organisations internalise stakeholder expectations, ensuring that strategic decisions reflect not only economic considerations but also normative and relational obligations.

Similarly, institutional theory (DiMaggio & Powell, 1983) reinforces the idea that organisational behaviour is shaped by social norms, regulatory pressures, and expectations of

legitimacy. Organisations do not operate in isolation: they conform, imitate, or respond to institutional demands in order to survive and maintain credibility. Legal governance thus emerges as a response to coercive pressures (from law and regulation), normative pressures (from professional standards and ethical norms), and mimetic pressures (from peer organisations that adopt best practices). Through this lens, legal governance is not merely a set of internal controls but a process of institutional alignment that enhances organisational legitimacy and resilience.

Adding to these perspectives, systems thinking highlights that organisations function as dynamic, interconnected systems in which legal rules, managerial actions, ethical cultures, and technological infrastructures influence one another. Legal governance framed through systems thinking recognises that compliance failures or ethical lapses are rarely the result of isolated decisions; instead, they arise from systemic misalignments — breakdowns in communication, governance structures, incentives, or cultural norms. A systems-based approach therefore emphasises continuous feedback loops, adaptive learning, and holistic integration of legal and ethical principles across all organisational subsystems.

Taken together, these theoretical frameworks converge on a central insight: effective governance requires more than rule adherence; it requires coherence with societal values, stakeholder expectations, and institutional norms. This is the essence of sustainability in modern management. Organisations that embed legal governance into their strategic and operational structures position themselves not only to avoid risk but to cultivate legitimacy, trust, and long-term value. Through stakeholder responsiveness, institutional alignment, and systemic integration, legal governance emerges as a conceptual bridge between law, management, and ethics — a foundational element of sustainable organisational leadership in the twenty-first century.

3. Legal Governance as a Management Function

3.1. Integrating Legal Governance into Strategy

Legal governance functions most effectively when embedded in the strategic core of the organisation. The board of directors and senior executives must treat legal risk as a dimension of strategic risk. Strategic management frameworks, such as Porter's value chain or Kaplan and Norton's balanced scorecard, can be adapted to include legal objectives as performance indicators. Moreover, legal counsel should not merely provide ex-post guidance but participate in strategic deliberations — ensuring that every decision reflects legal foresight and ethical consideration. This integration fosters a culture where legal risk management becomes a continuous process of strategic learning.

Embedding legal governance into organisational strategy requires a fundamental reorientation of managerial thinking, one in which legal considerations are not peripheral constraints but integral components of strategic advantage. When legal risk is understood as a dimension of strategic risk, it becomes inseparable from decisions about market entry, innovation pathways, digital transformation, stakeholder engagement, and organisational growth. This reconceptualisation elevates legal governance from a compliance obligation to a strategic capability.

To operationalise this integration, established strategic management tools can be reframed to account for legal and ethical dimensions. For example, Porter's value chain may

incorporate legal checkpoints at every stage — from procurement and data acquisition to product development, customer relations, and after-sales support. This ensures that value creation is aligned with legal integrity across the entire chain of activities. Likewise, the balanced scorecard can include legal objectives as key performance indicators, such as metrics for regulatory readiness, ethical audit completion rates, legal innovation initiatives, or stakeholder trust indices. In doing so, organisations treat legal performance not as a cost centre but as a measurable contributor to strategic success.

Crucially, integrating legal governance into strategy requires redefining the role of legal counsel. Instead of functioning as ex-post evaluators who intervene once decisions are taken, legal professionals should act as strategic partners engaged from the earliest stages of deliberation. Their involvement ensures that decisions are informed by legal foresight, emerging regulatory trends, ethical implications, and potential long-term impacts. This strategic presence of legal counsel transforms legal reasoning into a forward-looking resource that reduces uncertainty and strengthens decision quality.

Furthermore, this integration promotes a culture of continuous strategic learning. As the regulatory environment becomes more dynamic — particularly in areas such as artificial intelligence, data protection, environmental standards, and corporate accountability — organisations must adapt by institutionalising mechanisms for ongoing monitoring, knowledge acquisition, and cross-functional collaboration. When legal governance is embedded into strategic routines, managers internalise the habit of evaluating not only whether a decision is lawful, but how it aligns with broader organisational values and long-term sustainability.

Ultimately, integrating legal governance into strategy builds organisational resilience. It enables firms to anticipate risks rather than react to them, align innovation with legitimacy, and maintain a competitive advantage in environments where regulatory expectations and societal demands increasingly shape the contours of strategic action. In this sense, legal governance becomes a cornerstone of responsible management and a driver of sustainable value creation.

3.2. Leadership and Organisational Culture

Leadership is the critical link between formal legal frameworks and behavioural outcomes. A management culture that values legality, fairness, and transparency generates what scholars describe as ethical capital. Training programmes, open communication, and internal compliance champions can institutionalise legal awareness across departments. When employees perceive legal and ethical conduct as part of organisational identity, governance becomes self-reinforcing rather than externally imposed.

Leadership serves as the pivotal bridge between formal legal structures and the informal behavioural norms that ultimately determine organisational conduct. Regulations, policies, and governance frameworks have limited impact unless they are animated by leaders who model, reinforce, and reward legally and ethically sound behaviour. In this sense, leadership is not merely a functional role but a normative force that shapes how individuals interpret their responsibilities and how organisations internalise legal governance.

A leadership culture grounded in legality, fairness, and transparency contributes to the development of what scholars term ethical capital — an intangible organisational resource that

enhances trust, strengthens stakeholder relationships, and supports long-term sustainability. Ethical capital is cultivated when leaders consistently communicate the value of legal compliance, demonstrate integrity in decision-making, and promote accountability at all levels of the organisation. It becomes an asset that differentiates high-performing organisations in environments characterised by increasing regulatory scrutiny and social expectation.

To institutionalise this culture, organisations must invest in capacity-building initiatives that translate legal governance principles into everyday practice. Training programmes help employees understand not only the content of regulations but the ethical rationales behind them. Open communication channels encourage individuals to raise concerns, report irregularities, and seek clarification without fear of reprisal. Additionally, the use of internal compliance champions — individuals embedded within departments who serve as points of contact for legal and ethical questions — strengthens the diffusion of legal awareness across the organisation. These champions embody the principle that governance is a shared responsibility, not the exclusive domain of the legal department.

When employees perceive legal and ethical conduct as intrinsic to organisational identity, governance becomes self-reinforcing. Instead of relying on coercive mechanisms or external enforcement, the organisation develops an internalised sense of responsibility in which individuals voluntarily adhere to norms because they align with their understanding of “how we do things here.” This cultural internalisation is essential for sustaining legal governance in dynamic environments where new risks emerge rapidly and formal controls may lag behind technological or contextual changes. Ultimately, leadership and organisational culture play a decisive role in transforming legal governance from a set of rules into a living organisational practice. They ensure that legal integrity is not simply imposed from the outside but emerges organically from within — embedded in collective beliefs, behavioural routines, and organisational identity. This alignment between leadership, culture, and governance strengthens institutional legitimacy and enhances the organisation’s ability to act responsibly, adaptively, and sustainably.

4. Legal Governance for Sustainability

4.1. ESG, Compliance, and Legal Accountability

Sustainability is no longer limited to environmental considerations; it encompasses ethical conduct, human rights, and corporate governance — the ESG triad. Legal governance serves as the backbone of this triad by ensuring that commitments to social and environmental responsibility are grounded in enforceable policies and measurable outcomes. For instance, the EU Corporate Sustainability Reporting Directive (CSRD, 2024) mandates a new level of legal accountability in sustainability disclosures, compelling organisations to integrate ESG metrics within their governance systems. Legal governance, therefore, provides the procedural legitimacy for sustainability claims — transforming moral commitments into binding managerial responsibilities.

The broadening of sustainability into the ESG framework — Environmental, Social, and Governance — reflects a shift in how organisations are evaluated by regulators, investors, consumers, and society at large. Ethical conduct, respect for human rights, labour standards, anti-corruption measures, and responsible data practices have become as integral to sustainability as carbon footprints or resource use. Within this expanded understanding, legal

governance forms the structural backbone of ESG performance, providing the normative and procedural architecture necessary to operationalise sustainability commitments. While many organisations articulate ambitious ESG goals, their credibility depends on the ability to translate aspirational values into enforceable, verifiable, and transparent practices. Legal governance ensures this translation by embedding ESG mandates within policies, reporting mechanisms, internal controls, and strategic decision-making. Without legally grounded governance structures, ESG risks becoming a rhetorical exercise — vulnerable to accusations of “greenwashing,” “ethics washing,” or “purpose washing.” Law, therefore, acts as a safeguard that anchors sustainability claims in binding obligations.

The introduction of the EU Corporate Sustainability Reporting Directive (CSRD, 2024) marks a paradigm shift in this direction. The CSRD compels organisations to integrate ESG metrics into their annual reporting with the same rigor as financial disclosures. This includes mandatory due diligence, double materiality assessments, human rights impact evaluations, and detailed documentation of governance processes. By elevating sustainability reporting from voluntary practice to legal obligation, the CSRD transforms ESG from a discretionary domain into a central component of corporate accountability.

Importantly, the CSRD also strengthens the governance dimension of ESG, requiring organisations to demonstrate how boards oversee sustainability risks, how management integrates ESG considerations into strategy, and what internal controls ensure reliability of sustainability data. Legal governance thus becomes the procedural foundation that enables ESG metrics to serve as meaningful performance indicators rather than symbolic gestures.

In this sense, legal governance provides procedural legitimacy for sustainability claims. It institutionalises mechanisms that ensure:

- *Consistency* between ESG commitments and operational behaviour
- *Accountability* through clearly assigned responsibilities and oversight structures
- *Transparency* via standardised, legally regulated reporting practices
- *Enforceability* by creating avenues for regulatory sanctions or stakeholder challenge

By embedding sustainability within legally grounded governance systems, organisations convert moral commitments into binding managerial responsibilities. This transformation enhances stakeholder trust, improves risk management, and positions the organisation to respond effectively to the increasing alignment between global sustainability standards and domestic regulatory frameworks. Ultimately, legal governance acts as the connective tissue linking ESG values to organisational practice. It ensures that sustainability is not merely a narrative or corporate ambition, but a strategically integrated, institutionally verified, and legally accountable mode of organisational conduct.

4.2. Digital Transformation and Legal Management

Digitalisation reshapes governance by introducing both opportunities and risks: algorithmic decision-making, data privacy, and AI-driven operations. Effective legal governance requires the adoption of digital compliance ecosystems — systems that automate monitoring, enhance transparency, and support ethical AI use. Managers must balance innovation with legal prudence, ensuring that technological efficiency does not erode human

oversight. Legal governance thus becomes a bridge between technological progress and institutional ethics.

Digital transformation is fundamentally altering the architecture of organisational governance. The proliferation of data-driven technologies, algorithmic decision-making, and AI-supported operations introduces new layers of complexity that challenge traditional compliance models. While digitalisation enhances efficiency, scalability, and predictive capability, it also amplifies risks related to privacy, discrimination, cybersecurity, and the erosion of human agency. Legal governance becomes essential in navigating these tensions, providing a structured framework through which digital innovation can unfold responsibly.

A central requirement in this digital landscape is the development of digital compliance ecosystems — integrated technological infrastructures that support continuous regulatory monitoring, automated reporting, and real-time risk assessment. These systems move organisations beyond manual or episodic compliance checks, enabling dynamic oversight of data flows, algorithmic outputs, and system behaviours. Tools such as automated audit trails, data lineage tracking, explainable AI modules, and compliance dashboards allow managers to identify irregularities early, document decision processes, and demonstrate accountability to regulators and stakeholders.

Moreover, as organisations increasingly rely on AI for decision-making, legal governance must ensure that ethics by design principles are embedded into the development and deployment of these technologies. This means implementing safeguards such as human-in-the-loop controls, fairness audits, model documentation, and impact assessments. These mechanisms reinforce the legal and moral imperative that technological systems remain subject to human judgment and aligned with fundamental rights. The managerial challenge lies in balancing innovation with legal prudence. Digital transformation can tempt organisations to prioritise speed and efficiency over thoughtful deliberation. Yet technological optimisation without legal and ethical grounding risks undermining institutional legitimacy, exposing organisations to litigation, reputational damage, and regulatory penalties. Legal governance provides the counterweight to this tendency by ensuring that technological progress is guided by normative constraints and long-term strategic considerations.

In this context, legal governance functions as a bridge between technological capability and institutional ethics. It ensures that digitalisation enhances, rather than destabilises, organisational integrity. By integrating legal reasoning into digital strategies, managers promote innovation that is not merely technically sophisticated but also transparent, accountable, and aligned with societal expectations. Ultimately, digital transformation requires organisations to evolve from static compliance systems to adaptive, technology-enabled governance frameworks. Legal governance offers the conceptual and operational tools needed to manage this evolution, ensuring that the promise of digital transformation is realised without compromising ethical standards or fundamental rights.

5. Strategic Implications for Management

5.1. Competitive Advantage Through Legal Governance

Legal governance enhances competitiveness by reducing uncertainty, building trust, and signalling reliability to investors and stakeholders. Organisations with robust legal frameworks tend to outperform in volatile environments because they can anticipate and adapt

to regulatory shifts more effectively. Moreover, proactive governance attracts sustainable investment and strengthens reputational capital — both increasingly critical in ESG-driven markets. In this sense, legal governance is not a cost centre but a value-creating capability.

In an era defined by regulatory complexity, geopolitical volatility, and accelerated technological change, organisations increasingly rely on legal governance as a source of strategic differentiation. Far from being a mere compliance function, legal governance enhances competitive advantage by embedding stability, predictability, and ethical clarity into organisational operations. Firms that invest in strong legal infrastructures are better equipped to navigate uncertainty, respond to regulatory evolution, and maintain legitimacy in environments where reputational risks can escalate rapidly. A key dimension of this competitive advantage lies in risk reduction. Organisations that anticipate legal developments — whether in data protection, sustainability reporting, AI regulation, or corporate accountability — can adjust their strategies early, avoiding costly redesigns or disruptions. This capacity for legal foresight transforms governance into an adaptive capability, enabling firms to reconfigure processes, reallocate resources, and innovate within secure and clearly defined boundaries. In fast-changing markets, the ability to act compliantly and confidently becomes a distinctive performance asset.

Legal governance also enhances competitiveness through trust and reliability, two intangible but powerful drivers of market differentiation. Investors increasingly assess companies not only on financial indicators but on the integrity of their governance systems. Stakeholders — including consumers, employees, regulators, and business partners — gravitate toward organisations that demonstrate consistency between their stated values and their operational behaviour. Robust legal governance signals that an organisation builds products responsibly, manages data ethically, and honours its commitments to transparency and accountability. These signals generate reputational capital that translates into market loyalty, talent attraction, and long-term stakeholder engagement. Importantly, the rise of ESG-driven financial markets amplifies the strategic value of legal governance. Sustainable investment funds, impact investors, and institutional shareholders increasingly prioritise companies with credible compliance mechanisms, verifiable ESG reporting, and strong human rights due diligence. Legal governance provides the structural assurance that ESG commitments are enforceable, measurable, and embedded in organisational governance. This credibility enhances access to capital and strengthens the firm's positioning in global value chains, many of which now require demonstrable compliance with sustainability standards.

In this sense, legal governance shifts from being a perceived cost centre to becoming a value-creating capability. It contributes to organisational resilience, supports innovation by setting clear ethical boundaries, and enhances the firm's reputation in markets where legitimacy and stakeholder trust are paramount. By institutionalising legal governance, organisations cultivate a strategic advantage that is difficult for competitors to replicate: the ability to grow responsibly, adapt dynamically, and sustain long-term value creation in a legally and ethically complex world.

5.2. The Managerial Mindset Shift

To operationalise legal governance, managers must adopt a mindset of strategic legality — understanding legal obligations as opportunities for innovation and legitimacy. This involves cross-functional coordination between legal, compliance, HR, and strategic planning departments. Leadership development programmes should integrate legal governance modules, equipping future managers with the capacity to interpret law strategically and ethically. Operationalising legal governance requires more than structural adjustments or the introduction of new compliance tools; it demands a fundamental shift in managerial mindset. Managers must move beyond viewing law as a reactive constraint and instead embrace a posture of strategic legality, recognising legal obligations as sources of innovation, legitimacy, and competitive advantage. This cognitive reframing is essential for embedding legal governance into the organisational fabric.

A mindset of strategic legality encourages managers to interpret legal requirements proactively rather than defensively. Instead of asking, “What is the minimum required to avoid sanctions?”, strategically oriented managers ask, “How can legal norms enhance our processes, strengthen our relationships, and differentiate us in the market?” Such an approach aligns legal compliance with organisational purpose, allowing legal governance to contribute directly to value creation and long-term resilience.

Realising this shift requires cross-functional coordination, as legal governance cannot be siloed within the legal or compliance departments. Effective implementation depends on collaboration between:

- Legal teams, who provide regulatory interpretation and strategic foresight;
- Compliance units, who operationalise controls and monitoring systems;
- Human resources, who embed ethical norms into recruitment, evaluation, and training;
- Strategic planning departments, who align legal governance with long-term organisational goals and risk appetite.

This interdepartmental integration transforms legal governance into an organisational capability rather than an isolated function, ensuring that decisions made at every level are informed by legal and ethical considerations. To support this transformation, leadership development programs must evolve. Traditional management education often treats law as a separate field — a set of rules to be learned rather than a strategic lens through which to understand organisational behaviour. Contemporary challenges require a different pedagogical model. Training modules should incorporate:

- Legal foresight and regulatory intelligence;
- Ethical reasoning and decision-making;
- Case-based learning on governance failures and successes;
- Interdisciplinary simulations involving legal, technical, and strategic dilemmas;
- Skills for navigating uncertainty, balancing stakeholder interests, and managing reputational risk.

These initiatives equip future leaders with the capacity to interpret law both strategically and ethically, embedding legal governance into their managerial identity.

Ultimately, the managerial mindset shift toward strategic legality fosters an organisational culture capable of navigating complexity with confidence and integrity. It ensures that legal governance becomes a source of direction, not obstruction — guiding

innovation, supporting legitimacy, and enhancing organisational sustainability in a world where legal and ethical scrutiny are defining features of corporate life.

6. Conclusions and Recommendations

Legal governance represents the next evolution in the relationship between law and management. It redefines compliance as a dynamic process embedded in strategy, culture, and leadership. As a strategic management tool, it enhances sustainability not only by ensuring regulatory adherence but by fostering ethical innovation, stakeholder trust, and long-term value.

Organisations that embed legal governance within their managerial DNA can transform the law from a limiting factor into a strategic asset. Future research should explore the operationalisation of legal governance within AI-driven institutions, the metrics for assessing its impact on sustainability, and the interplay between legal foresight and strategic agility in the digital economy.

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NONVERBAL COMMUNICATION AND TEACHERS' SOCIAL SKILLS IN PRIMARY SCHOOL: AN EXPLORATORY ANALYSIS IN THE EUROPEAN FRAMEWORK

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Abstract: Article 27 of the National Collective Labour Agreement for Schools defines the competencies that make up the teacher's professional profile, without, however, explicitly mentioning communicative skills, which nevertheless form the foundation of all teaching activity. The European Recommendations and the DigCompEdu Framework reaffirm the importance of communicative competences, urging schools to integrate them into educational processes. This study explores the role of nonverbal communication as a strategic factor in shaping classroom climate and educational relationships. Drawing on international contributions, an exploratory investigation was conducted on seven primary school teachers, observed through structured grids. The results show that only one out of seven teachers effectively uses nonverbal communication, while most display weaknesses, particularly in voice modulation and facial expressiveness, which have a direct impact on student engagement. The study therefore suggests introducing specific training modules aimed at developing teachers' communicative awareness and improving the quality of learning environments.

Keywords: Nonverbal communication; Teacher professionalism; Socio-relational competences; Classroom climate; Teacher training

1. Introduction

The competencies required for the professional profile of teachers were defined by Article 27 of the National Collective Labour Agreement (CCNL, 2018) for the school sector in 2018. According to the *Gazzetta Ufficiale*, «The professional profile of teachers consists of disciplinary, digital, linguistic, psycho-pedagogical, methodological-didactic, organizational-relational, guidance, research, documentation, and assessment competences, all of which are interrelated and develop through teaching experience, study, and the systematization of teaching practice». Although comprehensive, this list does not explicitly mention communicative competencies, which nevertheless represent the transversal foundation of all other professional dimensions. As Fiorin states, «Didactic communication remains, in any case, the heart of professionalism (Fiorin, 2002) ». Every skill, disciplinary, psycho-pedagogical, methodological-didactic, or relational, finds its expression in the teacher's ability to communicate effectively with students and with the wider educational community. Discussing communicative competences therefore means considering both verbal and nonverbal dimensions, since the construction of a positive classroom climate and the

quality of educational relationships largely depend on the harmony between what a teacher says and what they convey through body language, gaze, gestures, and voice. As far as students are concerned, the European Council Recommendation on Key Competences for Lifelong Learning (EU, 2018) assigns schools the task of promoting the development of social and civic competences. It follows that teachers, as the first mediators of such processes, must possess and cultivate them within their professional practice. An interesting contribution comes from the European Framework for the Digital Competence of Educators – DigCompEdu (European Commission, 2017), which identifies a specific area dedicated to communication within digital competences, highlighting its strategic role in fostering effective and inclusive interactions in online learning environments. This choice demonstrates the importance attributed to communication when discussing digital competence; by analogy, it becomes even more evident that communication skills should have a dedicated place within the professional profile outlined by Article 27 of the CCNL—where they are not explicitly mentioned, despite being the transversal foundation of all the other listed competences.

This gap represents the starting point of the present study, which offers an exploratory analysis of teachers' nonverbal communication in the classroom, assessed through observation grids. The observational practice can be applied by any teacher, in training or in service, who is interested in meta-reflection and the continuous improvement of their professional practice. The objective is to highlight how nonverbal communication represents a modifiable competence, whose development directly contributes to improving teaching effectiveness. In the analysed documents, communicative competences are often treated as an innate and immutable prerequisite of professionalism; on the contrary, they should be the subject of systematic study and conscious cultivation throughout a teacher's career. As Lusso (2005) affirms, «Communicative competences are not innate, but develop throughout life provided, of course, that one works to develop them! (Lusso, 2005)» The analysis thus paves the way for targeted training pathways that help teachers reflect on their nonverbal communication and develop it professionally. A conscious and coherent use of body language not only supports teaching effectiveness but also strengthens trust-based relationships with students and contributes to the creation of positive, inclusive, and participatory learning environments.

2. Research design and observed sample

The study was conducted as part of a 75-hour internship at a primary school. The sample consisted of seven teachers teaching different subjects, observed during regular classroom activities. Although the number of participants was limited, the diversity of disciplines made it possible to detect heterogeneous communicative behaviours, useful for outlining qualitative trends in nonverbal competences within the school context.

The research design was based on systematic observation, using structured grids developed from the studies of Richmond & McCroskey (Richmond & McCroskey, 2004) and adapted by Caccioppola (Caccioppola, 2019). These instruments focused attention on specific dimensions of teachers' communication, ensuring consistency in data collection and comparability among observations.

The grid included three main categories:

- Spatial behaviour (proxemics, posture, kinesics, haptics)

- Vocal signals (verbal indices, nonverbal vocalizations, pauses, and silences)
- Facial expressions (eye contact, emotional expressions, smile)

Indicators were rated on a scale from 0 (absence) to 3 (strong and significant presence), allowing the classification of teachers' nonverbal competence levels from absent to excellent.

Direct observation represents a privileged method for capturing nonverbal behaviour in context, though not without limitations. The small sample size restricts the generalizability of the results, and the observer's presence may, intentionally or not, influence teachers' behaviour. More than providing "objective" data, the investigation aims to offer an exploratory perspective, highlighting the importance of nonverbal communication in teaching practice and encouraging further research. It should also be emphasized that observation grids are not only research tools but can also serve teachers as self-assessment and meta-reflection instruments. From this perspective, they acquire formative value, as they promote critical awareness and continuous professional improvement.

3. Selection and description of observation grids

The following model is based on the observation framework developed by Caccioppola in her book *"E se le parole non bastano? Il comportamento non verbale dell'insegnante in classe"* (Caccioppola, 2019). The aim is to provide a detailed description of the various nonverbal messages considered when analysing teachers' behaviour through direct observation. The grids take into account different categories of behaviour, organized according to bodily systems of reference, and articulate each indicator on a scale from 0 to 3, allowing for a graded evaluation of the effectiveness of nonverbal communication.

Table 1. *Proxemic system of non-verbal behaviour of the teacher*

Categories of nonverbal communicative behaviour	Bodily reference system	Eachers' specific actions	Score (assign the score corresponding to the observed behaviour)
SPATIAL BEHAVIOUR	Proxemic system (interpersonal distance, movement in space)	Remains stationary near the desk or the board (maximum distance from students)	0
		Approaches students when speaking to them or during the explanation.	1
		Moves continuously close to students and among the desks, maintaining minimal distance from students.	2
		Organizes the physical classroom layout according to students' activities, maintaining physical proximity to them.	3

Source: Caccioppola F., 2019

The first area of the grid concerns teachers' spatial behaviour, examined through the proxemic system, that is, the use of interpersonal distance and movement within the classroom space. These nonverbal behaviours constitute a meaningful indicator of how teachers construct the educational relationship and manage their physical presence in support of instructional interaction. Observation is conceived along a continuum ranging from more static and distant configurations, such as maintaining a fixed position near the desk or the board, to progressively

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more dynamic and inclusive practices, characterised by approaching students, moving among the desks, and circulating within the classroom during instruction. The highest level of spatial behaviour is represented by the teacher's ability to intentionally reorganise the physical classroom layout in accordance with the proposed activities, while maintaining physical proximity that supports student engagement, attention, and participation.

Table 2. *Orientation and posture of non-verbal behaviour of the teacher*

Categories of nonverbal communicative behaviour	Bodily reference system	Eachers' specific actions	Score (assign the score corresponding to the observed behaviour)
SPATIAL BEHAVIOUR	Orientation and posture.	Maintains the same position and posture (standing near the desk or the board; seated at the desk), regardless of the classroom activities.	0
		Maintains the same position but changes posture (e.g., leans forward) when speaking to an individual student or to the whole class, then returns to a dominant position.	1
		Changes posture according to the activity (explanation, consolidation, conversation): leans toward the student and maintains face-to-face eye contact.	2
		Adopts a natural and flexible posture depending on the activity, during which he/she seeks to maintain face-to-face interaction with students.	3

Source: Caccioppola F., 2019

The second dimension of spatial behaviour addressed by the grid concerns teachers' orientation and posture, understood as core components of nonverbal communication and as privileged conveyors of interpersonal attitudes. Posture does not merely accompany verbal discourse; rather, it plays a significant role in shaping the relational climate, conveying signals of openness, availability, control, or dominance. In line with the literature on nonverbal communication, the grid distinguishes between rigid and dominant postural configurations, which tend to limit interaction and maintain a symbolic distance from students, and more natural and flexible postures, coherent with the different phases of instructional activity. The former are characterised by the maintenance of an invariant position and by an orientation that is largely insensitive to the communicative context, regardless of classroom dynamics. The latter, by contrast, involve an intentional adaptation of posture according to the situation (e.g., explanation, consolidation, dialogue), including leaning toward students, maintaining eye contact, and adopting a face-to-face orientation. The progression of evaluative levels therefore reflects a continuum ranging from predominantly static and self-referential communicative modes to more aware and relational forms of bodily presence, in which teachers use posture and orientation as tools to foster interaction, gather immediate feedback, and support student participation. From this perspective, posture is not considered an ancillary element, but rather an embodied pedagogical resource, capable of making educational intentionality visible and of supporting more effective communicative processes.

Table 3. Haptic system of non-verbal behaviour of the teacher

Categories of nonverbal communicative behaviour	Bodily reference system	Eachers' specific actions	Score (assign the score corresponding to the observed behaviour)
SPATIAL BEHAVIOUR	Kinesic system (body movement, gestures, and facial mimicry)	Does not perform body movements or use gestures during speech.	0
		Uses only head movements to provide feedback to the student with whom he/she is communicating (e.g., nodding or shaking the head).	1
	Haptic system (physical–bodily contact).	Occasionally uses gestures to emphasize parts of the discourse. May touch a student to reinforce the verbal message being addressed to him/her.	2
		Displays a “theatrical” behaviour (moves, gestures, appears to perform) and establishes physical and emotional contact with students.	3

Source: Caccioppola F., 2019

A further dimension addressed by the grid concerns teachers' kinesic and haptic behaviour, including body movement, the use of gestures, facial mimicry, and, when present, physical contact. These components of nonverbal communication play a central role in supporting, integrating, and, in some cases, substituting verbal messages, thereby contributing significantly to communicative expressiveness, clarity, and student engagement. With regard to the kinesic system, the grid considers a continuum of behaviours ranging from an almost complete absence of body movement and gestures during speech to progressively more articulated communicative modes, in which teachers use gestures, body movements, and facial expressions in an intentional and content-consistent manner. Intermediate levels include the use of minimal feedback signals, such as head movements while listening, as well as more explicit gestural behaviours that accompany and emphasise communication addressed to individual students or to the whole class.

The haptic system, referring to physical contact, is examined in an integrated and cautious manner, exclusively in terms of contextual appropriateness and communicative function. In this respect, the grid distinguishes between behaviours characterised by the absence of bodily contact and those in which teachers employ light and socially acceptable forms of contact (e.g., a pat on the shoulder or a brief touch on the forearm) to reinforce verbal messages, support attention, or express relational closeness. The progression of scores therefore reflects a shift from limited or reduced forms of bodily communication, potentially monotonous and weakly engaging, to richer, more integrated, and coherent expressive modes, in which body language contributes to conveying emotions, instructional intentionality, and involvement. At the highest levels, kinesic and haptic behaviour is conceptualised as an embodied pedagogical resource, capable of supporting interaction, strengthening the educational bond, and fostering a positive relational climate in the classroom.

Table 4. Vocal signal of non-verbal behaviour of the teacher

Categories of nonverbal communicative behaviour	Bodily reference system	Eachers' specific actions	Score (assign the score corresponding to the observed behaviour)

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VOCAL SIGNALS	Verbal vocal signals	Maintains a constant speech pattern, with volume and tone unchanged and independent of the classroom context. In the presence of background noise, continues speaking or raises his/her voice to obtain silence.	0
	Nonverbal vocal signals	Speaks predominantly, obtains silence from the class when students ask questions, and varies voice volume and tone.	1
	Pauses and silences	Changes tone and voice volume according to classroom activities. Background noise may occur during some activities (e.g., small-group work or less structured moments).	2
		Has a voice that, due to its richness of expression, captures the class's attention; does not speak continuously but leaves space for students' voices, which emerge during the pauses or silences allowed.	3

Source: Caccioppola F., 2019

Voice constitutes another key dimension. Vocal signals, both verbal and nonverbal, reveal the teacher's ability to modulate tone, volume, and rhythm according to context. A monotonous and unvaried speech pattern receives a low score for its limited ability to sustain attention, whereas the conscious use of pauses, silences, and tonal variations is recognized as highly effective in supporting comprehension and managing classroom dynamics.

Table 5. Face of non-verbal behaviour of the teacher

Categories of nonverbal communicative behaviour	Bodily reference system	Teachers' specific actions	Score (assign the score corresponding to the observed behavior)
FACE	Gaze and eye contact	Does not maintain eye contact with students and displays a face that shows little emotional expression.	0
		Maintains eye contact with the group as a whole when addressing the class, or with an individual student when speaking to him/her.	1
	Facial expressions	Displays an animated facial expression when speaking to an individual student or to the class (both positive and negative emotions), showing a present and engaged expression.	2
	Smiling	Displays an expressive and smiling face toward all students, maintaining an interested and attentive expression while speaking, responding, and listening to students.	3

Source: Caccioppola F., 2019

Finally, the grids evaluate facial expressiveness, focusing on eye contact, emotional expressions, and smiling. Again, the scale reflects a continuum, from absence of expressiveness and lack of eye contact (signalling detachment and rigidity) to an animated, expressive, and smiling face that conveys attention, interest, and emotional participation.

Based on the nonverbal behaviours previously described, a set of specific indicators was subsequently developed to derive an overall score for teachers' nonverbal behaviour, with a maximum value of 15 points. This index does not merely quantify the quality of nonverbal communication but also provides an interpretative framework for identifying strengths and areas for improvement in teaching practice. From this perspective, the grid is conceived as a tool for observation and self-reflection, supporting teachers, both in training and in service, in developing greater awareness of their communicative styles and in undertaking targeted improvement pathways. The following section presents the table outlining the evaluation scales and the criteria for interpreting the overall score.

Table 6. *Levels of non-verbal behaviour of the teacher*

LEVEL	DESCRIPTION
Level 0 Absent (total score ranging from 0 to 4)	The teacher's nonverbal behaviour is extremely limited or inconsistent with verbal communication. The teacher maintains maximum distance from students and adopts the same position and posture, typically remaining near the board or seated at the desk, regardless of the activities carried out by students. The teacher appears rigid, with an absence of gestural behaviour. Speech is monotonous and unvaried. The teacher does not maintain eye contact with students and displays facial expressions that convey little or no emotional information.
Level 1 Minimal (total score ranging from 5 to 8)	The teacher's nonverbal behaviour is monotonous and largely unchanging, or it lacks clear expressiveness. The teacher approaches students only for instructional purposes (e.g., when calling on a student or checking the outcome of their work). The teacher maintains the same position, although posture may change (e.g., leaning forward) when speaking to an individual student or to the class. Gestural behaviour is limited (e.g., nodding or shaking the head). The teacher speaks without leaving space for students' contributions; however, when students ask questions, he/she varies voice volume and maintains eye contact with them.
Level 2 Good (total score ranging from 9 to 12)	The teacher's nonverbal behaviour is adequately expressive in relation to the classroom context. The teacher moves continuously close to students and among the desks, changing position and posture according to the activities carried out. He/she leans toward students and maintains face-to-face eye contact. Head movements and gestures are used to emphasize parts of the discourse. The teacher may engage in physical contact with a student to reinforce a verbal message being addressed to him/her. Facial expression is animated when speaking to an individual student or to the class, conveying both positive and negative emotions, and remains attentive and present. Tone and volume of voice are modulated according to classroom activities. Background noise may occur during some activities (e.g., small-group work or less structured moments).
Level 3 Excellent (total score ranging from 13 to 15)	The teacher organizes the physical classroom layout according to students' activities, maintaining physical proximity and face-to-face interaction with them. He/she adopts a natural posture that communicates openness. The teacher displays a theatrical behaviour (moves, gestures, appears to perform) and establishes both physical and emotional contact with students. Facial expression is expressive and smiling toward all students; an interested and attentive expression is maintained while speaking, responding to, and listening to students. The teacher uses a voice that, due to its richness of expression, captures the class's attention. He/she does not speak continuously, but leaves space for students' verbal contributions, which emerge during the pauses and silences allowed.

Source: Caccioppola F., 2019

4. Results of observation

The exploratory study revealed significant differences in teachers' use of nonverbal communicative skills. Only one out of seven teachers achieved an excellent score (12/15), standing out for expressive gestures, constant eye contact, and dynamic use of classroom space. Three teachers reached a good level (9/15), generally adequate but not always consistent. Two teachers obtained low scores (2–8/15), displaying rigid posture, monotonous prosody, and limited expressiveness. The most critical case (2/15) concerned a teacher who maintained constant distance from students, with little facial expressiveness and minimal relational engagement.

Although based on a small sample, these findings highlight a notable gap: the CCNL (CCNL, 2018) does not explicitly include communication as a specific competence in the teacher's profile, assuming it as a given. The collected evidence, however, shows that only one in seven teachers consciously uses nonverbal resources as didactic and relational tools.

A perceived correlation also emerged between mastery of nonverbal communication and the quality of student participation. Classes led by expressive teachers appeared more motivated, disciplined, and collaborative, while those of less competent teachers tended to show distraction and disorder. This perception aligns with John Hattie's (Hattie, 2009) research, as cited by Silvia Micheletta (Micheletta, 2013), which emphasizes that the decisive factor in learning effectiveness lies in teachers and their approaches: student success or failure largely depends on what teachers do, or fail to do. From this perspective, the most influential elements are not merely technical-didactic but involve the relational dimensions of educational practice: passion for teaching, teachers' expectations, feedback exchange, and the visibility of learning, sometimes perceivable even in the exchange of glances between teacher and student. Hattie's analysis of over 800 factors confirms that the quality of teaching performance, including both verbal and nonverbal communication, forms the core of the educational process.

5. Conclusions

The results of this exploratory study reaffirm that nonverbal communication can no longer be considered an accessory or implicit element of teacher professionalism but must become an explicit focus of training. Although Article 27 of the CCNL does not mention it among professional competencies, educational practice demonstrates its crucial impact on classroom climate, student participation, and ultimately, learning quality. Teacher training programs should therefore include dedicated modules on nonverbal communication, not limited to theoretical acquisition but oriented toward practical experimentation, guided observation, and meta-reflection on one's communicative presence. International literature highlights how self-analysis tools, such as reflective journals, can effectively support teachers' professional development (Ukrop et al., 2018). For in-service teachers, continuous professional development should foster awareness of communicative style through practices such as peer observation, video feedback, and structured debriefing sessions. Recent research projects have also demonstrated the usefulness of digital tools that provide teachers with feedback on their classroom interactions, as in the case of *ClassInSight* (Ngoon et al., 2024).

Alongside these approaches, pedagogical research emphasizes the importance of action research that directly involves teachers as protagonists, allowing them to experiment with innovative practices and assess their impact. Specific studies have shown that teachers' nonverbal behaviour significantly affects teaching effectiveness (Bambaeeroo & Shokrpour, 2017) and that body and facial language directly influence how didactic messages are received (York, 2014). The aim, therefore, is not to teach teachers to "gesture better," but to help them develop deep relational awareness, harmonizing verbal and nonverbal language. In this direction, the observation grids used in this study are not merely research tools but formative devices that stimulate self-evaluation, foster meta-reflection, and support the continuous improvement of teaching professionalism.

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ETHICS BY DESIGN: INTEGRATING LEGAL PRINCIPLES INTO THE MANAGEMENT OF ARTIFICIAL INTELLIGENCE

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Abstract: *Artificial intelligence (AI) has moved from experimental technology to an integral component of strategic management. Yet, as algorithms increasingly shape human decisions, the question of how to embed ethics and legality into AI systems becomes central. This article examines the concept of Ethics by Design — the proactive integration of ethical and legal principles into the architecture, governance, and operation of AI. By bridging law, management, and ethics, the study argues that sustainable innovation requires more than regulatory compliance: it demands organisational structures that internalise moral and legal accountability. The paper outlines the foundations of ethical AI governance, the managerial implications of algorithmic accountability, and the role of law in ensuring human-centred digital transformation.*

Keywords: *ethics by design, AI governance, legal responsibility, strategic management, accountability, sustainability*

1. Introduction

Artificial intelligence has transformed organisational management, enabling unprecedented efficiency and predictive capability. However, these benefits come with ethical and legal challenges: opacity, bias, data misuse, and diminished human oversight. In response, the principle of Ethics by Design has emerged as a guiding philosophy, advocating that ethical and legal standards must be integrated into the very design and deployment of AI systems — not added later as corrective mechanisms.

This article situates Ethics by Design at the intersection of law, management, and technology, proposing it as a managerial framework that aligns innovation with legitimacy. Rather than viewing law as a constraint, it considers legality and ethics as structural components of sustainable digital governance.

Building on this premise, Ethics by Design reframes artificial intelligence not as a neutral technical tool, but as a socio-technical system whose consequences reverberate across organisational, legal, and societal domains. In this sense, the concept moves beyond traditional compliance models. Instead of merely ensuring that AI systems do not violate existing rules, Ethics by Design encourages organisations to embed *anticipatory governance* into every stage of the AI lifecycle — from data collection and model training to deployment, monitoring, and decommissioning.

This proactive orientation is crucial in a landscape where regulatory frameworks are evolving rapidly. Instruments such as the EU Artificial Intelligence Act, the General Data Protection Regulation (GDPR), and sector-specific compliance requirements impose not only

technical obligations but also managerial responsibilities. Organisations are increasingly required to demonstrate that they exercise *due diligence*, maintain *risk-based governance structures*, and uphold *transparency obligations*. Ethics by Design provides the conceptual and operational tools necessary to meet these standards, transforming abstract legal principles into concrete managerial practices.

Within organisational management, the integration of Ethics by Design operates on three interconnected levels:

1. Strategic level – redefining corporate governance to incorporate ethical risk-assessment, accountability structures, and decision-making principles aligned with fundamental rights and societal values.
2. Operational level – translating ethical frameworks into procedures, workflows, quality controls, and documentation practices that ensure traceability and accountability throughout the AI lifecycle.
3. Cultural level – fostering an organisational mindset where employees, managers, and technical teams internalise ethical reflexivity as part of everyday practice, not as an external constraint.

Through this multilevel approach, Ethics by Design becomes a managerial philosophy capable of bridging the gap between *legal compliance*, *technological innovation*, and *institutional legitimacy*. In a world where algorithmic systems increasingly mediate hiring decisions, credit scoring, law enforcement tools, medical diagnostics, and educational evaluation, the question is no longer whether organisations should adopt ethical frameworks, but how effectively they can integrate them into their governance structures.

Ultimately, the argument advanced in this article is that Ethics by Design is not merely a normative ideal — it is an operational necessity. Organisations that treat ethics as a peripheral or optional consideration expose themselves to reputational, legal, and operational risks. Conversely, those that embed ethical principles into the architecture of their AI systems cultivate trust, legitimacy, and long-term sustainability.

2. Conceptual Framework

2.1. From Compliance to Ethical Design

Traditional compliance models address legal risks after technology has been implemented. Ethics by Design inverts this logic: it seeks to embed moral and legal reasoning from the earliest stages of AI development. This paradigm shift moves organisations from reactive governance to proactive accountability.

The European Union's AI Act (2024) embodies this transition by requiring that systems meet principles of transparency, fairness, and human oversight before deployment. Management, therefore, becomes a co-creator of ethical architecture rather than a passive regulator.

This shift reflects a broader evolution in governance theory: the recognition that compliance alone is insufficient in environments characterised by technological opacity and rapid innovation cycles. Traditional models assume that risks can be identified, measured, and sanctioned ex post, once a violation occurs. But algorithmic systems challenge this assumption. Their complexity, reliance on probabilistic reasoning, and dependence on dynamic datasets create forms of uncertainty that cannot be adequately addressed through post-hoc remedies.

Ethics by Design introduces a preventive logic, seeking to eliminate or mitigate risks *before* they materialise. In doing so, it repositions ethical and legal assessments as integral components of the design process. Engineers, data scientists, and organisational leaders are encouraged to collaborate from the outset, ensuring that system architecture reflects normative commitments such as non-discrimination, proportionality, explainability, and respect for fundamental rights. Under this framework, management assumes a transformative role. Rather than merely enforcing compliance checklists, managers act as custodians of organisational values and stewards of responsible innovation. Their involvement is essential for aligning technical choices with broader institutional goals — including reputation, stakeholder trust, and long-term sustainability.

The EU AI Act formalises this managerial responsibility by mandating risk-management systems, documentation practices, human-in-the-loop controls, and continuous monitoring *prior* to market entry. The law effectively codifies the Ethics by Design logic, signalling that ethical integration is no longer optional but a structural requirement for digital governance in Europe. This represents a profound change: the burden is now on organisations to demonstrate that their systems were developed within a principled, rights-respecting framework.

In this sense, Ethics by Design functions not merely as a compliance strategy, but as a holistic governance model. It cultivates anticipatory accountability, reshaping organisational processes so that ethical reflection becomes embedded in the everyday functioning of AI development and deployment. This approach enhances institutional legitimacy and prepares organisations for emerging regulatory landscapes, where societal expectations increasingly demand transparency, fairness, and human-centric oversight.

2.2. The Legal Foundations of AI Governance

AI governance rests on existing legal doctrines—data protection, human rights, and liability law—but extends them into uncharted terrain. Concepts such as algorithmic accountability and explainability represent managerial translations of legal principles like due process and non-discrimination. In this sense, legal governance and managerial strategy converge, ensuring that ethical compliance is not a legal checkbox but a performance criterion.

AI governance is therefore anchored in a multilayered legal ecosystem, where classical legal doctrines intersect with emerging regulatory instruments. While data protection law (notably the GDPR) establishes foundational requirements for lawful processing, transparency, and individual rights, human rights law frames the broader normative boundaries within which AI systems must operate. Liability law, in turn, delineates the conditions under which organisations may be held accountable for harm caused by algorithmic decision-making.

Yet these frameworks were not originally designed with autonomous, adaptive, or opaque technologies in mind. As a result, AI governance evolves by extending established legal concepts into new domains, requiring both reinterpretation and innovation. Algorithmic accountability—requiring organisations to justify and document the internal logic of AI systems—translates the procedural fairness of due process into a technological context. Similarly, explainability operationalises the right to understanding and contestation, bridging

the gap between complex computational reasoning and the individual's capacity to challenge decisions that affect them.

These developments illustrate a growing convergence between legal governance and managerial strategy. Compliance is no longer confined to legal departments; it becomes a shared organisational responsibility embedded in design decisions, procurement policies, risk management frameworks, and oversight mechanisms. In this context, legal norms act as strategic constraints and enablers: they shape how organisations allocate resources, design workflows, and evaluate performance.

Thus, ethical compliance is reframed as a performance criterion—a measurable indicator of organisational maturity and resilience. It impacts stakeholder trust, regulatory approval, market competitiveness, and long-term sustainability. Far from being a bureaucratic checkbox, legal adherence becomes integral to innovation itself: an organisation that cannot demonstrate accountability, transparency, or fairness risks exclusion from markets, erosion of public trust, and exposure to financial and reputational sanctions.

In this way, the legal foundations of AI governance provide the normative architecture upon which managerial frameworks such as Ethics by Design are built. They ensure that technological ambition is aligned with societal values and that organisations internalise their obligations not as defensive reactions to regulation, but as proactive commitments to legitimacy and responsible digital leadership.

2.3. Governance Through Design: Embedding Law into Technical Architecture

The evolution from reactive compliance to proactive ethical integration requires a fundamental reconceptualisation of governance mechanisms. Instead of relying on external audits, periodic checks, or ex post sanctioning, Governance Through Design embeds legal and ethical principles directly into the technical architecture of AI systems. This approach treats algorithms not merely as computational tools, but as infrastructures of normative significance — systems whose very structure can promote or undermine fundamental rights.

Embedding governance into design means translating abstract legal norms into operational specifications. Requirements such as data minimisation, purpose limitation, fairness, explainability, and human oversight must be encoded into system architectures, not merely referenced in policy documents. This technical translation process elevates the role of multidisciplinary collaboration: engineers must understand legal obligations, lawyers must grasp technical constraints, and managers must coordinate these perspectives into a coherent organisational strategy.

Within this paradigm, risk management becomes a design principle rather than an administrative afterthought. High-risk AI systems, as defined by the EU AI Act, must incorporate mechanisms for continuous monitoring, auditability, traceability of decisions, and the capacity to intervene—features that transform governance from an external control into an internal function of the system itself. Technical features such as logging, version control, explainability layers, and human-in-the-loop decision gates are no longer optional enhancements but mandatory safeguards that embody the organisation's commitment to lawful and ethical operation. This approach also reflects a broader theoretical movement in regulatory thinking: the shift from *rules-based* to *architecture-based* governance. Whereas traditional regulation relies on setting behavioural expectations, governance through design builds

constraints and protections into the environment in which decisions are made. In the context of AI, this means ensuring that systems are structured to prevent discriminatory outcomes, avoid opacity, and preserve human agency by default.

For managers, this transformation blurs the line between strategy and compliance. Ethical governance becomes a core organisational competence, requiring investment in training, infrastructure, and interdisciplinary teams. It also demands cultural change, as employees must internalise the idea that every design decision—however technical—carries normative implications. In this sense, Governance Through Design represents the operational heart of Ethics by Design: it turns values into features, principles into protocols, and legal obligations into system behaviour.

By embedding governance into the very code and architecture of AI systems, organisations simultaneously enhance legal robustness, ethical credibility, and operational resilience. The result is a governance model capable not only of meeting regulatory expectations, but of shaping a sustainable and rights-centric technological ecosystem.

3. Management of Artificial Intelligence: Ethical and Organisational Dimensions

3.1. The Manager as Ethical Designer

The role of the manager evolves from operational control to ethical stewardship. Effective AI management requires multidisciplinary teams that combine technical expertise with legal insight and ethical reasoning. Decision-makers must implement internal review boards, algorithmic audit systems, and risk assessment tools to ensure that AI aligns with both regulatory norms and social expectations. Embedding ethical thinking into corporate governance structures — through codes of conduct, training, and board-level oversight — transforms Ethics by Design into a continuous management process rather than a one-time design feature.

In this emerging governance landscape, the manager is no longer a passive overseer of technical processes but an ethical architect responsible for orchestrating the conditions under which AI systems can operate responsibly. This redefined role requires an ability to navigate the intersection of law, technology, and organisational behaviour — a hybrid competence that blends strategic foresight with normative sensitivity. Managers must cultivate a working environment in which ethical reflection is not peripheral but embedded in the organisational DNA.

To achieve this, multidisciplinary collaboration becomes a structural requirement rather than an optional enhancement. Ethical AI design depends on the interaction of data scientists, legal experts, ethicists, cybersecurity specialists, human resources professionals, and executive leadership. The manager's task is to facilitate this collaboration, align diverse forms of expertise, and ensure that ethical deliberation informs every stage of the AI lifecycle. This includes setting priorities, allocating resources, defining success metrics, and ensuring transparency in decision-making processes.

A central managerial responsibility is the establishment of internal governance mechanisms that institutionalise ethical oversight. These include internal review boards for high-risk AI systems, algorithmic audit protocols, impact assessments, and mechanisms for reporting or mitigating harm. Such structures function as early-warning systems, enabling

organisations to detect biases, identify systemic risks, and adapt to regulatory changes before issues escalate into legal or reputational crises.

Furthermore, managers must embed ethical thinking into corporate governance frameworks. This can be achieved through codes of conduct tailored to AI development, continuous training programs on legal and ethical issues, and the integration of AI governance into board-level agendas. Board oversight—particularly through risk committees or dedicated ethics committees—ensures that organisational strategy aligns with societal values and regulatory expectations. In this context, Ethics by Design is not a static requirement but a continuous management process, informed by iterative learning, monitoring, and adaptation.

This ongoing commitment to ethical stewardship enhances organisational legitimacy. It demonstrates to regulators, customers, employees, and partners that the organisation takes seriously its responsibility to manage AI systems in ways that respect human rights and promote societal well-being. Ultimately, the manager as ethical designer becomes a pivotal actor in shaping a form of digital governance that is not only technically robust but also morally grounded.

3.2. Accountability in Algorithmic Decision-Making

Algorithmic accountability challenges the classical notion of responsibility in both law and management. Who is responsible when an algorithm discriminates or causes harm? Ethics by Design responds by distributing accountability across the entire lifecycle of AI: design, deployment, and monitoring. This distributed model of responsibility reflects principles of good governance — transparency, traceability, and due diligence — adapted to the digital context.

Algorithmic accountability thus requires a reconceptualisation of responsibility that departs from traditional, human-centred models. Classical legal doctrine presupposes identifiable actors who intentionally or negligently cause harm. AI systems, however, complicate this framework: they operate autonomously, evolve over time, and rely on datasets and optimisation processes that often obscure causal chains. This raises critical questions for both law and management: How do we attribute fault in environments where decision-making is partially automated, probabilistic, and opaque?

Ethics by Design offers a structural response by distributing accountability across the entire AI lifecycle. Rather than assigning responsibility exclusively to developers or end-users, this model recognises that multiple actors contribute to algorithmic outcomes. Designers influence model architecture, managers shape governance structures, procurement teams select datasets and vendors, and operators oversee deployment and maintenance. Accountability therefore becomes multi-layered, shared, and process-based, aligning with contemporary understandings of organisational responsibility.

This distributed approach operationalises core principles of good governance:

- Transparency ensures that decision-making processes are documented, explainable, and open to scrutiny by regulators, stakeholders, and affected individuals.
- Traceability provides the capacity to reconstruct the decision-making pathway, enabling organisations to identify where biases, errors, or system failures emerged.

- Due diligence demands continuous risk assessments, monitoring, and corrective actions, signalling that responsibility is not static but evolves as systems learn and adapt.

Importantly, this reconfiguration of accountability does not dilute responsibility; rather, it enhances organisational robustness by ensuring that no stage of AI development is exempt from oversight. It shifts accountability from an ex post attribution of blame to an ex ante commitment to responsible design and governance, encouraging organisations to anticipate and mitigate potential harms before they materialise.

From a managerial perspective, this means establishing clear lines of responsibility within the organisation: documenting roles and expectations, creating escalation pathways for ethical concerns, and integrating algorithmic risk into performance evaluation and corporate reporting. This systemic accountability not only meets emerging regulatory standards — such as those embedded in the EU AI Act — but also strengthens institutional legitimacy by demonstrating a proactive commitment to rights-respecting digital innovation.

Ultimately, algorithmic accountability becomes a cornerstone of Ethics by Design: it reframes responsibility not as a punitive mechanism, but as a collective, ongoing practice of stewardship, ensuring that AI systems function in ways that align with societal values and legal obligations.

4. Organisational Governance and Legal Integration

4.1. Embedding Legal Principles in Corporate Strategy

To operationalise Ethics by Design, organisations must integrate legal principles into strategic planning. Legal counsel should participate in AI strategy meetings, and ethical KPIs (Key Performance Indicators) should be embedded in management scorecards. This convergence of legal and managerial oversight enhances institutional resilience, helping organisations anticipate legal risks while maintaining reputational integrity.

Embedding legal principles into corporate strategy requires organisations to move beyond the episodic consultation of legal experts and toward a model where legal reasoning becomes a strategic asset. In the context of AI governance, this means that legal counsel, compliance officers, and data protection specialists must be included from the inception of technological initiatives, not merely engaged at the final approval stage. Early integration allows legal principles — such as proportionality, fairness, accountability, and respect for fundamental rights — to shape system architecture, risk appetite, and organisational priorities.

In practical terms, organisations can operationalise this alignment by incorporating ethical and legal performance indicators into managerial scorecards. These KPIs may include metrics related to algorithmic bias detection, explainability audits, data quality assurance, incident reporting timelines, or the rate of compliance with internal governance protocols. When ethical performance becomes measurable, it also becomes manageable, enabling leaders to evaluate the organisation's progress and identify areas requiring further intervention.

Moreover, this convergence of legal and managerial oversight contributes to institutional resilience. By embedding legal considerations into strategic planning, organisations develop the capacity to anticipate regulatory shifts, adapt to evolving societal expectations, and respond to emerging risks before they materialise. This anticipatory posture

reduces exposure to litigation, regulatory penalties, and market disruption — consequences that can be particularly severe in high-risk AI domains such as healthcare, finance, education, or law enforcement. At the same time, integrating legal principles at the strategic level strengthens reputational integrity. In an era where stakeholder trust is increasingly tied to responsible data practices and transparent algorithmic governance, organisations that can demonstrate principled decision-making enjoy competitive advantages. Ethical credibility becomes part of the brand identity, reinforcing consumer confidence, investor trust, and employee engagement.

Thus, embedding legal principles into corporate strategy is not merely a compliance exercise but a strategic imperative. It ensures that Ethics by Design is translated into actionable governance structures, long-term institutional vision, and operational coherence. By aligning legal norms with managerial objectives, organisations create a governance ecosystem in which innovation and legitimacy reinforce each other, rather than standing in tension.

4.2. The Role of Law as an Enabler, not a Constraint

While many firms view regulation as an impediment to innovation, this article argues that legal frameworks — particularly those centred on human rights and data protection — provide a foundation for sustainable technological progress. Incorporating ethics by design ensures not only compliance but trustworthiness, which in turn strengthens market credibility and public acceptance.

Contrary to the perception that regulation stifles innovation, law functions as an enabling architecture that provides clarity, stability, and legitimacy for technological development. In domains characterised by rapid innovation and high uncertainty, such as artificial intelligence, legal frameworks reduce ambiguity by articulating the boundaries within which innovation can occur responsibly. Far from constraining creativity, these boundaries establish the *conditions of possibility* for sustainable technological ecosystems.

Human rights law, data protection norms, and emerging AI-specific regulations offer normative guardrails that guide organisations toward solutions that are socially acceptable and ethically sound. They encourage developers to consider impacts on autonomy, dignity, non-discrimination, and privacy — principles that are essential for maintaining public trust in automated decision-making. Legal requirements such as transparency, fairness, and human oversight incentivise firms to adopt methodological rigour and operational discipline, thereby improving the quality and robustness of AI systems.

Understanding law as an enabler also reframes compliance as a strategic advantage rather than a bureaucratic obligation. Organisations that embed legal principles into their AI governance models are better positioned to avoid costly redesigns, regulatory sanctions, or reputational crises. They can enter markets with greater confidence, secure partnerships more easily, and differentiate themselves through ethical leadership. In high-stakes industries, where consumer and stakeholder scrutiny is intense, demonstrable adherence to legal and ethical standards becomes a form of *competitive capital*.

Ethics by Design amplifies this enabling function by ensuring that normative considerations are integrated from the outset. This proactive incorporation fosters trustworthiness, a quality increasingly recognised as essential for the societal acceptance of AI technologies. Trust is not merely an intangible value; it has concrete market implications —

influencing user adoption rates, customer loyalty, investor confidence, and regulatory goodwill. Companies that can demonstrate the integrity of their systems enjoy a reputational premium, especially in sectors where the consequences of algorithmic harm are significant.

Thus, law emerges not as an obstacle but as a catalyst for sustainable innovation. By embedding legal principles into design processes and organisational strategy, firms create AI systems that are not only technologically advanced but also aligned with societal expectations and democratic values. This alignment strengthens the legitimacy of AI deployment and supports a vision of technological progress that is both responsible and resilient.

5. The Future of Ethical AI Governance

5.1. Human-Centred Design and the “Right to Explanation”

A core challenge in AI governance is maintaining human agency. The EU General Data Protection Regulation (GDPR) introduced the “right to explanation”, obliging organisations to clarify automated decisions that affect individuals. Managers must therefore ensure that AI systems remain interpretable and controllable — maintaining the principle that technology serves humanity, not vice versa.

The rise of automated decision-making has intensified concerns about the erosion of human agency. As algorithms increasingly shape access to employment, credit, healthcare, education, and public services, the need to preserve individual autonomy becomes a central pillar of AI governance. Human-centred design responds to this challenge by ensuring that technological systems enhance, rather than displace, human judgment, dignity, and self-determination.

Within this framework, the “right to explanation”, emerging from the GDPR and echoed in subsequent European regulatory instruments, represents a crucial safeguard. Although debated in its precise legal scope, the principle affirms that individuals affected by automated decisions are entitled to understand the reasoning behind them and to contest outcomes that are unfair or erroneous. This requirement reflects deeper legal values — procedural fairness, transparency, and respect for individual rights — now translated into the digital environment.

For organisations, the right to explanation has profound managerial implications. It demands that AI systems be designed with interpretability, traceability, and controllability at their core. Managers must ensure that technical teams adopt methods that allow for meaningful insights into how decisions are generated, whether through inherently interpretable models, explainability layers, or rigorous documentation practices. This design orientation counters the “black box” problem, which undermines accountability and erodes public trust.

Moreover, maintaining human agency requires effective human oversight mechanisms. Managers must define clear thresholds for human intervention, establish escalation routines when automated decisions produce anomalies, and ensure that employees are trained to understand the capabilities and limitations of AI tools. Such safeguards are integral to preserving the principle that technology serves humanity, not vice versa.

Human-centred design therefore becomes a strategic priority, not a peripheral ethical concern. It aligns organisational practices with both regulatory mandates and societal expectations, reinforcing trust and legitimacy in AI-driven processes. By embedding

interpretability and oversight into technological infrastructures, managers uphold the core democratic principle that individuals retain the ability to understand, challenge, and influence the systems that shape their lives.

Ultimately, the right to explanation is not merely a procedural entitlement; it is a manifestation of a broader commitment to human-centred governance. As organisations increasingly rely on algorithmic tools, this commitment ensures that innovation remains aligned with human values, ethical constraints, and legal protections — the essential foundations of a responsible digital society.

5.2. The Sustainability Dimension

Ethical AI governance contributes directly to organisational sustainability. Trust, transparency, and fairness enhance long-term stakeholder value, reduce litigation risk, and foster innovation ecosystems built on legitimacy. In this light, Ethics by Design is not a moral accessory but a strategic asset — an element of competitive differentiation in the digital economy.

Sustainability in the digital era extends far beyond environmental concerns. It encompasses the capacity of organisations to operate responsibly, maintain stakeholder trust, and remain resilient amid technological, legal, and social change. In this broader sense, ethical AI governance is inseparable from organisational sustainability. AI systems that violate privacy, produce discriminatory outcomes, or operate opaquely undermine not only regulatory compliance but also institutional credibility, social licence to operate, and long-term value creation.

Ethics by Design strengthens this sustainability framework by embedding principles such as fairness, transparency, and accountability into organisational processes. These principles function as risk-mitigating mechanisms, reducing exposure to litigation, regulatory sanctions, reputational harm, and operational disruptions. As AI-driven decisions increasingly affect fundamental human interests, stakeholders — including consumers, employees, regulators, investors, and civil society — expect organisations to demonstrate ethical integrity. Meeting these expectations is essential for securing durable relationships and maintaining a stable operating environment.

In addition, ethical AI governance promotes innovation ecosystems grounded in legitimacy. When organisations adopt clear ethical standards, they create predictable and trustworthy environments for technological experimentation and cross-sector collaboration. Partners and developers are more willing to engage with institutions that demonstrate transparency and responsible governance, while customers show higher adoption rates for technologies perceived as safe, explainable, and aligned with societal values. This reinforces the idea that trust is not a soft value but a measurable component of economic performance.

From a strategic standpoint, Ethics by Design becomes a source of competitive differentiation in the digital economy. As regulatory standards tighten and societal scrutiny intensifies, organisations that proactively integrate ethical and legal considerations gain a market advantage. They can enter regulated markets more quickly, secure certification more easily, and mitigate the costly need for retrofitted compliance measures. In contrast, firms that treat ethics as an afterthought risk technological lock-in, systemic vulnerabilities, and loss of stakeholder confidence.

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Thus, the sustainability dimension reveals Ethics by Design as far more than a moral accessory. It is a strategic asset—a driver of resilience, innovation, and long-term institutional legitimacy. By embedding ethical governance into organisational culture and technical infrastructure, managers cultivate systems capable not only of technical performance but of enduring societal acceptance. In a digital landscape shaped by rapid disruption and heightened expectations, this alignment between ethics and sustainability becomes indispensable for responsible organisational leadership.

6. Conclusions and Managerial Implications

The management of artificial intelligence requires a synthesis of law, ethics, and strategy. Ethics by Design transforms this synthesis into a practical governance model, ensuring that technological innovation aligns with human values and legal standards. Organisations that institutionalise ethical design gain resilience, legitimacy, and sustainability — not because they follow rules, but because they internalise them into culture and process.

The future of management in the AI era will belong to leaders who understand that ethics is not external to design but the very framework through which intelligent systems become truly responsible.

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ANALYZING THE EVOLUTION OF DIGITALIZED GOVERNANCE RESEARCH: INSIGHTFUL PUBLICATION TRENDS AND GAPS

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Abstract: *The paper attempts to throw light on the publication trends of digitalized governance by using a more inclusive approach of using keywords such as “e-governance”, “digital governance” and “smart governance”. By searching and extracting the relevant records from the Web of Science (WOS) Core Collection, the paper conducted bibliometric analysis on 1154 selected records that met the selection criteria. The analysis revealed that the number of publications is increasing on yearly basis in the past 5 years. This could be attributed to growing interest of researchers in this subject as well as an escalating concern among the scholars regarding increasing social issues and public awareness towards them. Similarly, most of the paper were published in China, the United State of America and India, with a substantial contribution from the Western and Central regions of Europe. Therefore, the paper emphasizes on disparities in the literature of this field and based on an in-depth analysis, concludes that future scholars should focus more on the collaboration of multiple stakeholders while studying digitalized governance.*

Keywords: *Smart governance, digital governance, e-governance, bibliometric analysis, smart cities*

1 Introduction

In the present-day context, cities are facing major environmental as well as social issues (Bolívar & Meijer, 2016) that are impacting the standard of living and overall life quality of the cities' residents. For securing and maintaining a better living standard, governments are trying several methods, one of which is famous for its innovation-oriented approach, namely Smart Governance. However, the term “governance” which is generic is often misunderstood and as per the existing literature, there is no consensus among scholars regarding its definition. On the other hand, the term “smart governance” is often associated with “digital governance” and “e-governance”. While some authors argue that they are different sides of the same coin, others claim that they have different meanings and implications. Nevertheless, there is no doubt regarding the fact that in the past decade, with the rising population of city and increasingly growing issues in city, the interest of academics and scholars is escalating in smart governance.

Therefore, in order to fill the literature gap, the present paper attempts to showcase the publication trends of smart governance in the past decade (more precisely, papers from 2015 to 2025 were considered). The main objective of this research is to emphasize what research areas are more focused by the scholars when studying this topic and since the terms “digital governance” and “e-governance” are often used interchangeably, these were also included in

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the research query. So, the paper covers a broader literature landscape and provides a more nuanced depiction of scholarly discourse in the field of digitalized governance.

Similarly, the current study aims to answer the following Research Questions (RQs) for guiding the author in achieving the objective of this paper and providing a road-map:

RQ 1: How did the number of publications concerning digitalized governance evolved from the year 2015 to 2025?

RQ 2: What are the most predominant research areas in the digitalized governance literature?

RQ 3: Which are the countries/regions that focused more on researching digitalized governance?

RQ 4: Which are the most dominating Sustainable Development Goals in the publications focusing digitalized governance?

RQ 5: What are the research areas in digitalized governance literature that should be more studied in the upcoming years?

By answering the above RQs, future directions for researchers can be recommended by emphasizing which research areas did not receive enough attention from the scholars despite an increased relevance and practical implications. In this way, the paper attempts to provide direction to the future researchers by filling a literature gap.

2 Methodology

The main purpose of the paper was to throw light on the publication trends of digitalized governance (*Digital Governance*, *Smart Governance* and *E-governance*). For this purpose, a wide range of relevant papers were selected and extracted from the Web of Science. Since we conducted a quantitative examination of the literature on Smart Governance, Digital governance and E-governance, bibliometric analysis was used as a method for answering the research questions proposed earlier in this paper. Sidor et al. (2025) claim that this is a well-known research methodology, which permits researchers to objectively examine the scientific literature of a research domain for revealing its trends.

The keywords used for building a query and finding relevant papers were: “*Smart Governance*” OR “*Digital Governance*” OR “*E-governance*”. This resulted in a substantial number of records, which were then filtered to limit the number of publication years from 2015 to 2025 and then later on, the research areas that predominantly focused on Economics and Social Science-related fields, excluding the ones that majorly concentrated on medical and technology-related fields. Besides, a filter on language allowed us to select only records that are published in English.

After going through the screening process, 1154 records were obtained that respected the selection criteria and were deemed relevant for this research paper.

3 Literature Review

Governance is explained by Pereira et al. (2018) as “*interaction and collaboration of different stakeholders in decision-making processes*”. Similarly, Offe (2009) and Fukuyama (2016) claims that there is no consensus of the definition of this term. For the most of the 20th century, corporate governance had a well-established meaning in business and legal circles.

Nevertheless, it wasn't until the early 1990s that the adjective-less term "governance," which was purposefully employed in opposition to the more conventional word "government," became widely utilised. These days, the term "governance" is applied promiscuously to a wide range of activities that share the function of directing or controlling social behaviour.

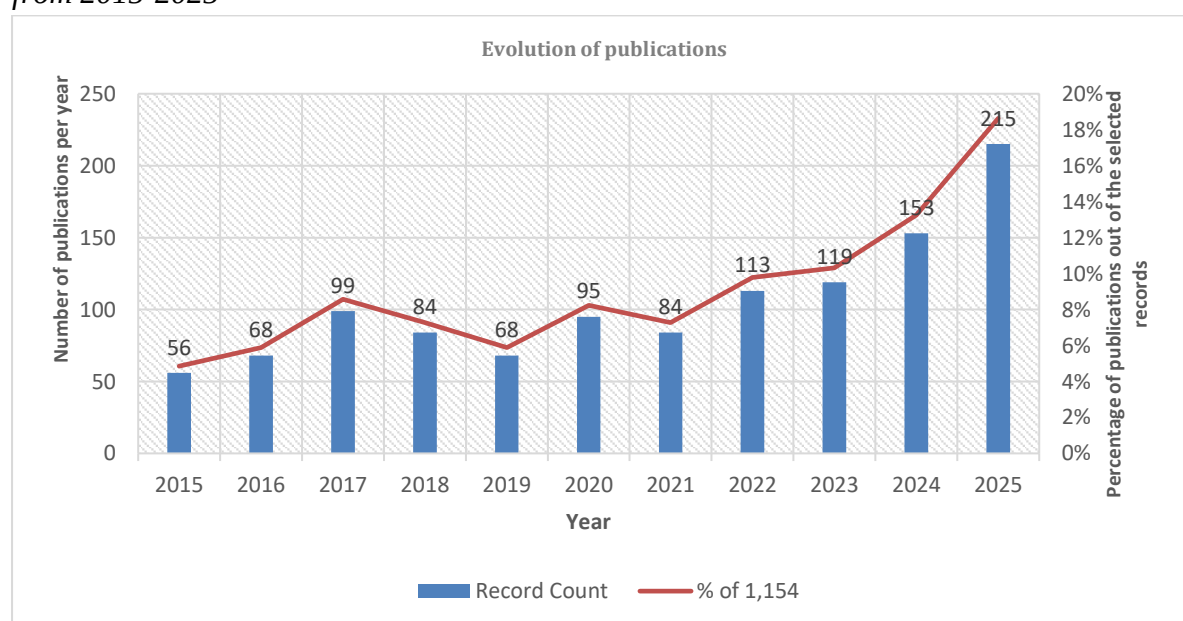
Some scholars (Offe, 2009) claim that the term *governance* has become an "empty signifier" due to its ambiguity and broad usage. Moreover, the term is oftentimes associated with a company's financial performance as corporate governance may impact managerial choices, lower risks, and increase shareholder value through procedures including board monitoring, accountability, and transparency - all of which eventually led to improved financial results (Kaur et al., 2023).

A growing number of literature (Meijer & Bolívar, 2016) today pays attention to smart cities and how they are governed. This is because when it comes to cities, securing a healthy as well as safe living environment is one of the primary concerns due to increasing social and environmental issues (Buşa et al., 2021; Ruijter et al., 2023) such as pollution and population explosion that make it difficult to meet the demands of a city's residents. This is one of the major reasons why, smart city project managers rely a lot more on a collaboration between multiple stakeholders as these partnerships can be challenging. In this context, smart governance is defined by Oprea & Kaur (2025) as a modern approach which utilizes advanced digital technologies for establishing a more people-centred government system.

Based on the above arguments, it is clear that in order to run a smart city, city developers need to apply smart governance to get better results. Similarly, in this context, digital governance represents an effective solution adopted by them to utilize digital technologies in government practices. Therefore, Humayun et al. (2020) claim that these two terms (namely, smart governance and digital governance) are actually two different sides of the same coin.

4 Results and Discussion

Figure 1. *Evolution of the number of records published in digitalized governance literature from 2015-2025*



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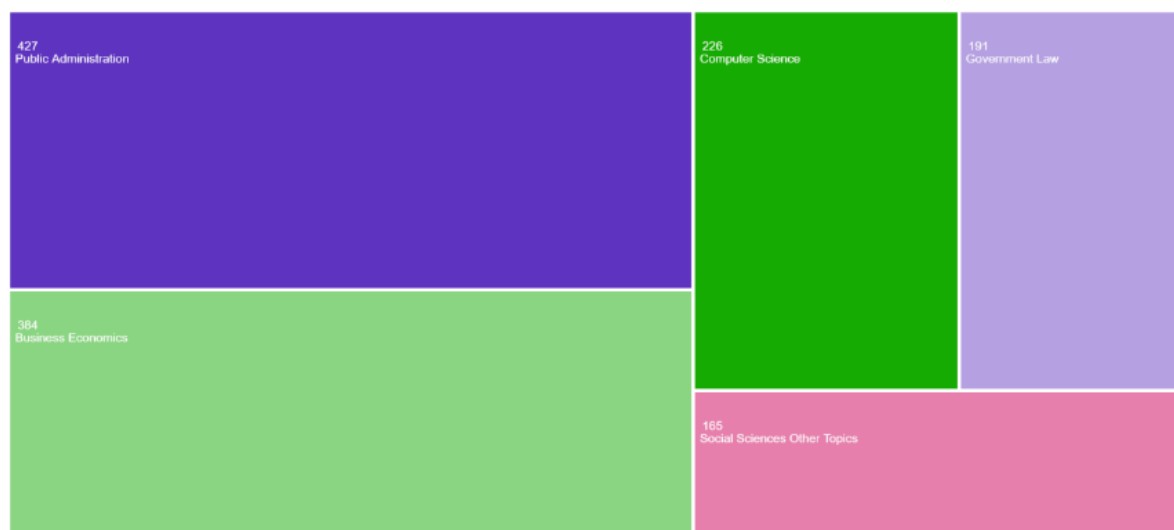
However, Oprea & Kaur (2025) argue that even though these terms are sometimes used interchangeably, but they have slightly different implications. For instance, the aim of smart governance is to enhance decision-making outcomes by using digital tools, whereas digital governance primarily concentrates on digitalization of processes and usage of digital tools. In other words, digital governance is a broader term while smart governance just combines innovative strategies with technology to get the best outcomes (in this case, a more responsive and inclusive governance).

Besides, e-governance is also often confused with digital governance. Although these terms have similarities, but the slight difference is that e-governance focuses more on using advanced digital tools to enhance government services, while digital governance is a broader notion as it aims to use technologies for enhancing all governance processes (Dawes, 2008).

After selecting and extracting the relevant records that meet the criteria (in total 1154 documents), the data was analysed. As shown in the figure above, the number of publications on digitalized governance have been consistently increasing in the past 5 years. This throws light on the fact that in academic discourse, the interest is increasing for this subject. Besides, these numbers could also be attributed to the growing social issues in the recent years, which escalated public awareness.

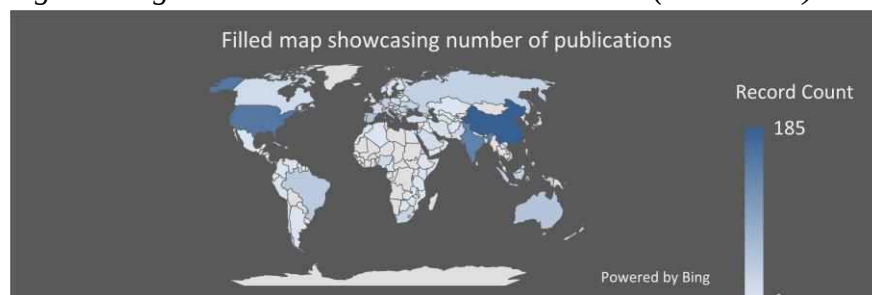
Similarly, the most common research area under which the selected articles were published are: *Public Administration* (427), followed by *Business Economics* (384), *Computer Science* (226), *Government Law* (191) and *Social Sciences Other Topics* (165). Although the social science and economics field have higher number of publication but a part of the reason why *Computer Science* has lower number of records is that during the screening process, more preference was to records focusing on social science field. However, before filtering/excluding the research areas, *Computer Science* initially had 784 records which is much higher than the other categories. Later on, a part of these publications was excluded as they were not deemed relevant for the scope of this paper.

Figure 2. Most predominant Research Areas of digitalized governance literature indexed in WOS (2015-2025)



Source: WOS Core Collection

Figure 3. A filled map showcasing the most predominant geographical regions/nations of digitalized governance literature indexed in WOS (2015-2025)



The above filled map showcases the number of records published in different regions. The countries with a darker colour illustrate the higher relative publication number in that area. As shown in Figure 3, both China as well as the United States have the darkest colour which implies that these countries dominate, followed by India, which also has a relatively darker shade in comparison to other nations. Furthermore, while Africa, much of the Middle East, and areas of South America have very low publication counts, Europe exhibits substantial coverage, especially in Western and Central regions. With moderate involvement, Australia along with a few South American nations also stand out.

Overall, the map shows that research output is concentrated in North America, East Asia, and some parts of Europe, while significant regions are still under-represented, indicating possible differences in scholarly endeavours and availability of resources worldwide.

Figure 4 shows the distribution of selected records among SDGs (Sustainability Development Goals) is dominated by the goals that have a direct impact on service quality through digital innovation or transformation such as infrastructure improvement, urban management as well as education. This implies that digitalized governance has a practical relevance and is more associated to public domains rather than economic goals (SDG 1, 8, 9 and 10). This finding is consistent with Figure 2, where we observed that *Public Administration* is a more common research area than *Business Economics*, when discussing digitalized governance literature.

Figure 4. The most predominant SDG focus areas of digitalized governance literature indexed in WOS (2015-2025)



Source: WOS Core Collection

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The dominance of SDG 4 (Quality Education) shows that academics acknowledge the importance of applying digitalized governance in a city for enhancing learning environment. Similarly, higher records attributed to SDG 11 (Sustainable Cities and Communities) reminds us that a growing number of researchers (Kaur et al., 2024) argue that the concept of Smart Governance has also evolved. More precisely, Smart Governance is one of the important pillars of smart cities, which was earlier seen and perceived only as “an expression of adaptability”. Nevertheless, with time, it was realized that the concept of sustainability is also evolving (Trindade et al., 2017; Tomar et al., 2019; Toli & Murtagh, 2020; Kaur & Trifan, 2024) and is an integral part of developing a smart city with improved quality of life (Macke et al., 2018). Therefore, the concept of smart sustainable city was developed which also takes into account the adoption of 17 SDGs proposed by the United Nations (UN).

Furthermore, predominance of SDG 3 (Good Health and Well-being) could be explained by the fact that in recent years, AI-driven diagnostics are increasingly gaining attention. In public service domain, health represents one of the most substantial sectors (besides education), which explains that while discussing about Smart Governance, it is impossible to ignore or overlook this goal. Similarly, SDG 9 (Industry Innovation and Infrastructure) emphasized the relationship between advanced technologies and their role in creating innovative and sustainable ecosystems.

However, the most interesting observation is that despite relevance of governance and collaboration with multiple stakeholders, there was a minimal focus on SDG 17 (Partnership for the Goals). This shows a huge literature gap that prevails at present. Likewise, Smart Governance can help in enhancing SDG 16 (Peace, justice and strong institutions) by enhancing accountability (Grossi et al., 2020) and transparency (Jacobs et al., 2020) in institutions as mentioned earlier by Almulhim & Yigitcanlar (2025) and therefore, should not be ignored while researching this topic.

5 Conclusions

Based on this bibliometric analysis, we found out about the major publishing trends in digitalized governance scholarship in the past decade. In this context, one may conclude that the paper fills a major literature gap by emphasizing what the scholars focused on and what they ignored while studying this topic. As per the findings of this paper, the number of publications concerning digitalized governance are gradually increasing on yearly basis since the past 5 years. The growing number of research papers in this field could be attributed to the escalating interest of scholars coupled with increasing awareness of public regarding the social issues in the last decade. Similarly, we observed that China, USA and India are most active publishers, while Europeans from Western and Central regions also have a substantial contribution to the digitalized governance literature. Furthermore, the paper also sheds light on the distribution of digitalized governance publications across the SDGs.

The dominance of certain SDGs which had a greater number of publications associated to them show that some SDGs (especially SDG 17) are not sufficiently researched regardless of their higher relevance to the subject. Likewise, SDGs such as Quality Education related to public sector and services were more predominant in comparison to the ones that were related to economics.

The future studies should focus more on effective collaboration of multiple stakeholders while researching about digitalized governance as this is also a substantial element of creating a sustainable, smart city. Similarly, the role that digitalized governance plays in promoting SDG 16 (Peace, justice and strong institutions) by increasing accountability and transparency in institutions must not be overlooked in academic discourse.

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THE IMPACT OF CRISIS-MILITARIST STAGES OF CYCLICAL SOCIETAL DEVELOPMENT ON ECONOMIC INTERESTS

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Abstract: *The purpose of this article is to examine economic interests in the context of the influence of crisis-militaristic phases of global cycles on the conditions for their realisation. Economic interests play an important role in cyclical societal development, being one of the main drivers of societal progress and at the same time giving rise to deep interclass and geopolitical contradictions. The intensification of these contradictions leads to crises at the level at which they arise. The periodic intensification of geopolitical contradictions, largely due to the conflict of economic interests of geopolitical actors, leads to the unfolding of crisis-militaristic phases of global cycles. After the completion of these phases of global cycles, a new geopolitical hierarchy is established in the capitalist world system, which means that new conditions are formed for the realisation of the economic interests of states and, as a consequence, for the realisation of the economic interests of their national businesses and populations. The leader of the global geopolitical system receives the main advantages for the realisation of economic interests. During crisis-militaristic phases, states involved in geopolitical struggles shift to some extent towards the militarisation of the economy and a mobilisation-based form of societal life. The militarisation of the economy involves an increase in state military spending, which improves conditions for the economic interests of businesses necessary for the military economy and worsens conditions for non-militaristic businesses and the population. If military spending is increased by redistributing state financial resources in their favour at the expense of social spending, the social quality of life for broad sections of the population deteriorates, which means that conditions for human development deteriorate. Already today, in the process of transition to the crisis-militaristic phase of the current long cycle of world politics, there is a significant slowdown in progress in the field of human development.*

Keywords: *economic interests, military-economic cycles, crisis-militaristic phases, militarisation, social quality.*

1. Introduction

Economic interests play a key role in the system of societal relations, as well as in the process of cyclical civilisational development. At each historical stage of cyclical civilisational development, economic interests have a decisive influence on societal institutions and characterize the level of societal progress, that is, they are the quintessence of the era. The internal reasons for the cyclical nature of societal development are differences in the pace of technical, technological, institutional, and socioeconomic changes, which lead to the formation, intensification, and resolution of internal contradictions through changes in the specific historical forms of society (Podliesna, 2017), and thus to fundamental transformations of the institutional environment and conditions for the realization of economic interests. The grounds for resolving these contradictions are formed in the course of complex crises affecting

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all spheres of societal life. The way out of the crisis is through some form of societal violence (war, revolution, other types of societal aggression), which is primarily due to the inability of societal institutions to ensure peaceful forms of resolving acute contradictions. Social violence leads to a reformatting of the institutional system, which entails a change in the conditions for the realization of economic interests.

There are several levels of economic interest realization: global (civilization-wide), integrative (common interests of integrative associations of geopolitical actors - states, transnational businesses), national (individual states, national businesses), social strata of society, and individual (each individual). The basic conditions that influence the achievement of states' economic interests are the geopolitical situation and the state's place in the geopolitical hierarchy, the state of the global economic situation, the stability and level of development of the state's own political and economic system, and its resource potential. The ability of national businesses and the population of each specific state to realize their economic interests is strongly influenced by the state of its institutional environment, the stability of its political and economic system, its level of socio-economic development, and its civilizational affiliation. The unfolding of crisis-militaristic phases of global military-economic cycles affects the economic and institutional conditions for the realization of economic interests at all levels.

The development of civilization as a whole is shaped by the unity of diverse cyclical societal processes, including military-economic cycles. Military-economic cycles should be understood as a form of global cyclicity generated by the struggle for resources that allows geopolitical actors, the winners in the struggle for economic and military-political leadership, to dominate the world system in the long term and develop successfully. Each historical form of the political-economic system of domination, which was established as a result of war, contained the preconditions for the next war – deep socio-economic, political, and civilizational contradictions. At each stage of historical societal development, a certain form of socio-economic cycles emerged, exerting a decisive influence on cyclical societal dynamics. The emergence and establishment of the dominance of a particular form of cycles corresponds to the level of scientific, technical, and economic development, as well as the characteristics of the institutional architecture of a specific historical form of society (Podliesna, 2017).

Military-economic cycles are one of the most relevant forms of cycles for the cyclical dynamics of capitalist society. Among them, the long cycles of world politics and cycles of hegemony have the greatest impact on the cyclical process of civilization development under capitalism. These are cyclical processes of geopolitical competition for world leadership and the redistribution of resources and spheres of influence, and thus opportunities for the realization of economic interests. The main cycle-forming factor of these cycles is the crisis-militaristic events of civilizational development, unfolding in the form of long-term military confrontation between competing geopolitical blocs, which sometimes intensifies and sometimes weakens, forming crisis-militaristic phases. As a result of these phases of global cycles, a new geopolitical hierarchy is established in the capitalist world system, and thus new conditions for the realization of economic interests that depend on it.

2. Literature review

In the historical retrospective of societal progress, there is a clear connection between changes in the conditions for the realization of economic interests and cyclical socio-economic and institutional development. Economic interests and societal institutions are closely interrelated. One of the founders of the institutional approach in economic theory, T. Veblen, was convinced that economic interest permeates all aspects of human life and influences the culture of human existence (Veblen, 1898). According to A. Schotter (1981), economic agents, in pursuing their own interests, thereby cause the development of institutions capable of satisfying those interests. This article examines the problem of realizing economic interests in the context of the cyclical nature of societal development, primarily its crisis-militaristic phases. To study economic interests in the context of the global cyclical process of civilizational development, in particular its military-economic component, we rely on the works of G. Modelski (Modelski, 1995) and I. Wallerstein (Wallerstein, 1983). In studying the impact of the redistribution of society's resources in favor of achieving military goals on the opportunities for realizing economic interests, we use theoretical and empirical arguments set forth in the works of P. Akçagün, A. Y. Elveren (Akçagün & Elveren, 2021), A. Y. Elverena, S. Hsub (Elverena & Hsub, 2018), I. Hossein-Zadeh (Hossein-Zadeh, 2006, 2007, 2010).

3. Methodology

The study mainly applied logical and historical methods, as well as dialectical ascent from the abstract to the concrete, including general scientific methods of analysis and synthesis, induction and deduction. To achieve the research objectives, data from the Stockholm International Peace Research Institute, the World Bank, and the Organization for Economic Cooperation and Development were used.

4. Results

The economic interests of geopolitical actors form a dynamic system of contradictions and common interests among all participants in the global cyclical geopolitical process, the rhythm of which is set by periodic crisis-militaristic stages in the development of the world system. Periods of greatest destabilization of global or regional geopolitical systems coincide with crisis-militaristic phases of societal development. The wars and revolutions that occur during these phases lead to a critically dangerous loss of stability and crises in the security of civilizational development at the level (local or global) at which they unfold. However, it is precisely during crisis-militaristic phases that the foundations for resolving contradictions in societal development are established. As a result of wars, geopolitical and civilizational contradictions are resolved, regional (if wars are local in nature) geopolitical systems or the global geopolitical system (if the war becomes global in nature) are reformatted, in other words, the institutional and economic conditions for the functioning of geopolitical actors and the achievement of their geopolitical and geoeconomic goals change. As a result of revolutions, contradictions between social classes are partially resolved and the class structure of society is transformed, and thus the conditions for the realization of the economic interests of different social classes.

Often, the response of states or their military-political blocs to security crises arising during crisis-militaristic phases is a transition to a mobilization-based form of societal life. This radically changes the political-ideological orientations and economic interests of the state,

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business, and the population. In order to establish in the societal consciousness the necessity to comply with the requirements of the ideology of a mobilization society, it is necessary to introduce some form of a state of emergency. This inevitably limits the opportunities for economic actors whose activities do not meet the priorities of the mobilization model of the economy to pursue their economic interests, as well as the opportunities for citizens to pursue their economic interests aimed at improving their quality of life.

Measures to combat the spread of COVID-19, which restricted economic activity and societal life in general, as well as the recent intensification of local and global military conflicts, have created the conditions for a shift in the economic policies of many states from improving the welfare of their citizens to militarization. A significant role in the militarization of the capitalist economy is played by the growth of state military spending, which has a negative impact on socially oriented state spending: it either decreases or (under optimal conditions) stops growing. Based on the concept of "redistributive militarism", I. Hossein-Zadeh concluded that the redistribution of resources from non-military to military spending has devastating consequences for societal development. This redistribution of resources from the bottom up leads to increased income inequality; It hinders the achievement of vital national goals and reduces human capital development programs, such as infrastructure projects, the construction of new schools, hospitals, dams, and, in general, all projects aimed at building human and physical capital (Hossein-Zadeh, 2010).

The opportunities for citizens and non-militaristic businesses to pursue their economic interests deteriorate most significantly during large-scale wars, which are a form of crisis-militaristic phases of global cycles (in particular, the long cycles of world politics described by G. Modelski and W. Thompson, the cycles of hegemony by I. Wallerstein). The crisis-militaristic phase of each form of global cycles is a period of extreme exacerbation of contradictions in the system of interactions between competing geopolitical actors, leading to military-political conflict, the outcome of which determines the balance of power in a particular regional or global geopolitical system and creates the basis for overcoming the systemic crisis.

Beginning with the "long 16th century" and continuing to the present day, the crisis-militaristic phases of global cycles unfold in the form of "thirty-year wars". According to Immanuel Wallerstein (1983), in each case of hegemony, it was achieved through a thirty-year world war, a land war involving (not necessarily continuously) almost all the major military powers of the era in large-scale conflicts that were extremely devastating for the land and population. According to the theory of long cycles in world politics, around 2026, a "macro-decision" phase will begin, which in previous cycles unfolded as a 30-year period of global confrontation, leading to world wars (Modelski, 1995).

The conditions for a new crisis-militaristic phase in the cyclical development of the world system have already been established. This trend is evidenced primarily by economic indicators. According to the Stockholm International Peace Research Institute (SIPRI), global military spending increased by 37% between 2015 and 2024 and grew in all five geographical regions (SIPRI, 2025a). Compared to 2002, the total sales of the 100 largest arms manufacturers and military service providers doubled in 2023 (from US\$331 billion to US\$632 billion) (SIPRI, 2025).

As a result of the new crisis-militaristic phase (approximately from 2026), the conditions for the realization of the economic interests of states, their associations, transnational and national businesses will change in the cyclical development of the world system. In particular, in historical retrospect, during the deployment of crisis-militaristic phases of global cycles, foreign trade relations were conducted in accordance with protectionist policies, and after their completion, the capitalist world system entered another wave of free trade (Table 1).

Table 1. *The coordination of international trade regimes with military-economic cyclicity*

Period	Form of international trade regime dominating the world-system	Phases of long cycles of world politics
mid-19th century – 1914	Free Trade Transitioning into “The Imperialism of Free Trade”	- “Agenda - setting” (1850-1873) <i>of the ninth long cycle of world politics</i> , - “Coalition-building” (1873-1914) <i>of the ninth long cycle of world politics</i>
1914 – mid-XX century	Protectionism	- “Macrodecision” (1914-1945) of the ninth long cycle of world politics
mid-XX century – early 2020s	Globalization	- “Execution” (1945-1973) <i>of the ninth long cycle of world politics</i> , - “Agenda - setting” (1973-2000) <i>of the tenth long cycle of world politics</i> , - “Coalition-building” (2000-2026) <i>of the tenth long cycle of world politics</i>
Since 2022 – beginning 2050s -?	Strengthening Protectionism Tendencies	“Macrodecision” (2026-2050) of the tenth long cycle of world politics

Source: Derived from: Modelski, G. (1995). The Evolution of Global Politics. Journal of World-Systems Research, 1.(7),424-467. <https://doi.org/10.5195/jwsr.1995.38>

The British Empire, being the hegemon of the world system following the "macro-decision" phase of the 7th and 8th long cycles of world politics (1688-1714 and 1792-1815, respectively) (Modelski, 1995) and having achieved unconditional leadership in industrial development in the mid-19th century, replaced its protectionist policy with the introduction of free trade principles on a global scale, which was extremely beneficial to it as a technological leader. In the 20th century, during the crisis-militaristic period of cyclical development of the world system, which included World War I, the Great Depression, and World War II, protectionist policies prevailed in the world system, which was due to the desire of opposing geopolitical blocs for relative autarky. After the end of the "macro-decision" phase of the ninth long cycle of world politics, the political-economic, cultural-ideological dominance and technical-technological leadership of the United States was established in the world system. It was the United States that initiated and became the main driving force behind the new wave of globalization, and thus the liberalization of international trade.

Today marks the beginning of the "macro-decision" phase of the tenth long cycle of world politics, and the global economy is entering a period of protectionism, one of the most important drivers of which is the tariff and sanctions policy of the United States, which has entered the struggle to maintain its status as the world leader. The onset of the global economic crisis in 2008 marked the beginning of the decline of globalization against a backdrop of growing geopolitical tensions. Local and global conflicts, both new (Ukraine) and renewed

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(Syria, Israel-Palestine, India-Pakistan) are components of a hybrid "global war" in which escalating geopolitical contradictions must be resolved and a new geopolitical hierarchy of countries in the world system must be established. After that, based on the historical retrospective of the cyclical alternation of periods of free trade and protectionism, a new period of liberalization of foreign trade relations will begin in a form appropriate to the conditions of the information and network society (Podliesna, 2024).

The economic interests of the leading actors in geopolitics (states, their geopolitical blocs, transnational businesses) dominate over the economic interests of national businesses and citizens. In times of crisis and militarism, the economic policies of states involved in geopolitical struggles, whether through direct participation in military actions or through the organization of proxy wars, take on a militaristic character. Therefore, state support is provided primarily to the military-industrial complex and the economic entities that support its activities. In such conditions, contradictions between big business, which meets the needs of the military economy, and big business in the civilian sectors of the economy are exacerbated. For the former, the period of turbulence generated by the crisis-militaristic phases of military-economic cycles creates opportunities for growth, while for the latter, it disrupts established global and local value chains and threatens collapse. In addition, the growth of citizens' well-being and overall social quality temporarily loses its relevance for governments. To this end, an appropriate ideological justification for the need for society to function in a state of emergency is found and formalized at the legislative level.

Social quality is defined by the authors of the theory of social quality perspective as the extent to which people are able to participate in the dynamics of soci(et)al relationships under conditions that enhance their well-being, capacity and individual potential (Van der Maesen & Walker, 2012; IASQ Board, 2024).

In a historical retrospective of the development of the capitalist world system, the economic policies of states involved in geopolitical competition, aimed at improving social quality in conditions of peaceful existence (in other words, post-war recovery and growth) are cyclically replaced by economic policies of militarization and the introduction of a mobilization form of societal life in the process of deploying crisis-militaristic phases of global military-economic cycles. Militarization generates both positive effects, such as the development of military technologies forms the technical and technological basis for overcoming economic crises and negative effects, such as during periods of militarization, conditions for human development and societal progress deteriorate.

In the current climate of intensifying local and global military conflicts, which are laying the groundwork for the next crisis-militaristic phase in the cyclical development of the world system, the deterioration of human development has already become apparent. According to a new report by the United Nations Development Programme (UNDP), progress in human development has slowed to a record low. The 2025 report, "A matter of choice: People and Possibilities in the Age of Artificial Intelligence", assesses progress in key areas of development, such as health, education, and income levels. Assessments of indicators for 2024 show stagnation in the Human Development Index (HDI) in all regions of the world, as well as growing inequality between rich and poor countries. The gap between countries with low and very high HDI levels has been growing for the fourth consecutive year (UN, 2025).

The temporary refusal of peacetime economic interests in favor of militarization during a crisis-militaristic period of cyclical development of the world system creates a technical and technological basis for overcoming its next systemic crisis (including the economy as well as the institutional environment at the micro, macro, meso, and global levels). Warfare requires the introduction of basic technological innovations, which are subsequently successfully applied and generate profits in non-military sectors of the economy.

Advanced military technologies are eventually adapted for civilian use, leading to increased productivity across the entire economy. Defense research and development spending has led to a host of innovations. Microchips, radar, lasers, satellite communications, mobile phones, GPS, and the Internet are all the result of US Department of Defense funding for basic research at the Massachusetts Institute of Technology, Stanford University, and national laboratories. Breakthroughs were achieved at IBM and Bell Laboratories, and all of them were commercialized by Intel Corp., Motorola Inc., and many other corporations (Hosseini-Zadeh, 2006).

The outcome of the crisis-militaristic phases of global cycles is the reformatting of the global economic space based on a new geopolitical hierarchy, for the stability of which the leading actors in geopolitics care not only about the growth of their geopolitical influence, but also about internal stability. This forces them to create conditions for expanding opportunities for businesses and citizens to pursue their economic interests. In other words, states that are competing geopolitical actors in the recovery phase following the crisis-militaristic phase are implementing measures to improve the well-being of their citizens, which means that the social quality and loyalty of citizens towards their governments and, in general, towards the emerging social structure of society are growing.

The cyclical nature of changes in conditions for the realization of citizens' economic interests is determined not only by global military-economic cycles, but also by domestic political cycles. In this sense, the results of a study by Bove, Efthyvoulou, and Navas (2017) on the role of social and military spending in shaping political cycles are particularly relevant. After analyzing data on a group of 22 OECD countries, the researchers obtained empirical evidence for a theoretical model according to which, before elections, incumbent politicians change the structure of spending in favor of social welfare and reduce defense spending, signaling that their preferences are close to those of voters, which in turn shapes the electoral budget cycle. However, governments are less likely to make such compromises in countries affected by conflict, where national security plays an important role in voters' choices. Politicians' spending decisions also depend on their ideological positions: left-wing parties advocate for increased spending on "butter", such as old age, family, etc., and disability benefits, while right-wing parties advocate for increased spending on "guns" (Bove, Efthyvoulou & Navas, 2017).

As for the impact of increased military spending on business interests, there is no consensus in academic discussions on this issue. There are solid research findings showing that military spending has a positive effect on profit margins in both arms-exporting countries and countries that are net arms exporters (in other words, exporting more arms than they import) but this relationship is not as significant in the case of arms-importing countries (Elverena & Hsub, 2018). Militarization is extremely profitable for global financial capital, as it is a major source of profit and an effective tool for self-reproduction. Financial capital has strengthened

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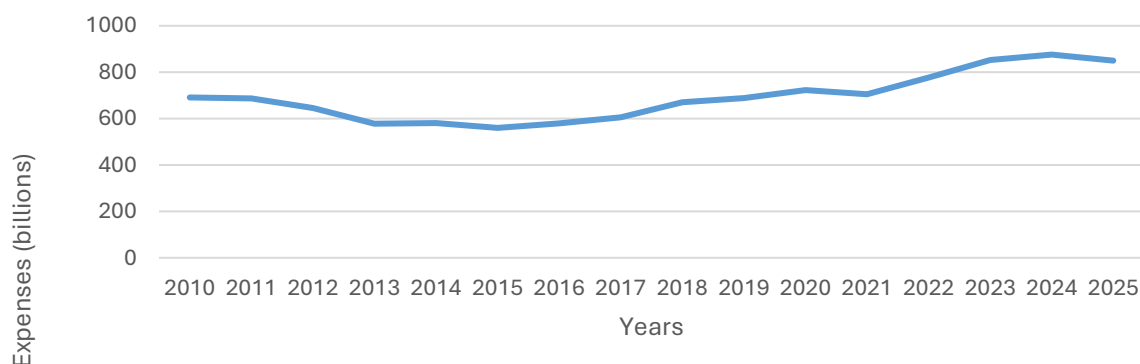
its influence on the military sector by buying up shares in giant arms corporations to become an important component of the military-industrial complex (Akçagün & Elveren, 2021).

Based on their analysis of empirical data, Akçagün and Elveren (2021) found a significant correlation between financialization and militarization in the United States between 1949 and 2019. In the 1950s and 1960s, military spending counteracted the stagnation of monopoly capitalism, in response to which the role of financial capital increased in the late 1970s. The US economy began to rely on the financial sector alongside military spending as two main stimuli to combat slow economic growth and declining profitability in the manufacturing sector.

Financial capital has expanded both nationally and internationally, significantly strengthening its influence on the global geopolitical system.

To pursue its economic interests, the current leader of the capitalist world system (the United States) employs a comprehensive strategy to maintain its dominant position in scientific and technological development, cultural and ideological influence, and economic leadership. Historically, military power has been the decisive factor in the cyclical struggle for world hegemony, and this remains true today. As the capitalist world system develops and its economic structure becomes more complex, the financial sector is becoming increasingly important. Therefore, primacy in this sphere of economic interests is fundamentally important for the current and future leader of the world system, as is the military-technological basis for domination. According to Akçagün and Elveren (2021), the absolute dominance of the dollar has secured the US's global economic leadership, making it the center of global financialization. This economic power allows the US to have an impressive military budget (Fig. 1), which strengthens US political power, thereby ensuring the dominance of the dollar.

Figure 1. *US Department of Defense budget for fiscal years 2010–2025*



Source: Derived from: Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer March 2024. *Defense Budget Overview United States Department of Defense Fiscal Year 2025 Budget Request Revised April 4, 2024.*
https://comptroller.war.gov/Portals/45/Documents/defbudget/FY2025/FY2025_Budget_Request_Overview_Book.pdf

The sharp increase in military spending in the early 1950s, early 1980s, and early 2000s occurred in the United States immediately after periods of economic recession. The increase in military spending during World War II brought the US economy out of the prolonged effects of the 1930s depression. The sharp increase in military spending in the early 1950s helped

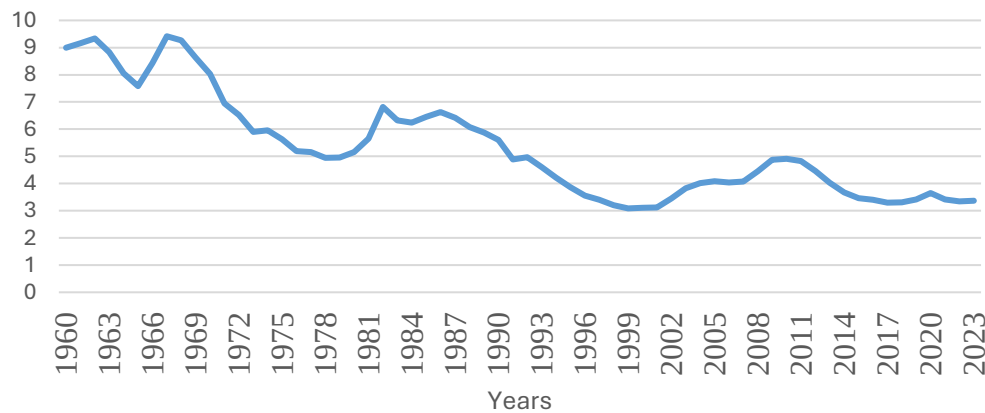
reverse the recession of the late 1940s, and an equally large increase in Pentagon spending in the early 1980s helped end the recession of 1980–1982 (Hosseini-Zadeh, 2006).

According to Keynesian theory, military spending, as a component of the state budget, has a multiplier effect on the economy. Keynesians defend the role of military spending in stimulating aggregate demand during periods of economic recession (Chary & Singh, 2024).

The dynamics of military spending as a percentage of US GDP (Fig. 2) confirms that the increase in the military burden was a response to the crisis in the economy.

During periods of slow growth in military spending in the US, the share of non-military government spending in GDP increased. From the mid-1950s to the mid-1970s, the share of non-military government spending in GDP rose from 9.2% to 14.3%, an increase of 5.1%. During the same period, the share of military spending in GDP fell from 10.1% to 5.8%. In the early 1980s, under Reaganomics, military spending rose sharply and tax rates on higher incomes were cut just as sharply, resulting in a significant increase in income inequality and a large budget deficit. Economic policies aimed at sharply increasing military spending and reducing taxes for the wealthy were somewhat moderated in the 1990s, which helped slow the growth of income inequality. However, in the 2000s, the US resumed increasing military spending and reducing taxes for the wealthy, which exacerbated income inequality (Hosseini-zadeh, 2007) and thus worsened the ability of broad segments of the population to realize their economic interests.

Figure 2. *US military spending (% of GDP)*



Source: Derived from: World Bank. (2025). <https://databank.worldbank.org/source/world-development-indicators#>

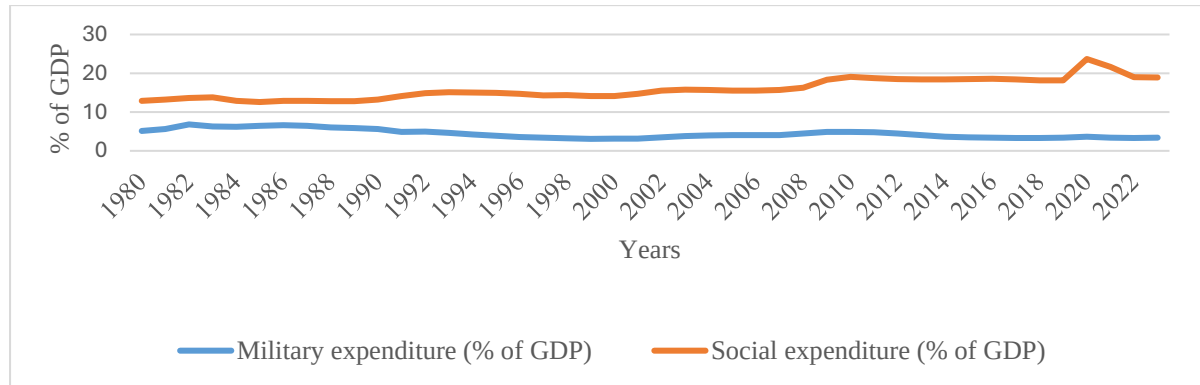
The growth in military spending helped overcome cyclical crises in the US economy - the leader of the global geopolitical system that emerged after the end of the macro-decision phase (1914-1945) of the ninth long cycle of world politics. The economic conditions of the world system's leader largely determine the conditions for the realization of the economic interests of other geopolitical actors.

The ten-year Budget Control Act (BCA), which was in effect until fiscal year 2021, significantly reduced US defense budgets after a decade of growth. The budgets for fiscal years 2023–2025 strengthen US military power today, creating conditions to counter future threats. From 2021 to 2024, the US Department of Defense budget increased from \$705 billion to \$876 billion (Office of the Under Secretary of Defense (Comptroller), 2024).

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The dynamics of US military spending (Fig. 1, Fig. 2) show that after the end of the Cold War, the role of military spending in the US economy declined. After the terrorist attacks of September 11, 2001, military spending increased over the next 10 years, and then declined over the following decade.

Figure 3. *Dynamics of social and military spending of USA*

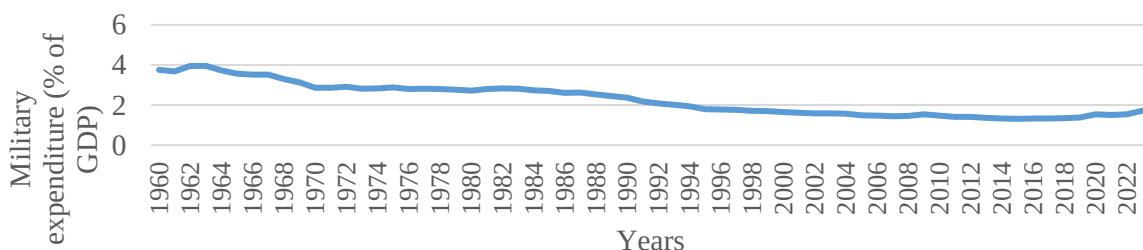


Source: Derived from: World Bank. (2025). <https://databank.worldbank.org/source/world-development-indicators#>, OECD Data Explorer. (2025). Social expenditure aggregates. <https://www.oecd.org/en/data/datasets/social-expenditure-database-socx.html>, <https://data-explorer.oecd.org>

During the Reaganomics period, the share of social spending in US GDP declined. After the end of the Cold War and until the global economic crisis of 2008, this indicator grew moderately but steadily (Fig. 3). In 2009-2010, as well as in 2020, there was a sharp increase in the share of social spending in US GDP (Fig. 3) in response to crisis events – the global economic crisis and the crisis triggered by COVID-19. The world system's entry into a crisis-militaristic phase requires its leader to make corresponding changes to budgetary policy, so we observe a decline in the share of social spending in US GDP in 2023 to 2010 levels, along with a resumption of growth in the US Department of Defense budget (Fig. 1, Fig. 3).

After the end of the Cold War, the EU was able to consistently reduce its defense spending (European Commission, 2025), which reached its lowest level as a share of GDP in 2014–2015 (Fig. 4).

Figure 4. *Military expenditure (% of GDP) - European Union*



Source: Derived from: World Bank. (2025). <https://data.worldbank.org/indicator/MS.MIL.XPND.GD.ZS?locations=EU>

However, since 2020, defense spending in the EU has begun to rise. In recent years, Europe has been cooperating more closely within NATO to respond to security threats.

According to NATO, defense spending by EU members of the Alliance reached NATO's target of 2% of GDP in 2024. On average, EU member states still spend less on defense than the US (2.9% of GDP in 2023) or the UK (2.1% in 2022). According to the Stockholm International Peace Research Institute (SIPRI), arms imports by European NATO members more than doubled from 2015–2019 to 2020–24, with the share of imports from the US rising from 52% to 64%. Therefore, the EU needs to strengthen the consolidation of its defense industry and procurement policy in order to reduce its dependence on external suppliers.

To enhance the EU's defense capabilities, a package of measures called "Readiness 2030" was developed, aimed at supporting the European defense industry, deepening the "single defense market", and promoting increased defense spending, including through fiscal flexibility. The European Commission has proposed that Member States coordinate their requests to activate the national exemption clause of the Stability and Growth Pact. This flexibility will allow Member States to temporarily exceed the net expenditure set by the Council to finance increased defense spending. To ensure fiscal sustainability, the Commission has defined the timing and scope of the national exemption clause: flexibility for higher defense spending is limited to 1.5% of GDP compared to the base year and will be available for four years (2025–2028). Expenditures covered by this provision are determined on the basis of the statistical category "defense" in COFOG (Classification of Functions of Government) (European Commission, 2025).

The European Commission has identified security and defense as a key priority for the period 2024–2029, specific manifestations of this new strategy include the publication of the European Rearmament Plan in March 2025 and the preparation of the first White Paper on European defense. The Readiness 2030 Plan (formerly ReArm Europe) is based on five main sources of funding: 1) a new financial instrument called Security Action for Europe (SAFE), which will provide up to €150 billion in loans for joint defense procurement through the joint issuance of debt obligations; 2) strengthening national defense funding by invoking the national exemption clause under the Stability and Growth Pact, which gives member states more fiscal space for defense spending; 3) using existing EU instruments, such as the Cohesion Fund, more flexibly to reallocate resources to defense-related projects; 4) expanding the role and increasing the contributions of the European Investment Bank (EIB) to the financing of security and defense projects; 5) mobilizing private capital by further developing the Savings and Investment Union to create a sustainable financial base for the entire defence sector (Wolfenstein, 2025).

The Readiness 2030 plan implies a sum of €800 billion. This exceeds the €750 billion mobilized in 2020 under the Next Generation EU initiative in response to the COVID-19 pandemic. The redirection of €150 billion in loans allocated under the Next Generation EU program to joint defense projects will be offset by investments in energy and digital transformation. Similarly, the reallocation of cohesion funds will undermine efforts to combat territorial inequality (Duval, 2025).

Many European countries that are members of NATO are better known for their developed social welfare systems than for their military power, but in 2025 they committed to increasing defense spending to an amount equivalent to 5% of annual GDP by 2035. According to a World Bank expert, if this plan is implemented, in ten years' time, a generation that largely

entered adulthood during a period of relative harmony and enjoyed numerous associated benefits until middle age may soon face a new, uncomfortable reality (Letzing, 2025).

The German Chancellor recently stated that "the welfare state as we know it today can no longer be financed by our economy – and that is why we have to change it". All over Europe, welfare states are already experiencing difficulties due to an aging population and a shrinking workforce, which means rising social spending and declining tax revenues. The growing defense budget also complicates the functioning of the welfare state's economic system (Sappenfield, 2025).

In October 2025, the Council of the EU and the European Parliament reached an agreement on measures to stimulate defense investment in the current EU budget for the implementation of the ReArm Europe plan. This preliminary agreement aims to facilitate faster, more flexible, and coordinated investment in the European Defense Technological and Industrial Base (EDTIB) by amending five EU regulations: the Digital Europe Programme, the European Defence Fund, the Connecting Europe Facility, the Strategic Technologies for Europe Platform (STEP), and Horizon Europe. The European Parliament supported the expansion of EU financial support under the Horizon Europe programme for dual-use companies and the defence sector (Council of the EU, European Council, 2025). This initiative will allow funds from the scientific research support program, funds for the development of depressed regions, and other EU civil programs to be reallocated to military and dual-use projects.

The necessity to choose between increasing military spending and implementing the concept of a welfare state in EU countries is one of the most pressing manifestations of the contradictions in their socio-economic and institutional development today. The entry of the modern world system into a crisis-militaristic phase of global cyclical development forces states actively involved in geopolitical competition with the need to sacrifice the economic interests of non-military businesses and citizens in order to achieve long-term geopolitical and geo-economic goals, including through direct or indirect participation in military conflicts.

5. Discussions

Today, the unfolding of global crisis-militaristic processes is largely determined by the nature of the local-global conflict in Ukraine, the Israeli-Palestinian conflict, and other hybrid conflicts. The outcome of these conflicts will largely determine the balance of power in the global geopolitical system after the end of the current crisis-militaristic phase in the cyclical development of the world system, when a new, relatively stable form of civilizational development will take shape (Podliesna, 2024). This means that new conditions will be formed for the realization of the economic interests of states whose political and economic systems interact to form the world system. The opportunities for the realization of the economic interests of their citizens and businesses will depend on the position of each state in the new global geopolitical system.

In times of crisis and militarism, geopolitical rivals increase their military spending, which affects the prospects for realizing their economic interests: firstly, increased military spending is a tool of military Keynesianism for overcoming cyclical economic crises; secondly, increased spending on strengthening a country's defense capabilities strengthens its geopolitical

position and, therefore, its opportunities to obtain formal and informal preferences in the system of international economic relations.

When assessing the impact of increased military spending on the conditions for achieving economic interests, it should be borne in mind that the sources of funding for this growth have different effects on the realization of the economic interests of the state, business, and the population. The state strengthens its position as an actor in geopolitical competition through increased military spending. However, if military spending is increased by raising taxes on citizens' incomes and the profits of non-military economic entities, this reduces their ability to pursue their economic interests. A similar effect is also created by financing military spending through cuts in social spending and various types of state financial support for the development of non-military businesses.

In order to realize the economic interests of citizens, a certain basis of social quality is necessary, which depends on government spending on healthcare, education, environmental protection, social protection, and security. During periods of crisis and militarization, states involved in geopolitical competition often cut spending on ensuring a decent level of social welfare, refocusing on increasing military spending. The dynamics of Ukraine's state budget spending is a striking example of this (Table 2).

Table 2. *The share of defense spending and expenditures aimed at ensuring social quality in all expenditures of the state budget of Ukraine*

Years	State budget expenditures of Ukraine (% of all state budget expenditures)				
	defense	environmental protection	health care	education	social protection and welfare
2018	9,84	0,53	2,29	4,50	16,62
2019	9,94	0,59	3,59	4,81	20,38
2020	9,35	0,52	9,70	4,10	25,06
2021	8,56	0,55	11,44	4,28	22,77
2022	42,24	0,17	6,81	2,16	15,75
2023	52,25	0,13	4,47	1,51	11,69
2024	51,36	0,21	4,49	1,44	10,36

Source: Derived from: Ministry of Finance of Ukraine. (2025). State budget web portal for citizens. <https://openbudget.gov.ua/?month=12&year=2024&budgetType=CONSOLIDATED>

The share of government spending that creates conditions for the full realization of citizens' economic interests in all expenditures of the Ukrainian state budget during the years of hostilities on its territory has decreased significantly compared to 2021. On the contrary, the share of government spending on defense in Ukraine's total state budget expenditures has increased sharply since 2022. According to information from the state web portal "Budget for Citizens", defense spending in Ukraine's state budget amounted to 42.24% in 2022, 52.25% in 2023, and 51.36% in 2024. Compared to the same indicator for 2021 (8.56%), the share of defense spending in 2022 increased 4.9 times, in 2023 – 6.1 times, and in 2024 – 6 times (Ministry of Finance of Ukraine, 2025). These changes in the structure of government spending make it impossible to ensure a decent standard of living for the Ukrainian population, and thus to realize its economic interests. The decline in the share of spending on healthcare and education is particularly alarming. The share of healthcare spending in Ukraine's total state

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budget expenditure in 2022 was 6.81%, which is 1.7 times less than in 2021; in 2024, it will be 4.49%, which is 2.5 times less than in 2021.

After the start of the local-global conflict in Ukraine, the share of education spending in the country's state budget fell to 2.16% in 2022, compared to 4.28% in 2021; in 2024, this figure was 1.44%, in other words, a 2.9-fold decrease compared to its value in 2021. Accessible, fundamental, and comprehensive education shapes societal consciousness, which can influence the state, including during electoral cycles, by ensuring that state institutions perform the functions necessary to realize the economic interests of citizens.

The human potential of each particular society depends on the level of development of the education and healthcare systems, as well as their accessibility to the population. Therefore, the trend of reducing government spending in Ukraine on these most important areas of societal life, which to a certain extent can be explained by the conditions of wartime, should not be continued in the post-war recovery phase of the Ukrainian economy.

The main focus of the Ukrainian political and economic system's development during the current crisis and militaristic phase has been the formation of a mobilized society aimed at militarization and survival, rather than expanding opportunities for citizens to pursue their economic interests. As other countries become more deeply involved in the cycle of global economic militarization that is beginning today, the opportunities for their citizens to realize their economic interests will also deteriorate.

6. Conclusions

At the global level, one of the driving forces behind cyclical military-economic processes is competition among geopolitical actors to expand opportunities for realizing economic interests.

Periodically, deepening geopolitical contradictions lead to geopolitical competition taking the form of large-scale military conflicts, during which the stability and security of the world system's development are critically reduced. In other words, a new crisis-militaristic stage of its development begins, characterized by an increase in security crises and requiring an increase in defense spending by geopolitical competitors, which worsens conditions for the realization of the economic interests of the population and non-militaristic businesses.

The militarization of the economy and societal consciousness is a fairly effective tool for implementing a mobilization scenario to overcome deep crises in the capitalist economy, in particular by increasing military spending, which, according to Keynesian theory, leads to an increase in aggregate demand through the multiplier effect, thus contributing to overcoming the crisis and transitioning to economic growth.

At the same time, the redistribution of state financial resources in favor of military spending at the expense of non-military spending, primarily social spending, undermines the ability of broad segments of the population to pursue their economic interests, leads to increased social inequality, and generally worsens conditions for human development.

The militarization of the economy and societal consciousness is an effective way to overcome the crisis in the political and economic system and temporarily stabilize it. Following this, the conditions for achieving the economic interests of the state, business, and citizens temporarily become more balanced and favorable. However, militarization creates the basis for

even deeper socio-economic and geopolitical crises in the long term. The militarization of societal consciousness institutionalizes the need to abandon the improvement of social quality and the full realization of economic interests in favor of the mobilization and militaristic priorities of geopolitical struggle in the context of crisis and militaristic phases of global cycles.

The unfolding of crisis-militaristic phases of global military-economic cycles leads to the transformation of the global geopolitical system, resulting in either the emergence of a new leader of the global geopolitical system or a change in the geopolitical strategy of the old leader who has retained its dominance. The leader of the global geopolitical system determines the direction of the world economy, which creates conditions for the realization of economic interests. The leading state in the global geopolitical system receives the main advantages for the realization of its economic interests. Its partners also achieve a more advantageous position than other countries in the system of international economic relations that is established after each crisis-militaristic period. This creates the basis for future exacerbation of geopolitical contradictions and, consequently, the unfolding of new crisis-militaristic phases.

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WORKING TOWARDS AN EDUCATION POLICY FOR PROMOTING INTERACTION AMONG EDUCATIONAL INSTITUTIONS AND FAMILIES

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Abstract: *This article addresses the growing need for coherent European education policies that explicitly recognise families as strategic partners in educational processes. Focusing on the Italian case as an illustrative example, the paper analyses the evolution of school–family relationships from formal participation towards substantive educational co-responsibility. Drawing on pedagogical and sociological theory, national and European normative frameworks, and comparative evidence from OECD reports, the study highlights the central role of relational practices, teacher professionalism, and school autonomy in promoting effective interaction between educational institutions and families. The analysis underscores how persistent educational inequalities across Europe are closely linked to family background, thereby reinforcing the urgency of policy approaches that support structured, dialogical, and inclusive school–family partnerships. The article concludes by proposing operational orientations aligned with European policy priorities, aimed at strengthening shared educational responsibility and fostering students’ autonomy, equity, and long-term educational success.*

Keywords: *school–family partnership; educational co-responsibility; teacher professionalism; European education policies*

1. Introduction

In the context of the twenty-first century, profoundly shaped by far-reaching social, cultural, and educational transformations, the relationship between school and family emerges as a crucial nexus, requiring a redefinition of its forms, boundaries, and purposes in response to the complex demands of contemporary societies. Within this framework, the role of the family—and, more specifically, its educational, cultural, and socio-instructional conditions—has become increasingly decisive in shaping young people’s educational choices and significantly influencing their trajectories of academic achievement and social success.

International research has consistently highlighted how family background, parental education levels, and cultural capital strongly affect students’ aspirations, expectations, and learning outcomes. Classic sociological contributions have shown that the transmission of cultural capital within families plays a pivotal role in reproducing or mitigating educational inequalities (Bourdieu & Passeron, 1977; Bourdieu, 1986). Similarly, Coleman’s theory of social capital

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underscores how family-based relationships, norms, and support networks function as critical resources that enhance students' educational engagement and performance (Coleman, 1988). These perspectives remain highly relevant in contemporary educational systems, where inequalities increasingly intersect with migration, socio-economic vulnerability, and differentiated access to cultural and educational resources.

At the same time, the diversification of family structures, the growing plurality of parenting models, and the intensification of intercultural dynamics challenge schools to rethink their institutional role and their modes of interaction with families. Recent pedagogical and sociological studies emphasize that parents today demonstrate heightened educational awareness and expectations, while also experiencing greater uncertainty in navigating complex and rapidly changing educational pathways (OECD, 2023; OECD, 2024). Large-scale international assessments further confirm that students' academic success is strongly correlated with family socio-economic and cultural indicators, reinforcing the need for schools to adopt compensatory and inclusive strategies capable of counterbalancing structural disadvantages (OECD, 2019; OECD, 2022). In this evolving scenario, characterized by high mobility and increasingly non-linear relational dynamics, a conception of school–family relations based solely on episodic meetings or instrumental communication appears inadequate. Contemporary scholarship advocates instead for a dialogical, participatory, and co-constructed approach to education, in which the partnership between school and family is not an ancillary component but a foundational dimension of pedagogical action (Epstein, 2011; Goodall & Montgomery, 2014). Such an alliance is essential not only to support students' learning processes but also to promote equity, shared responsibility, and sustained educational success.

From this perspective, strengthening school–family partnerships represent a strategic lever for addressing educational inequalities and fostering students' holistic development. Recognizing families as active educational agents—and acknowledging the decisive role of their cultural and educational resources—allows schools to move beyond deficit-oriented models and towards collaborative frameworks capable of enhancing young people's agency, resilience, and long-term success in increasingly complex social contexts.

Such an alliance, however, to be authentic and generative, cannot be reduced to a merely organizational agreement or a functional division of responsibilities. Rather, it requires a profound rethinking of reciprocal responsibilities, grounded in trust built through genuine listening and a form of shared responsibility enacted daily. In a society characterized by complexity, as highlighted by Morin (2001), education cannot be entrusted to a single actor but must instead be conceived as a collective enterprise, in which multiple agencies—schools, families, and territorial and institutional actors—contribute jointly to the construction of meaning. Within this perspective, an educational alliance entails mutual recognition not only of competencies but also of the limits, roles, and specific viewpoints that each actor brings, fostering cooperation based neither on delegation nor control, but on responsible sharing (Romeo, 2023).

The urgency of such an alliance becomes even more evident when considering the evolution of family educational styles and the growing fragility of community ties, which often

result in a form of educational solitude affecting both teachers and parents alike (Castaldi, 2023). In this context, education can no longer be conceived as an exclusive or isolated task, but rather as an integrated and multi-level process requiring coherence, continuity, and shared meaning across educational environments.

Communication plays a decisive role within this framework. There can be no genuine alliance without authentic dialogue, nor can shared responsibility exist in the absence of a real convergence of educational goals and intentions (Bruner, 1996). Education, as Bruner himself argued, is fundamentally a narrative process through which individuals construct meaning from experience. It is within the relational fabric and the shared narratives between school and family that an educational project capable of guiding and sustaining students' development can take shape. In the Italian context, despite significant normative efforts aimed at promoting more advanced forms of participation, school–family relationships continue to oscillate between meaningful openings and structural resistances, often remaining anchored to vertical, formal, and episodic communication practices (Ministry of Education and Merit, 2023).

It is within this framework that the present article is situated. Its aim is to analyse the evolution of school–family relationships in the Italian context, focusing on the transition from predominantly formal participation towards a deeper form of educational co-responsibility, as outlined in the 2023 national guidelines. Particular attention is devoted to the strategic role of school autonomy, understood as a key lever for fostering meaningful dialogue with families and for reshaping school organisation from a relational perspective. The article also reflects on how the construction of an authentic educational alliance necessarily entails the development of a professional culture capable of integrating communicative, relational, and pedagogical competencies alongside didactic expertise, within a genuinely generative perspective (Palma, 2024). The overall intention is to offer a theoretical and practice-oriented contribution to the ongoing debate on how schools can increasingly become open, welcoming, and dialogical environments, able to value the complexity of educational relationships and to build, together with families, a solid and shared pact for students' growth and success.

2. From formal participation to educational co-responsibility: the normative evolution of school–family relationships in Italy

The reflection on the relationship between school and family within the Italian educational system has its roots in the reformist era of the 1970s. With Presidential Decree No. 416/1974, part of the so-called *Decreti Delegati*, a process of school democratization was initiated through the introduction of collegial bodies such as the Class Council and the School Council, formally recognising families as actors in school governance. This regulatory innovation aimed to overcome a centralised and hierarchical model of schooling, instead promoting a participatory culture that acknowledged the plurality of subjects involved in the educational process. Nevertheless, despite its original intentions, parental participation has often progressively taken the form of a bureaucratic fulfilment rather than a genuine assumption of educational co-responsibility. Opportunities for dialogue have frequently remained limited and burdened by formalism, with

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little impact on the pedagogical dimension of school–family relationships (Bettinelli & Cardarello, 2022). A more significant conceptual shift occurred with the introduction of the *Educational Co-responsibility Pact* (*Patto educativo di corresponsabilità*) through Presidential Decree No. 235/2007. This instrument marked an important evolution in the way relationships between schools, families, and students were conceived, moving the focus from formal participation towards a substantive sharing of educational goals. Updated in 2019, the Pact functions not only as a regulatory tool defining shared rights and duties, but also as a symbolic and dialogical device capable of fostering a culture of respect and mutual commitment to students’ holistic development (Presidential Decree No. 235/2007; Ministry of Education and Merit, 2023). Its deeper significance lies less in the formal act of signing than in its potential to initiate a process of reciprocal recognition of educational roles, encouraging a conscious and continuous collaboration between schools and families (Chiusaroli, 2022).

This orientation is further reinforced by the recent *Guidelines on Parental Participation and Educational Co-responsibility* issued by the Ministry of Education and Merit (2023), which explicitly stress the need to move beyond episodic and formal forms of involvement in order to promote authentic and structured educational co-design. The Guidelines outline a relational model grounded in practices of active listening, ongoing dialogue, and strategic cooperation, recognising educational co-responsibility not as a theoretical aspiration but as a necessary condition for effectively supporting students throughout their educational trajectories. Within this framework, the school–family relationship is understood as dynamic, process-oriented, and participatory, nourished not only by periodic meetings or official communications but also by institutionalised spaces for dialogue, joint training pathways, and structured opportunities for shared educational reflection (Zollo & Galdieri, 2023).

A further strategic element in redefining school–family relationships is represented by school autonomy, introduced by Law No. 59/1997 and subsequently regulated by Presidential Decree No. 275/1999. These reforms granted schools greater responsibility in designing their educational provision—now formalised in the *Three-Year Educational Offer Plan* (*Piano Triennale dell’Offerta Formativa*, PTOF)—in relation to territorial needs, available resources, and the specific characteristics of local school communities (Law No. 59/1997; Presidential Decree No. 275/1999). When interpreted merely in organisational terms, school autonomy risks being reduced to a technical–administrative mechanism. However, when reframed within an ethical and pedagogical perspective, it can become a powerful lever for co-responsibility, promoting a school identity that is open to dialogue with families and the wider social context. In this sense, autonomy enables schools to actively involve parents in the design and evaluation of educational activities, while also strengthening relationships of trust and reciprocity among educational actors (Moria, Rossi, & Toci, 2022). Achieving this potential, however, requires overcoming technocratic interpretations of autonomy and reclaiming its deeper pedagogical meaning, grounded in co-responsibility constructed over time through authentic relational practices.

Overall, the normative evolution of the Italian educational system from 1974 to the present reveals a persistent tension between models of formal participation and perspectives oriented

towards substantive educational co-responsibility. The contemporary challenge, therefore, lies in translating this principle into concrete practice, ensuring that it does not remain confined to declarative statements but becomes embodied in everyday experiences of educational cooperation. Only through a structured and continuous dialogue between schools and families—supported by coherent regulatory frameworks and a shared pedagogical orientation—can a solid educational alliance be built, capable of responding effectively and sensitively to the complexity of current educational challenges (Turano, 2023).

3. The relational dimension of teacher professionalism in Italy

As highlighted in the previous sections, within a context marked by profound normative, organisational, and social transformations affecting all levels of the Italian school system, educational professionalism is currently facing unprecedented and complex challenges. The evolution of students' educational needs and the transformation of their life contexts require teachers to expand their professional scope well beyond instructional planning and the implementation of daily teaching practices. Teachers are increasingly called upon to act as relational mediators within complex educational ecosystems, engaging not only with students but also with families, colleagues, and territorial actors.

In this regard, the Prime Ministerial Decree of 4 August 2023 (published in the Official Gazette No. 224 of 25 September 2023) defines the new framework for the initial training of secondary school teachers through the introduction of structured university-based qualifying pathways grounded in professional standards consistent with the educational aims of the Italian school system. Annex A of the decree outlines the professional profile of the qualified teacher, identifying a structured set of competencies—cultural, disciplinary, methodological, didactic, psycho-pedagogical, organisational, assessment-related, and digital—aimed at shaping a dynamic, reflective, and continuously evolving teaching professionalism. However, a closer reading of the document reveals a clear underrepresentation of relational competencies, particularly those related to communication with families and cooperative work within the broader educational community.

Although the introductory section of the decree acknowledges the importance of building positive educational relationships and recognises the teacher's orienting function, these dimensions appear marginal within the systematic articulation of professional competencies, which remains predominantly focused on technical and instructional aspects of teaching. Relational competencies are mentioned only in a fragmented and generic manner—for instance, in reference to classroom group management or to relations with families—without an explicit and integrated recognition of their transversal and strategic value. The resulting image is that of a teacher still primarily centred on individual didactic action, rather than on a distributed and collaborative professionalism capable of influencing the overall relational quality of the school context.

Such an approach risks overlooking a fundamental pedagogical principle: teaching professionalism cannot be confined to the technical–operational management of the classroom but must be understood as unfolding across a plurality of relational contexts that involve the entire

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school ecosystem. Interaction with colleagues, collaboration with families, and dialogue with educational and institutional actors in the local community constitute structural dimensions of teachers' work, whose educational effectiveness is closely intertwined with the quality of the relationships established.

Educational and sociological research has long emphasised the centrality of communicative and relational competencies in defining teacher professionalism. Perrenoud (2002), for instance, includes them among the ten key competencies for teaching, highlighting the importance of cooperation among colleagues, family involvement, and attention to relational dynamics with students. Similarly, the OECD report *Teachers Matter* (2005) and European policy documents on key competences for lifelong learning (Council of the European Union, 2018) stress the need to strengthen teachers' interpersonal and communicative skills as an integral part of both initial and in-service teacher education. Teachers are increasingly required to manage complex relational situations that demand competencies not always included in their professional repertoire and for which specific training opportunities are often insufficient or lacking altogether (Simeone, 2023). The effectiveness of educational action is therefore closely linked to teachers' ability to build and manage complex relational networks. Encounters with families engage teachers' professionalism in ways that extend beyond rational, conscious, and formal dimensions, involving emotional and symbolic aspects that situate the school–family relationship within the realm of implicit pedagogies and latent educational processes (Gariboldi, 2007). This highlights the growing need for a professional and intentional use of relational competence, which can only develop through training pathways that enable teachers to become reflective practitioners of the interactions they enact.

Within this perspective, the conscious use of communication emerges as a cornerstone of the educational co-responsibility pact between school and family. Communication cannot be reduced to a mere exchange of information; rather, it must be understood as a dialogical, empathic, and bidirectional practice capable of generating shared meanings. Following Bruner's (1996) cultural approach, the construction of educational meaning is possible only through communicative processes that integrate cognitive, emotional, and relational dimensions, making visible also the latent aspects of interactions.

For educational communication to fully realise its potential, teachers must be able to employ multiple communicative forms and expressive codes. Verbal language represents only one among many; non-verbal communication—comprising posture, tone of voice, facial expressions, eye contact, proxemics, and gestures—plays a crucial role in conveying meaning. As early studies have shown (Mehrabian, 1971), in contexts involving emotions and attitudes, a significant proportion of perceived meaning is transmitted through non-verbal channels. In school–family interactions, non-verbal communication assumes a strategic function, as it conveys trust, openness, willingness to listen, and mutual respect.

Teachers who are aware of their bodily language can enhance the effectiveness of verbal messages, prevent misunderstandings, and create a relational climate conducive to dialogue and educational collaboration. However, such competence is rarely the object of systematic training

within initial or in-service teacher education. Yet research on interpersonal communication consistently demonstrates that congruence between verbal and non-verbal communication is decisive for perceived credibility and for the quality of relationships established (Argyle, 1988; Hall, 2006). Coherent gestures, an empathic tone of voice, attentive eye contact, and an open bodily stance can facilitate dialogue even in sensitive situations, transforming interaction into a genuine experience of educational alliance.

Investing in teachers' communicative training, therefore, does not merely entail the development of technical skills but fosters deeper relational awareness and a more refined capacity to interpret the emotional and cultural signals that emerge within school–family dialogue. Strengthening the relational dimension of teacher professionalism thus represents a crucial condition for making educational co-responsibility both effective and sustainable within increasingly complex and plural educational contexts.

4. Educational autonomy and independence: family influence and European perspectives

Within a mature vision of educational co-responsibility, one of the most delicate and strategically relevant issues concerns the promotion of students' autonomy. Autonomy should not be understood merely as the ability to make decisions or to orient oneself consciously within one's educational pathway, but also as the progressive development of trust in one's own personal resources and capacities. The profound social, cultural, and familial transformations experienced across Europe over recent decades have generated increasingly complex dynamics, making the family context a decisive—yet never neutral—factor in shaping students' educational trajectories.

Comparative European and OECD data consistently demonstrate the strong influence of family background on students' educational outcomes and life chances. Large-scale international assessments such as PISA and longitudinal analyses conducted by the OECD highlight that parental education levels remain among the most powerful predictors of educational attainment across European countries (OECD, 2019; OECD, 2022; OECD, 2023). In Italy, this pattern appears particularly pronounced: students whose parents have lower levels of educational attainment face a significantly higher risk of early school leaving, while the likelihood of completing upper secondary and tertiary education increases sharply when at least one parent holds a university degree. Although national statistics capture this phenomenon in specific terms, similar intergenerational gradients are observable across most European education systems, confirming the structural nature of educational inequality within the European context.

From a comparative perspective, OECD analyses show that, on average across Europe, young people whose parents have not completed upper secondary education are more than twice as likely to leave education early compared to their peers from highly educated families. Conversely, the probability of completing tertiary education increases dramatically when students grow up in households endowed with higher levels of cultural and educational capital (OECD, 2022). This evidence reinforces Bourdieu's (1986) theoretical insight regarding the intergenerational transmission of cultural capital as a powerful driver of educational and social mobility. Families constitute not only affective and relational environments but also primary

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symbolic and cultural spaces in which linguistic codes, cognitive styles, expectations, and dispositions towards learning are acquired and internalised.

Parental educational attainment thus represents a cumulative advantage, operating not only at the symbolic level but also through concrete forms of support, guidance, expectations, and access to supplementary educational resources. Across Europe, policies aimed at promoting educational equity increasingly recognise the need to counterbalance these structural asymmetries through school-based interventions, early support measures, and inclusive pedagogical practices. At the same time, this growing awareness has generated ambivalent dynamics within family–school relationships. On the one hand, there has been an increase in parental involvement in children’s educational pathways; on the other hand, some contexts have witnessed the diffusion of forms of overprotection or educational substitution, which may hinder students’ processes of emancipation and responsibility-building (Biscaldi & Zunino, 2023).

Educational research suggests that autonomy cannot be either imposed or left to chance but must be carefully scaffolded within a balanced relational context. Students need to feel supported without being replaced, encouraged without being deprived of responsibility. In this sense, schools play a crucial role in fostering students’ perceived self-efficacy through didactic and relational practices that value personal initiative, frame error as a learning opportunity, and promote reflexivity as a key dimension of growth (Bruner, 1996). These processes may be compromised when families—especially in the absence of an explicit and shared educational pact—adopt substitutive rather than complementary roles, thereby weakening students’ opportunities to develop autonomy.

For this reason, educational co-responsibility must also translate into a clear and shared definition of respective roles and spheres of action. While families are primarily responsible for providing stable emotional support, value frameworks, and a home environment conducive to learning, schools retain the responsibility for designing, guiding, and evaluating students’ educational pathways within a perspective of progressive and personalised development (Chiusaroli, 2023). Bruner’s cultural perspective remains particularly relevant in this regard, as it emphasises that meaningful learning can only occur within cultural contexts that value language, dialogue, and the negotiation of meaning. Consequently, the promotion of autonomy cannot be reduced to a purely cognitive or methodological issue but must be rooted in a culture of mutual trust between school and family, based on clarity of roles, coherence of interventions, and a shared commitment to building a genuine educational alliance.

Within a European framework increasingly oriented towards equity, inclusion, and lifelong learning, the tension between protection and autonomy, guidance and freedom, should not be addressed through dichotomous or delegatory logics. Rather, it should be interpreted through the principle of educational subsidiarity, according to which each actor intervenes in support of the learner’s integral development, without replacing or neutralising the agency of others. From this perspective, activating shared spaces of reflection between teachers and parents becomes essential in order to develop a common educational vision and to prevent both conflictual dynamics and reciprocal forms of de-responsibilisation (Turano, 2023).

5. Operational proposals and future developments: a European-oriented perspective

In light of the analytical path outlined in the previous sections, it becomes increasingly evident that the school–family relationship, although institutionally recognised across European education systems, requires a profound rethinking capable of fully activating the educational potential embedded in a genuinely co-constructed alliance. Conceiving parental involvement merely as formal adherence or functional presence is no longer sufficient. Rather, there is a need to design and implement spaces, times, and modes of collaboration with an explicitly educational and relational orientation, in which dialogue among adult educational actors can generate shared meaning, guidance, and mutual trust. This need is particularly relevant in contemporary European societies, where young people—despite national specificities—exhibit broadly comparable behavioural patterns, aspirations, and vulnerabilities shaped by globalised cultural, digital, and social dynamics.

From this perspective, a first operational proposal concerns the establishment of stable and structured opportunities for reciprocal listening and dialogue, within which teachers and parents can engage in meaningful discussion around educational needs, strategies, and shared pedagogical responsibilities. Such spaces should move beyond the predominantly informational logic that still characterises many school–family interactions across Europe—often limited to individual meetings or unidirectional communications—and evolve into genuine laboratories of educational co-design. In these settings, families can be recognised as active partners in the educational process, valued for the experiential knowledge and cultural resources they bring (Castaldi, 2023; Palma, 2024). Comparable practices have been promoted in several European policy frameworks that emphasise parental engagement as a lever for educational inclusion and student well-being.

Alongside this, it is essential to promote joint training pathways involving both school staff and parents, aimed at fostering shared reflection on communication, conflict management, inclusion, and educational co-responsibility. The goal of such initiatives should not be to “educate” families in a prescriptive sense, but rather to create spaces of reciprocal exchange grounded in the recognition of everyday challenges and a shared commitment to acting in the best interests of children and young people. European experiences in family–school partnership programmes demonstrate that when training initiatives are designed with sensitivity to families’ languages, time constraints, and cultural backgrounds, they can significantly contribute to building durable cultures of trust and cooperation, moving beyond episodic responses to isolated problems (Chiusaroli, 2022; Zollo & Galdieri, 2023). Another strategic direction concerns the reconfiguration of the Educational Co-responsibility Pact. Across many European contexts, similar instruments exist but are frequently reduced to formal documents signed at the beginning of the school year, with limited pedagogical impact. Reframing such pacts as outcomes of participatory processes—open to dialogue, periodically revisited, and collectively negotiated—could restore both their symbolic and functional value. Moreover, extending these frameworks to include territorial actors such as local associations, social services, and third-sector organisations aligns with European approaches to education as a shared and community-based responsibility, recognising the plurality of actors involved in young people’s development (Mulè, 2024; Romeo, 2023).

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To further support dialogue and strengthen the bond between school and family, the integration of narrative, reflective, and documentary tools into everyday school practice represents a promising avenue. Instruments such as shared diaries, learning portfolios, or digital platforms for formative documentation can help make visible what often remains implicit: students' learning processes, emerging difficulties, adopted strategies, and achieved milestones. When appropriately valued, these tools foster a plural and dialogical narration of educational experience and contribute to the construction of a shared memory of meaning—an approach increasingly encouraged within European policy discourses on formative assessment and learner-centred education (Dusi, 2023; Biscaldi & Zunino, 2023). Finally, none of these proposals can be fully effective if they are not embedded within a genuinely participatory school governance framework. Revitalising collegial bodies—not merely as representative structures but as authentic spaces for shared reflection and decision-making—constitutes a crucial condition for strengthening educational alliances. In this process, school leadership plays a decisive role in facilitating dialogue, acknowledging conflict as a generative dimension, and sustaining participation. The strategic use of digital technologies, widely promoted in European education policies, can further enhance accessibility and inclusiveness, particularly for families facing logistical, linguistic, or socio-economic barriers to participation (Moria, Rossi, & Toci, 2022; Turano, 2023).

Taken together, these proposals do not constitute a rigid model to be uniformly applied across diverse national contexts. Rather, they offer a cultural and operational orientation that invites schools to conceive themselves as open, plural, and dialogical educational communities. Within such a vision, families are not merely users or recipients of educational services but co-responsible actors in the formative process. Strengthening school–family partnerships in this way represents a key lever for responding to shared European educational challenges and for supporting young people's development within increasingly complex and interconnected social landscapes.

6. Conclusions

This article has explored the evolution of school–family relationships within the Italian educational system, situating it within a broader European and international framework marked by increasing complexity, social fragmentation, and persistent educational inequalities. Through an integrated analysis of normative developments, theoretical perspectives, and empirical evidence, the study has highlighted how the transition from formal participation to substantive educational co-responsibility represents not merely a regulatory adjustment but a profound cultural and pedagogical shift.

The analysis has shown that, despite significant policy efforts at both national and European levels, school–family partnerships continue to oscillate between declarative intentions and uneven practices. Normative instruments such as collegial bodies, the Educational Co-responsibility Pact, and school autonomy frameworks have undoubtedly expanded opportunities for participation, yet their transformative potential largely depends on the quality of relational processes enacted within schools. Without sustained dialogue, mutual recognition, and shared

responsibility, these tools risk remaining confined to formal compliance rather than fostering genuine educational alliances.

Particular attention has been devoted to the relational dimension of teacher professionalism, emphasising how communicative and interpersonal competencies constitute a foundational—yet still under-recognised—component of effective educational action. Strengthening these competencies through initial and in-service teacher education emerges as a strategic priority for enhancing school–family relationships and for supporting students’ holistic development. In parallel, the discussion of educational autonomy has underscored the decisive influence of family background on students’ trajectories across Europe, highlighting the need for balanced approaches that support autonomy without fostering dependency, and that align family involvement with school-based pedagogical guidance.

From a European policy perspective, the findings reaffirm the importance of integrated and multi-level strategies that address educational inequality, promote inclusion, and valorise families as co-responsible partners in education. The operational proposals outlined—ranging from structured spaces for dialogue and joint training pathways to participatory governance and narrative tools—should be understood as adaptable orientations rather than prescriptive models, capable of being contextualised across diverse national and local settings.

Ultimately, fostering an authentic educational alliance between school and family requires a shared cultural commitment to trust, dialogue, and subsidiarity. It calls for schools to position themselves as open and reflective educational communities, for families to be recognised as active and competent partners, and for policy frameworks to support relational and participatory practices over purely procedural ones. In this sense, strengthening school–family co-responsibility represents not only a response to current educational challenges but also a necessary condition for promoting equity, agency, and sustainable educational success for young people across Europe.

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CONTINUOUS TRAINING AND THE REFLECTIVE ROLE OF TEACHERS IN PREVENTING SCHOOL DROPOUT

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Abstract: *School dropout represents one of the most pressing challenges for contemporary education systems, with significant implications for both individual well-being and social cohesion. This study examines the role of continuous professional development in preventing early school dropout, emphasizing the importance of observational and reflective practices in enhancing teaching quality. Through a theoretical-critical analysis and the exploration of innovative educational experiences, the paper investigates training models that position teachers as facilitators of learning. The study highlights the need for educational policies that adopt a systemic approach to teacher training, fostering student engagement and academic success.*

Keywords: *school dropout; continuous training; well-being; educational policy.*

1. Introduction

Over the past decades, early school dropout has become an increasingly central issue in pedagogical debates and in both national and international education policy. Beyond impeding the personal and professional development of students, it constitutes a structural challenge with profound consequences for social cohesion and the economic competitiveness of nations. Schools, tasked with educating new generations and promoting social inclusion, now face complex challenges shaped by rapid cultural, economic, and technological change. These dynamics call for a critical rethinking of teaching practices and instructional strategies. Within this framework, teachers play a pivotal role—not only as transmitters of disciplinary knowledge but also as facilitators of learning environments that engage students actively, sustain motivation, and reduce the risk of early dropout. Prior research highlights the decisive impact of personalized instruction, active methodologies, and meaningful educational relationships on students' retention in the school system (Hattie, 2009; Batini & Bartolucci, 2016). Yet for such approaches to become embedded in daily teaching practice, teachers must have access to continuous professional development that strengthens advanced methodological skills, fosters the capacity to detect early signs of academic disengagement, and cultivates reflective strategies for improving educational practice. Sustained training and the development of a dynamic, self-aware professional identity are thus essential for ensuring educational practices that are effective, equitable, and inclusive.

2. Definition and dimensions of early school leaving

Early school leaving is a complex and multidimensional phenomenon that extends beyond the definitive interruption of formal education. It encompasses a wide range of

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situations in which students, while remaining formally enrolled, experience learning difficulties and irregular attendance, thereby compromising the successful completion of their educational pathway. This, in turn, generates significant consequences both at the individual and societal levels (Colombo, 2010). In the European context, the term Early School Leaving (ESL) is used to indicate the premature termination of schooling without obtaining an upper secondary qualification or a formally recognized vocational credential (European Commission, 2013), underscoring the importance of the issue within international education strategies. Despite progress in recent years, which has seen a decline in dropout rates across several EU countries, data continue to highlight significant challenges, particularly in socioeconomically disadvantaged areas. In Italy, the early school leaving rate stands at 12.7%, one of the highest in Europe, with particularly critical levels in the South, where persistent educational deprivation and limited access to cultural and training resources exacerbate the issue (ISTAT, 2023). The causes of early school leaving are closely linked to social and economic factors, including family educational background and income, the quality of local educational opportunities, and the presence of support networks capable of sustaining vulnerable students (Benvenuto, 2016).

2.1 The role of schools and teachers in prevention

The school system is widely recognized in the literature as one of the key actors in preventing early school leaving, due to its potential to serve as an inclusive, motivating, and structured learning environment that supports the success of all students, regardless of their starting conditions (Batini & Bartolucci, 2016). For schools to effectively fulfill this role, they must be reimagined not merely as places for knowledge transmission, but as dynamic and interactive educational contexts. In such contexts, teachers—fully aware of their role as knowledge mediators and promoters of inclusion—should be enabled to develop professional competencies that extend beyond methodological and disciplinary expertise to encompass relational, emotional, and motivational dimensions. This broader skill set is essential for creating learning pathways that are both effective and meaningful (Scales, 2015).

Research consistently demonstrates that the quality of teacher–student relationships, students’ sense of belonging to the school community, and the use of flexible, targeted teaching strategies have a decisive impact on retention, countering disengagement and early dropout (Alivernini, Manganelli & Lucidi, 2017; Schelvis et al., 2014). Within this perspective, active learning methodologies are particularly significant, as they place students’ engagement at the center of the educational process, enabling the construction of personalized learning pathways. Such approaches are better suited to addressing the needs of increasingly diverse school populations, marked not only by differences in skills and learning styles but also by varied socioeconomic, linguistic, and cultural backgrounds (Schelvis et al., 2014; Alivernini et al., 2017).

In light of these considerations, continuous teacher training should not be regarded solely as a matter of professional updating but as a strategic cornerstone for enhancing the overall quality of the education system. Professional development opportunities grounded in critical reflection, peer collaboration, and the experimentation of innovative teaching practices are essential for promoting a school model capable of constant renewal, adaptation

to societal transformations, and the provision of equal learning opportunities for all students (Lamb et al., 2011).

2.2. Aim of the study

This study aims to explore the relationship between teachers' continuous professional development and the prevention of early school leaving, with particular attention to the role of reflective and observational practices in strengthening teaching strategies. Pedagogical research has long demonstrated that approaches based on critical reflection and systematic observation of educational practices enhance teachers' ability to interpret learning dynamics, identify early signs of school disengagement, and adopt more effective intervention strategies (Schön, 1983; Brookfield, 1995; Mortari, 2009). Through a theoretical and critical analysis supported by empirical evidence, this contribution examines how in-service training can not only expand teachers' methodological repertoire but also contribute to the construction of a stronger, more self-aware professional identity—one capable of orienting educational practice toward the promotion of student success and the reduction of dropout risks (Timperley et al., 2007; Hargreaves & Fullan, 2012).

Beyond individual training practices, particular attention is given to implications for education policy, highlighting the need for a systemic approach to professional development. Such an approach should move beyond isolated initiatives and instead adopt integrated strategies that enhance the role of teachers as facilitators of learning. A training model of this nature should foster the creation of innovative and inclusive school environments in which improvements in teachers' professional competencies translate into a direct impact on instructional quality and the prevention of early school leaving (Darling-Hammond, 2017; OECD, 2019).

3. The value of continuous professional development for teachers

The evolution of education systems, deeply shaped by social, economic, and technological transformations, has made continuous professional development an essential component in ensuring teaching quality and promoting student success. In a rapidly changing context that requires schools to constantly revise their role and teaching practices, teacher training can no longer be conceived as an occasional or peripheral activity. Instead, it must be structured as a permanent and systematic process capable of effectively addressing contemporary challenges (Timperley et al., 2007). Whereas in the past the teacher's role was primarily associated with the transmission of disciplinary knowledge through traditional, lecture-based methods rooted in passive learning, it is now evident that such a model is inadequate in the face of growing educational complexity. The diversification of student needs, the introduction of new technologies, and the demand for more personalized and interactive learning call for a radical rethinking of teaching practices, aligning them with the requirements of the knowledge society and lifelong learning (Schön, 1983; Mezirow, 1991).

Consequently, teacher professionalism can no longer be restricted to mastery of disciplinary content alone, but must also encompass reflective and adaptive dimensions. These enable teachers to develop strategies that foster student engagement through participatory, co-constructed learning. The literature has consistently shown that the quality of teaching and the methodological approaches employed significantly affect not only student

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motivation but also school retention and the development of positive attitudes toward learning and the institution itself (Hargreaves & Fullan, 2012). Strategies that promote active participation, interactive methodologies, and the creation of positive learning environments are particularly effective in countering early school leaving and encouraging more motivated, informed engagement (Batini & Bartolucci, 2016). For these reasons, investing in teacher training means not only ensuring the constant updating of methodological skills but also advancing an educational approach that is dynamic and reflective, one that enables schools to meet contemporary challenges more effectively. These include fostering inclusion for students with special educational needs, adopting differentiated teaching strategies, and developing transversal skills essential for constructing meaningful, long-lasting learning pathways that accompany students throughout their educational and professional trajectories (Timperley, 2011).

3.1. Moving beyond technical specialization: from knowledge transmission to reflective teaching

In increasingly complex educational settings characterized by cultural, linguistic, and cognitive diversity, it is necessary to adopt an approach that goes beyond the provision of technical tools and emphasizes teachers' capacity for critical reflection on their practices. Such reflection allows educators to adapt their work to the needs of students and the dynamics of the school context (Schön, 1987). Reflective teaching, based on critical analysis and the continuous adaptation of educational action, enables teachers to transcend rigid applications of predefined methods and to position themselves as professionals capable of learning from experience. Through ongoing experimentation and revision, they refine their practice and improve its effectiveness (Brookfield, 1995).

This paradigm rests on the idea that effective teaching is not dependent solely on mastery of content but also on the ability to identify strategies that engage students and encourage active participation (Mortari, 2009). A central element of this approach is systematic observation, which allows teachers to analyze learning dynamics and student behavior while also serving as a vital tool for identifying effective strategies to meet educational needs, especially in contexts of vulnerability and risk of early school leaving (Mortari, 2009). Observation, understood as an intentional and reflective practice rather than a merely descriptive act, equips teachers to detect students' difficulties and redefine their interventions on the basis of empirical evidence and critical analysis. At the same time, peer collaboration through professional learning communities enhances the progressive improvement of teaching quality. Such communities provide effective contexts for professional growth by enabling teachers to share experiences, collectively analyze pedagogical challenges, and test innovative solutions. They foster professional development that is both conscious and oriented toward methodological innovation (Wenger, 1998).

3.2. The contribution of educational research to updating teaching practices and preventing early school leaving

Improving educational practices requires systematic and structured dialogue between schools and pedagogical research, which offers interpretative models and operational tools for addressing teaching and learning challenges in a scientifically grounded and

methodologically rigorous way. Numerous studies have demonstrated that teachers who engage in training based on empirical evidence have a greater impact on student outcomes compared to those who rely solely on traditional methods without ongoing professional development (Hattie, 2009).

One of the most significant evidence-based approaches in this area is lesson study, a methodology developed in Japan and later adopted internationally. Distinguished by its collaborative and clinical character, lesson study involves groups of teachers jointly designing a lesson with specific learning objectives and innovative strategies. The lesson is then observed in real time, typically by other teachers or researchers, so as to collect detailed data on student behavior, engagement with content, and instructional strategies. What sets lesson study apart is the subsequent cycle of review and critical reflection: the collected data are analyzed collectively to identify strengths, weaknesses, and strategies for improvement. This iterative process leads to the redesign and refinement of lessons based on emerging evidence. Beyond enhancing instructional quality, lesson study fosters a culture of action research in which teachers become co-producers of pedagogical knowledge, systematically testing and validating their practices (Lewis & Hurd, 2011).

Moreover, lesson study serves as a valuable tool for the early identification of risk factors associated with school dropout. Its structure, based on systematic observation and professional dialogue, helps teachers identify behavioral and cognitive indicators of disengagement, such as:

Limited participation in class activities, reflected in passivity, distraction, or refusal to engage;

- Irregular attendance and repeated absences, which may foreshadow progressive disengagement from school;
- Difficulties in relationships with peers and teachers, often linked to socioeconomic disadvantage or low self-efficacy;
- Low levels of motivation and effort, evident in failure to complete assignments or growing disinterest in learning activities.

When these elements are systematically analyzed and discussed collaboratively, teachers are better positioned to identify at-risk students and to design targeted interventions. Lesson study enables educators to test and refine teaching methods aimed at re-engaging demotivated or struggling students, while monitoring their impact over time (Lewis et al., 2006). In parallel, lesson study incorporates formative assessment practices, which not only track student progress but also provide deeper insights into learning dynamics and potential risks of dropout (Black & Wiliam, 1998). Authentic assessment strategies, based on real-world tasks and continuous feedback, help maintain motivation and provide personalized support, thereby reducing the likelihood of failure and disengagement.

3.3. Professional development as a tool for empowerment and identity construction

Continuous professional development is not only an opportunity for teachers to update their skills but also a crucial factor in shaping their professional identity. Training should therefore not be regarded as isolated interventions designed to address technical gaps but as an ongoing process that fosters professional reflection and strengthens teachers' sense of belonging to the school community.

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Teacher professionalism is not static; it evolves through peer collaboration, the experimentation of innovative practices, and sustained engagement with educational research (Wenger, 1998). Participation in structured training networks enhances awareness of one's role, provides opportunities to share strategies with colleagues, and reduces the risk of burnout by fostering stronger emotional and motivational engagement (Hargreaves & Fullan, 2012). In this perspective, schools should not be understood solely as places for student learning but also as environments for teacher growth, where professional development is driven by reflection, experimentation, and the co-construction of shared knowledge. Investing in teacher training therefore means not only strengthening didactic skills but also cultivating a more robust and self-aware professional culture capable of responding effectively to the ongoing transformations of the education system.

4. Developing teachers as learning facilitators

In contemporary education, teachers can effectively act as facilitators of learning only when professional development provides them with tools that enhance both instructional competence and pedagogical sensitivity. Such sensitivity enables the early identification and prevention of risk factors that may lead to school dropout. Educational research has therefore highlighted the need for training approaches that promote critical observation of the educational context, reflective practice, and the capacity to design inclusive and motivating learning environments (Hargreaves & Fullan, 2012).

Among the most effective strategies in this regard, observational and reflective practices serve as essential instruments for understanding students' learning processes and detecting early signs of disengagement. Another key dimension involves mentoring and peer collaboration, which not only support teachers' professional growth but also foster networks that facilitate the exchange of experiences and strategies for addressing educational challenges (Wenger, 1998). Systematic engagement with experienced colleagues or peers working in similar contexts helps develop more effective pedagogical solutions and strengthens an approach centred on the personalization of learning pathways.

Similarly, the use of educational narratives has proven particularly valuable in promoting teachers' self-awareness and encouraging critical and constructive reflection on their professional experiences (Day, 2004). Reflecting on one's own practice through narrative tools enables teachers to construct deeper meanings around the challenges of teaching, thereby reinforcing their sense of self-efficacy and their ability to manage school-related risk factors proactively.

4.1. Preventing school dropout: mentoring, peer collaboration and educational narratives.

In today's educational landscape—marked by increasing complexity and the diversification of students' needs—school dropout remains a significant challenge. To address this issue effectively, it is essential to implement professional development strategies that foster teachers' growth, with a particular focus on mentoring, peer collaboration, and the use of educational narratives.

Mentoring constitutes a supportive relationship between an experienced teacher and a novice or developing educator, aimed at strengthening methodological competences and enhancing teachers' sense of self-efficacy (Hobson, Ashby, Malderez & Tomlinson, 2009).

This process facilitates teachers' integration into the school community and helps reduce professional isolation, thereby improving motivation and professional identity (Kwan & Lopez-Real, 2005). Well-structured mentoring programmes have been shown to enhance teachers' ability to respond effectively to educational challenges and are particularly valuable in the Italian context for preventing school dropout (Mortari, 2009).

Alongside mentoring, peer collaboration represents another key avenue for professional growth. Through action-research groups, communities of practice, and co-design workshops, teachers can share good practices, collectively address professional challenges, and develop new pedagogical perspectives (Wenger, 1998). This collaborative approach promotes methodological innovation and the continuous improvement of teaching strategies, proving effective in combating school dropout through the adoption of active and inclusive pedagogies (Darling-Hammond & McLaughlin, 1995). Peer exchange not only enhances the quality of teaching but also fosters a stronger sense of belonging to the educational community—an essential factor in maintaining the motivation and engagement of students at risk of dropping out (Hargreaves & Fullan, 2012).

Finally, the use of educational narratives is fundamental, as it provides teachers with opportunities for critical reflection on their professional experiences and contributes to the construction of a more self-aware professional identity (Connelly & Clandinin, 1990). Reflective journals, teaching stories, and professional autobiographies enable educators to analyse their trajectories, reframe encountered difficulties, and assign deeper meaning to their pedagogical choices (Kelchtermans, 2009). Moreover, educational narratives foster a culture of sharing and continuous improvement within professional communities, thereby promoting more effective, student-centred teaching approaches (Goodson, 2013). The act of narrating teaching experiences not only strengthens teachers' professional awareness but also supports the early recognition and management of students' difficulties, helping to create more inclusive learning environments conducive to the success of all learners (Bruner, 2002).

5. Implications for educational policies

The phenomenon of early school leaving represents a complex issue that requires an integrated and multidimensional approach, one capable of moving beyond the mere training of teaching staff and embracing a broader perspective. In this regard, a key determinant in preventing school dropout is the implementation of personalized guidance and tutoring pathways which, starting from the early stages of schooling, can facilitate the self-assessment of individual competencies and the identification of educational trajectories aligned with students' personal aptitudes (Lo Presti & Tafuri, 2020). The activation of such measures, supported by continuous assistance strategies, constitutes a fundamental action for reducing the risk of early school leaving and promoting educational success.

At the same time, strengthening collaboration among schools, families, and the local community represents another cornerstone in combating early school leaving. An Italian policy document (2000) emphasizes that the creation of integrated educational networks, engaging social services, cultural associations, and local institutions, may provide meaningful support for students in vulnerable situations, thereby contributing to the construction of an inclusive and motivating school environment. Such synergy among the various actors within

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the educational process makes it possible to intervene promptly and in a targeted manner, reducing the negative effects of social inequalities on school performance.

Another crucial aspect concerns the adoption of innovative teaching methodologies that enhance student engagement and foster their active participation in the learning process. The integration of digital tools, the organization of laboratory-based activities, and the implementation of extracurricular pathways can positively influence student motivation, promoting the development of transversal competencies essential for their educational journey (Mancini & Gabrielli, 2009). Instructional innovation therefore not only improves teaching effectiveness, but also represents a key factor in preventing early school leaving.

Finally, the promotion of school well-being emerges as a decisive factor in building an educational environment conducive to learning. The establishment of positive relationships between students and teachers, active listening, and respect for individual differences prove to be effective strategies for strengthening students' sense of belonging to the school community and preventing situations of discomfort that could lead to dropping out (Lo Presti & Tafuri, 2020). From this perspective, the stipulation of a "learning contract" among schools, students, and families may serve as a useful tool for clearly outlining the rights and responsibilities of each actor involved, thereby fostering a solid and shared educational alliance.

5.1. The need for structured and regular training programmes

Although initial teacher education represents an essential step in developing solid professional competencies, it is not sufficient to ensure long-term teaching effectiveness. The constant evolution of teaching methodologies and educational needs requires the adoption of a model of continuous, structured, and systematic professional development capable of supporting teachers in updating their pedagogical practices and adapting to changes within the school context (OECD, 2019). International studies confirm that the most effective education systems are those that invest in continuous professional development programmes, as these not only improve teaching quality but also directly influence student learning outcomes and well-being, thereby contributing to the reduction of early school leaving (Darling-Hammond, 2017).

To be truly effective, such programmes must be conceived as processes integrated into teachers' career pathways, articulated through a multidimensional approach that includes experiential training, participatory observation, mentoring, and the establishment of communities of practice (Timperley et al., 2007). Moreover, it is essential that these pathways be accompanied by monitoring and impact assessment strategies, ensuring continuous improvement and the implementation of corrective measures when necessary, with particular attention to students at risk of dropping out of school (Guskey, 2002).

5.2. Valorising teachers who actively contribute to the growth of their professional community

Alongside the need to guarantee regular professional development opportunities, educational policies must include mechanisms for valorising the role of teachers, recognising the contributions of those who actively engage in the growth of their professional community and in efforts to combat early school leaving. The literature highlights that teachers involved

in collaborative networks, action-research projects, and interdisciplinary working groups develop greater awareness of their professional role and significantly enhance their competencies, with positive effects on the entire school environment and on the capacity to respond to the educational needs of the most vulnerable students (Hargreaves & O'Connor, 2018). Recognition of such forms of participation may occur through incentives for teachers involved in peer-to-peer training, access to educational leadership pathways to foster teaching innovation, and the integration of acquired formative experiences within career progression mechanisms, thereby contributing to the creation of inclusive and motivating educational contexts (Avalos, 2011). Furthermore, the development of professional communities of practice promotes cooperation among teachers, encourages the exchange of best practices, and supports the construction of shared pedagogical knowledge—elements essential for preventing school marginalization (Wenger, 1998).

5.3. Reating school environments that foster reflection and continuous improvement

For teacher-training and professional valorisation strategies to generate a lasting impact on the school system and contribute to reducing early school leaving, it is necessary to promote the creation of educational environments oriented toward reflection, experimentation, and continuous improvement (Fullan, 2011). Research shows that schools adopting an approach grounded in organisational learning and innovation are better equipped to improve their teaching practices and respond effectively to emerging educational challenges, thereby mitigating the risk factors associated with dropping out (Stoll & Earl, 2003). From this perspective, it is essential to establish dedicated spaces and times for pedagogical discussion and the sharing of experiences among colleagues, to encourage school leadership that is open to change and supportive of the experimentation of new methodologies without fear of punitive evaluations (Spillane, 2006), and to strengthen collaborations with universities and research centres to ensure access to up-to-date scientific resources and evidence-based teaching methodologies (Cordingley et al., 2015).

The adoption of a systemic and integrated approach that combines continuous professional development, the valorisation of the teaching profession, and innovative school environments represents the key to improving teaching quality, promoting student success, and effectively countering the phenomenon of early school leaving.

6. Conclusions

In light of the reflections developed throughout this work, it clearly emerges that preventing early school leaving and improving the quality of teaching are closely linked to systematic investment in teachers' continuous professional development. Such development must not be conceived as an occasional or merely formal activity, but as an indispensable component of teaching professionalism and as a central pillar of educational policy. Schools, as institutions responsible for constructing inclusive and meaningful learning pathways, require teachers who are adequately trained and capable of responding effectively to contemporary educational challenges. This demands targeted professional development policies that foster methodological updating, critical reflection on teaching practices, peer collaboration, and the recognition of the teacher's role as a facilitator of learning (Darling-Hammond, 2017).

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A holistic and systemic approach to teacher education must overcome the fragmentation of interventions and promote continuous professional development that is integrated into the professional career, valorising teachers as conscious and proactive actors within the educational process. The analysis presented has highlighted three essential aspects for understanding the role of continuous professional development in preventing early school leaving. First, teacher professional development cannot be limited to initial training but must be understood as an ongoing process founded on learning strategies grounded in observation, reflection, and educational research (Timperley et al., 2007). Second, reflective teaching, mentoring, and peer collaboration have proven to be essential tools for improving teaching quality, enabling teachers to develop greater professional awareness and to adopt effective methodologies to prevent school discomfort and dropout (Schön, 1983; Wenger, 1998; Hargreaves & Fullan, 2012). Finally, the effectiveness of teacher development also depends on the ability of schools and policymakers to create favourable conditions for its implementation, through the promotion of structured professional development programmes, the recognition of continuous training within career progression, and the creation of school environments that encourage reflection and continuous improvement (OECD, 2019).

For teacher education to truly contribute to reducing early school leaving, it must be reconceptualised within a lifelong learning perspective, whereby professional development is no longer perceived as a mere bureaucratic requirement but as an opportunity for continuous growth, closely connected to the real needs of schools and students (European Commission, 2013). It is therefore crucial to promote innovative training models that support experiential learning through methodologies enabling teachers to experiment with new educational practices and to reflect critically on their work, as well as research-based approaches and instructional experimentation that ensure constant methodological updating grounded in scientific evidence and validated empirical data (Cordingley et al., 2015). Strengthening professional learning communities through participatory models such as mentoring, co-design of curricula, and action research represents another key element for fostering teachers' sense of self-efficacy and reinforcing their connection with the school community (Guskey, 2002; Hargreaves & O'Connor, 2018).

A cultural shift is necessary for continuous professional development to have a meaningful impact on teaching quality and the prevention of early school leaving. Too often, professional development is perceived by teachers as a top-down obligation rather than an opportunity for growth, partly due to a school culture that privileges the transmission of content over the construction of knowledge (Fullan, 2011). To overcome this issue, schools must become learning environments for all, where teachers are given the opportunity to develop new competencies through authentic training experiences oriented toward experimentation, to engage with colleagues in collaborative learning contexts, and to test innovative methodologies without fear of punitive evaluation (Stoll & Earl, 2003). This implies, on the one hand, investment in educational leadership so that school leaders become promoters of a culture of collaboration and instructional innovation, and, on the other hand, the creation of favourable organisational conditions that allow teachers to devote time and energy to their professional development without perceiving it as an additional burden beyond daily teaching responsibilities (Spillane, 2006).

Only through an integrated approach involving schools, training institutions, and policymakers will it be possible to build an education system capable of effectively responding to present and future challenges, valorising teachers not only as disciplinary experts but as learning professionals able to guide students in their developmental pathways and contribute actively to the improvement of both schools and society.

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THE EUROPEAN UNION AND THE CHALLENGES GENERATED BY THE NEW AMERICAN ADMINISTRATION. THE CONTEXT OF THE DETERIORATION OF RELATIONS WITH THE USA

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Abstract: *Transatlantic relations, their consolidation after the Second World War, have been essential for the stability and security of Europe. However, in recent years, this strategic alliance has experienced significant deterioration, generated by multiple factors, such as political changes in the US, strategic divergences in the face of new global threats and the emergence of European autonomy in the field of security and intelligence. These changes have profoundly impacted the way in which Europe builds its security and intelligence capabilities, but also the nature of collaboration with traditional partners. This essay analyzes the causes and effects of the deterioration of transatlantic relations, providing a complex perspective on its implications for European security, with a focus on the field of intelligence and European strategic responses. The purpose of this article is to analyze how the new American administration has influenced European security, with a focus on relations in the fields of intelligence and defense. It will be demonstrated that, although partnership remains indispensable, the EU is forced to assume greater strategic autonomy and develop its own intelligence mechanisms.*

Keywords: *American, administration, Europe, regional, security.*

Introduction

With the demise of the Soviet Union, the role of NATO and the US in Europe was reconfigured. NATO's expansion eastward and the integration of new European states into the European Union changed the geopolitical balance (Kramer, 2005:49-69). Although this expansion was seen as a success in promoting democracy and stability, it generated negative reactions from Russia, which perceived these actions as a direct threat.

The US and Europe also had different approaches in several areas of interest: the 2003 intervention in Iraq deeply divided European opinion and the relationship with Washington (Lesser, 2005). These divergences were the first signs of a growing strategic distance.

Since the creation of NATO in 1949, relations between the United States of America (USA) and Europe have been the backbone of Western security. The USA has provided Europe with military guarantees and access to advanced technological capabilities, while Europe has been Washington's main strategic ally in the confrontation with the Soviet Union and, later, the Russian Federation. However, transatlantic relations have experienced significant fluctuations. The Suez Crisis (1956), disagreements over the intervention in Iraq

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(2003) or trade tensions in recent decades have shown that the partnership is often marked by divergences of interests. During the Trump administration (2017–2021), these tensions have reached unprecedented levels: anti-NATO rhetoric, withdrawals from international agreements and the "America First" policy have generated distrust in Europe.

Joe Biden's arrival in the White House was perceived as a "return to normality." However, the new administration did not exactly restore relations to the previous status quo. The strategic reorientation towards the Indo-Pacific, the definition of China as a systemic rival, the war in Ukraine and trade tensions have transformed the nature of the transatlantic partnership.

The North Atlantic Alliance was created in 1949 to counter the Soviet threat, and was a concrete expression of the US strategic commitment to Europe. The concept of "collective defense" enshrined in Article 5 of the Treaty was the foundation of an unprecedented partnership between countries with diverse political cultures and histories.

Through NATO, the US provided Europe with important security guarantees, military technology and logistical support, while Europe provided strategic positions, armed forces and political support. In addition, intelligence cooperation became a vital pillar, with agencies such as the CIA and MI6 collaborating with European services to counter Soviet espionage and international terrorism (Cristopher, 2018:412-430).

1. Transatlantic relations in transition

1.1. Lessons from the Trump administration

The Trump administration has brought about a paradigm shift. Harsh criticism of NATO, the conditioning of Article 5 on "proper payment" of financial contributions, and rapprochement with authoritarian leaders have sent shockwaves through Europe (Trump, 2018). In particular, claims that the US might not defend the Baltic states in the event of a Russian attack have undermined confidence in American security guarantees (Kasekamp, 2025). Moreover, unilateral withdrawal from international agreements – such as the Paris Agreement on climate change or the Joint Comprehensive Plan of Action on Iran (JCPOA) – has sent the message that Washington no longer considers multilateralism a necessary tool. This attitude has led Europe to ask fundamental questions about its own capacity to act.

The Trump administration has represented a significant break with the tradition of transatlantic relations. Under the slogan "America First," Trump has questioned the traditional US commitment to NATO and other multilateral bodies (O'Hanlon, 2018). He has demanded that European states increase their defense spending, threatening to reduce American support if they do not.

This rhetoric has created uncertainty and undermined allied unity, as well as Europeans' confidence in the stability of the transatlantic partnership (European Council, 2019). In addition, unilateral withdrawals from global agreements, such as the Paris Agreement, have heightened the perception of an America less willing to collaborate in the long term.

1.2. The Biden Administration – Between Continuity and Change

President Biden has repeatedly declared that “America is back.” (Biden, 2021). Re-entering the Paris Agreement, reaffirming our commitment to NATO, and consistent support for Ukraine seem to confirm this promise. However, this is not a complete return to the old status quo. The new administration has identified China as the primary systemic threat (The White House, 2021), meaning that the US strategic priority is the Indo-Pacific. Europe remains a vital but secondary partner. This repositioning raises a crucial question: what happens to European security if the US reallocates its resources to Asia?

1.3. European strategic autonomy

The concept of strategic autonomy emerged in European political discourse after 2016, driven by the EU's "Global Strategy" (EEAS, 2016). France promotes the idea of a "Defense Europe" capable of acting independently. Germany supports the strengthening of European capabilities, but in complementarity with NATO. In contrast, Central and Eastern European states, including Romania and Poland, are skeptical of European initiatives, considering that only the American umbrella can guarantee their security.

The publication of *the Strategic Compass* (2022) (Strategic Center for Security and Defense, 2022:7-15) represented a step forward in articulating a common European vision. However, the document also highlights its limits: without massive investments and political will, strategic autonomy remains more of a concept than a reality.

2. The challenges generated by the new American administration

2.1. The war in Ukraine and the relationship with Russia

The Russian Federation's invasion of Ukraine (February 24, 2022) represented the greatest security shock to Europe since 1945. The US reacted quickly, providing Ukraine with tens of billions of dollars in military and logistical support (Congress.Gov, 2024). The European Union adopted unprecedented economic sanctions and provided significant financial and military assistance.

However, the war has exposed differences: Washington is pushing for greater European involvement, while some member states (Hungary, Slovakia) are taking ambiguous positions. Moreover, for the Biden administration, Ukraine is just one front in a global confrontation with authoritarian regimes, while for the EU it is an existential issue.

The Ukrainian crisis of 2014 and the subsequent invasion of 2022 tested transatlantic solidarity. Although the US took a firm stance, imposing tough sanctions and supporting Ukraine militarily and financially, some European states were more reluctant, concerned about the economic and energy consequences (Heather et al., 2020).

The differences were manifested through variations in the level of support provided and distinct diplomatic approaches, which illustrated Europe's difficulty in building a unitary security and defense policy (EU Institute for Security Studies, 2021).

2.2. Technological competition and economic security

The Biden administration has continued the protectionist policies started by Trump, passing legislation such as *the CHIPS and Science Act* (2022) and *the Inflation Reduction Act* (2022) (Congress.Gov, 2022). These aim to strengthen US semiconductor production and the

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green energy transition. For Europe, the measures create a risk of relocation of investments and loss of competitiveness.

At the same time, the US insists that Europe exclude Chinese companies from critical infrastructure, such as 5G. Although some member states have complied (Denmark, Sweden), others maintain close economic relations with Beijing (Germany).

Tensions between the US and the EU have also been exacerbated in the economic and technological fields. Disputes over the taxation of US tech giants, trade restrictions and conflicts over data protection standards have created a tense atmosphere (European Commission, 2020). In addition, competition in cutting-edge technologies, such as 5G and cybersecurity, has become a national and allied security issue. Europe is seeking to reduce its dependence on US and Chinese technologies, which is further complicating its relationship with the US (Deni, 2022).

2.3. The Indo-Pacific and China's dilemma

The US reorientation towards the Indo-Pacific became evident with the launch of the AUKUS (Australia–UK–US) partnership in 2021 (Australian Broadcasting Corporation, 2021). Europe was surprised, especially France, which lost an important contract for submarines.

As for China, Washington describes it as its “main systemic rival.” (The White House, 2022). The European Union, however, uses a more nuanced formula: “partner, competitor, and systemic rival.” (European Commission, 2019). The divergence reflects differences in interests: the US perceives China in terms of security, Europe also sees it as a vital market.

2.4. Trade and climate issues

Transatlantic economic relations have been marked by trade conflicts (tariffs on aluminum and steel, the Airbus-Boeing dispute). Even under Biden, tensions persist, especially in the area of green subsidies (Kleimann, 2023). However, climate cooperation represents an area of convergence, with both sides declaring their commitment to reducing emissions and promoting renewable energies.

3. Implications for European intelligence and security

3.1. Transatlantic intelligence cooperation

The US and Europe collaborate intensively on intelligence, particularly through NATO, Europol and bilateral partnerships. American intelligence has been crucial in preventing terrorist attacks and in managing the Ukrainian crisis. However, there are imbalances. The US has advanced technological capabilities (satellites, global intercepts), and Europe is largely dependent on this support. Information exchange is often more unilateral than reciprocal (The International Institute for Strategic Studies, 2021).

Historically, cooperation between European and American intelligence services has been a pillar of transatlantic security. But the Snowden scandal in 2013 exposed controversies over surveillance and personal data protection, undermining trust (Greenwald, 2014).

Also, legislative divergences between the EU and the US on data protection and civil rights make information sharing more difficult (European Data Protection, 2021). These issues have led Europe to seek its own solutions to strengthen intelligence capabilities.

3.2. Limits of European capabilities

The EU has structures such as the EU INTCEN or the Satellite Analysis Centre (SatCen), but these do not have direct access to classified strategic information. Cooperation depends on the availability of Member States, and the lack of a single European intelligence service limits efficiency.

The European Union has invested in new institutions and mechanisms, such as the European Defence Agency and the European Counter-Terrorism Centre, to develop autonomous capabilities in intelligence and threat response (European Defense Agency, 2023).

Although progress is notable, administrative obstacles, national divergences and the lack of a common doctrine limit the full potential of this cooperation.

3.3. Hybrid threats

The new US administration places great importance on combating disinformation, cyberattacks and electoral interference. The war in Ukraine has demonstrated that propaganda, cyber operations and information manipulation can be as dangerous as conventional military attacks (NATO StratCom Center of Excellence, 2024).

For the EU, building societal resilience and developing its own response mechanisms becomes imperative. At the same time, partnership with the US remains crucial, as European resources are insufficient.

New threats, such as cyberattacks and disinformation operations orchestrated by hostile state actors, have emphasized the need for rapid and effective collaboration between intelligence services (NATO Cooperative Cyber Defense Center of Excellence, 2022).

Europe is trying to develop critical infrastructure and strengthen the resilience of its societies through strategic partnerships, but also by promoting a common legal framework.

3.4. Normative divergences

A sensitive point is the differences in data protection. The EU, through the GDPR, promotes strict standards, while the US privileges security and the interests of companies. These discrepancies create recurring tensions (see the invalidation of the “Safe Harbor” and “Privacy Shield” agreements).

4. In-depth case studies

4.1. The AUKUS crisis and the Franco-American rift

The announcement by the AUKUS alliance, which excluded France from a major submarine contract with Australia, caused a severe diplomatic crisis between France and the United States, deeply affecting transatlantic relations (Heisbourg, 2021). France perceived this action as a breach of trust and an affront to European strategic autonomy.

This raised questions about how the US manages strategic partnerships and alignment with Europe in the face of China and other global challenges.

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4.2. Ukraine: a test of solidarity and responsiveness

Russia's invasion of Ukraine has highlighted both the potential and the limits of transatlantic solidarity. Massive military and economic support from the US and some European states contrasts with the more moderate positions of other countries, where energy dependence and economic considerations influence foreign policy (Atlantic Council, 2023).

This highlighted the difficulties of implementing a unified and coordinated European security policy.

4.3. The energy crisis and Europe's vulnerabilities

The war in Ukraine has exposed Europe's critical dependence on Russian energy resources. The crisis has prompted the European Union to accelerate policies to diversify sources and promote energy autonomy (European Commission, 2022).

This situation highlighted the need for an integrated strategic plan, which includes energy security as part of security and intelligence policy.

In this context, the European Union has promoted the idea of strategic autonomy as a response to the uncertainties generated by fluctuations in American policy. Strategic autonomy involves the development of its own defense, intelligence and crisis response capabilities, as well as a more independent foreign policy (European Commission, 2022).

This is not without controversy, however: some American analysts see European autonomy as a potential fracture in the alliance, fearing that Europe could reduce its commitment to the US (Hamilton, 2019).

Conclusions

The new US administration has reconfigured the transatlantic relationship. On the one hand, Biden has reaffirmed the commitment to NATO and supported Europe in the face of Russian aggression. On the other hand, the strategic repositioning towards the Indo-Pacific and protectionist economic policies are forcing the EU to develop its own capabilities.

For Europe, the dilemma is clear: exclusive dependence on the US is no longer sustainable, but neither is complete autonomy realistic in the short term. The solution lies in a renewed partnership, based on complementarity, but also in a strengthening of European security and intelligence mechanisms.

Recent transformations in transatlantic relations are a turning point for European security. The deterioration of traditional cooperation with the US requires Europe to develop its strategic autonomy and strengthen its own intelligence and security capabilities. Only through flexible adaptation and collaboration can Europe ensure long-term stability and the protection of its fundamental values and interests.

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