

# SPECIFICITY OF CRIMINAL EVIDENCE DETECTION AS WELL OF THE INITIATION OF PROSECUTION FOR THE ORGANISED IMMIGRATION CRIME

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## **Abstract**

*The Art. in question is dedicated to the specificity of detecting the evidence of an offence and its prosecution, particularly referring to the organised illegal migration, both from the point of view of criminal science and from the point of view of the criminal lawsuit. The subject under investigation here is both practically and legislatively sensitive.*

*The aim of the research is to establish and elucidate the legal interactions, as well as to develop a practical algorithm for law enforcement authorities to detect evidence of organised illegal migration. The study comes with recommendations for law enforcement and prosecution bodies applicable both to the stage of establishing reasonable suspicion of committing the crime of organised illegal migration and to the stage of criminal prosecution initiation. At the same time, we aim at pointing out those features of the initial actions of the law enforcement bodies to which attention should be drawn and the indicated actions should be carried out in order to decide whether or not the conditions of the specified crime are met.*

*The research comes up with findings, recommendations and proposals of *lex ferenda*, in order to reach the top effectiveness of the organised illegal migration investigation, implicitly that the investigating and prosecuting authorities detect the evidence of organised illegal migration crime within a reasonable extend of time and expeditiously start the prosecution, with respect to the principle of formality of the criminal process.*

**Keywords:** *illegal migration, criminal evidence, prosecution*

**JEL Classification:** [K37]

The crime of organised illegal migration is punishable under the criminal law of the Republic of Moldova under Art. 362/1. This criminal provision was subject to constitutional revision because, in the view of the authors of the application lodged with the Constitutional Court of the Republic of Moldova, this provision allowed double punishment for the same offence, thus violating the *ne bis in idem* principle guaranteed by Art. 21 of the Constitution, as well as the inconsistency of this provision with the criteria of the quality of the law, since the phrase „territory of the State” could not specifically determine the territory of which State is protected by the criminal law provision. Therefore, the Court delivered the

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judgement that Art. 362/1 of the Criminal Code falls within the margin of discretion and does not contravene the Constitution, i.e. it is constitutional<sup>1</sup>.

The specificity of evidence detection for the above mentioned crime and the initiation of the prosecution in such cases are sensitive subjects of both criminal procedure and criminal science which directly influence not only the factual investigation of the crime but also the active role of the prosecution, the reasonable time limit, the formality of the criminal lawsuit, etc.

It is no news that the success of crime detection is ensured and there is a good chance that the evidence of the crime, the perpetrator, etc. will be discovered in time when the detection and prosecution authorities act promptly on a report of the crime. The prosecuting bodies referred to here must react quickly from the moment they are notified until the criminal case is brought to court. The first and most important actions that kick-start the investigation are those of detecting the traces of a criminal offence and the start of the criminal prosecution, i.e. the formalisation of the criminal lawsuit.

*„In this regard, the Constitutional Court notes that, according to Art. 28 para. (1) of the Criminal Procedure Code, the authorities have a positive obligation, within the limits of their competence, to initiate criminal prosecution in case of a notification, in the manner prescribed by the Code, with regard to the commission of a criminal offence, and to perform those necessary steps to establish the crime and to identify the guilty party”<sup>2</sup>.*

In the ECHR case *Velikova v. Bulgaria*<sup>3</sup>, *”The Court recalls that the State's obligation [...] requires by implication that **there should be some form of effective official investigation** (s.a.) [...]. The investigation must be, inter alia, **thorough, impartial and careful** (see the *McCann and Others v. the United Kingdom* judgment of 27 September 1995, Series A no. 324, p. 49, §§ 161-63, and *Çakıcı* cited above, § 86).”*

In order to better understand the subject under investigation, we have made an analysis of the criminal cases fundamented on the organized illegal migration offence in the timeframe 2020 to the end of April 2023<sup>4</sup>.

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<sup>1</sup> Decizia Curții Constituționale (DCC) a Republicii Moldova nr. DCC68/2019 din 14.05.2019 de inadmisibilitate a sesizării nr. 87g/2019 privind excepția de neconstituționalitate a articolului 362/1 din Codul penal. Publicat: 19.07.2019 în Monitorul Oficial Nr. 230-237 art. 156; Hotărârea Curții Constituționale a Republicii Moldova nr. HCC4/2017 din 07.02.2017 privind excepția de neconstituționalitate a unor prevederi din articolele 424 alin. (2), 431 alin. (1) pct. 11 ) din Codul de procedură penală și articolul 362/1 din Codul penal (sesizările nr. 145g/149g/2016). Publicat: 30.06.2017 în Monitorul Oficial Nr. 216-228 art. 74.

<sup>2</sup> DCC nr. 50 din 31.05.2018 de inadmisibilitate a sesizării nr. 59g/2018 privind excepția de neconstituționalitate a articolului 326 alin. (11) din Codul penal și a unor prevederi din articolul 283 alin. (1) din Codul de procedură penală (pct. 27).

<sup>3</sup> ECHR Judgement, *Velikova v. Bulgaria*, of 18.05.2000 (§ 80). Available: <https://hudoc.echr.coe.int/eng?i=001-58831> [accessed: 22.10.2022].

<sup>4</sup> The analysis was carried out on the basis of information provided by the Information Technology Service of the Ministry of Internal Affairs of the Republic of Moldova, which manages the Central Database (Crime Information Register).

As a consequence, the analysis revealed the following results listed in the table below.

Period of commencement of prosecution under Art. 362/1 of the Criminal Code	Total registered	Referred to court	Resolved	Closed	In progress
12 months 2020	35	4	0	1	30
12 months 2021	20	1	0	0	19
12 months 2022	346	9	1	4	332
04 months 2023	148	1	0	0	147

The analysis of statistical data shows that prosecution is completed in few criminal cases out of those registered by the prosecuting authority. This situation arises for multiple reasons such as the high workload required in the prosecuting this category of criminal cases, the cross-border nature, the drafting, sending and execution of requests for international legal assistance in criminal matters, the specificity of the criminal procedural law, etc.

In our opinion, one of these reasons is also the late detection of the facts indicating the crime, the late referral to the prosecution, the delay in starting the prosecution, as well as the inexperience of some law enforcement officials.

The practice shows that if the evidence of a criminal offence under Art. 362/1 of the Criminal Code are established in time, the immediate referral to the criminal prosecution body and the prompt commencement of the criminal prosecution, the criminal proceedings are effectively carried out, the purpose of the criminal procedural law is achieved at the prejudicial stages, and the perpetrator is brought to court within a reasonable time limit.

Out of the total number of 549 criminal cases in which prosecution was initiated under Art. 362/1 of the Criminal Code during the period indicated in the above table, in 86 criminal cases (which constitutes 15.7%) reasonable suspicion for the offence of illegal migration was established in less than 10 days, in 15 criminal cases (which constitutes 2.7%) evidence of the offence was established in less than 30 days, and in 102 criminal cases (which constitutes 18.5%) evidence of the offence was established in more than 6 months. For the rest of the criminal cases reasonable suspicion was established within 30 days to 6 months. The late detection of criminal evidence is also due to the late referral of persons (victims) to the detection or prosecution body. The latter may not delay the examination of material when deciding whether or not to initiate criminal prosecutions, as the law imposes a maximum time limit of 30 days (Art. 274(2)(a)). (1) of the CPP), which is discussed below.

The analysis shows that whenever the investigating and prosecuting authorities found traces of the offence within 30 days, the evidences of the offence

were discovered in time, all the perpetrators of the offence were identified, and as a result 15 cases were sent to the trial court for resolution in due time<sup>5</sup>.

There are situations where the investigating body immediately detects evidence of the offence and refers the matter to the prosecuting body, which in turn starts prosecution the same day. This leads to the rapid discovery of the criminal act, effective administration of evidence, apprehension of the perpetrators, identification of victims, etc.<sup>6</sup>.

An important element concerning the subject under investigation is the correct legal classification of the criminal act, i.e. the qualification of the offence, which according to Art. 113 para. (1) of the Criminal Code is considered "*the determination and legal ascertainment of the exact correspondence between the signs of the harmful act committed and the signs of the composition of the offence provided for by the criminal law*". It should be noted that the official qualification of the offence is not carried out at the stage of verification of the material by the investigating authorities or at the stage of verification of the referral of the offence, but at the stage of the commencement of the prosecution, i.e. when the order on the case is issued. The establishment of the evidence of the offence and the qualification of the offence can also take place at different procedural stages (e.g. when charging and prosecuting the perpetrator). At the stage of the initiation of the criminal prosecution, "(...) the qualification has a preliminary, indicative and hypothetical character, since the prosecution body is only provided with sufficient data to initiate criminal proceedings. Essentially, this form of classification is merely a qualifying version of the harmful act committed"<sup>7</sup>.

The above mentioned aspects are congruent with Art. 113 (1). (2) of the Criminal Code, which states that "*the official classification of the offence shall be*

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<sup>5</sup> For example: criminal case no. 2020870131, initiated on 21.08.2020 by the criminal prosecution body established within the General Inspectorate of Border Police of the Ministry of Internal Affairs of the Republic of Moldova on the basis of indications of the offence provided for in Article 362/1 of the Criminal Code; criminal case no. 2020870088, initiated on 11.08.2020 by the same criminal prosecution body; criminal case no. 2021041343, initiated on 08.11.2021 by the criminal prosecution body of the Balti Police Inspectorate of the General Police Inspectorate of the Ministry of Internal Affairs of the Republic of Moldova.

<sup>6</sup> For example, in criminal case no. 2022871699, the criminal act provided for in Article 362/1 of the Criminal Code was committed on 29.12.2022, after which, having been referred to the investigating body and subsequently to the prosecuting body on 30.12.2022, the latter began the criminal prosecution on the same day, and within 3 months, during which a series of procedural actions were carried out, implicitly including expert opinions, the criminal prosecution was completed.

<sup>7</sup> Vizdoagă Ion et al, *Practical Guide for Investigating Human Trafficking Crimes*, funded by the Office to Monitor and Combat Trafficking in Persons of the United States Department of State under the terms of Grant No. S-SGTIP-10-GR-0023 for the project "Preventing Corruption and Impunity in the Fight against Trafficking in Persons by Empowering the Media and Strengthening Cooperation between Civil Society and Law Enforcement Agencies 2010-2013" implemented by the International Organization for Migration (IOM). Chisinau, 2013, p. 66.

*carried out at all stages of the criminal proceedings by the persons conducting the prosecution and by the judges".*

Failure to detect evidence of the offence in time, late referral to the prosecuting authority, the conduct of the parties during the prosecution stage, may all lead to the release from criminal liability of the suspected person on the grounds of the expiry of the statute of limitations for holding the accused person criminally liable<sup>8</sup>.

Next, we will discuss the legal aspects of detecting evidence of the crime and the prosecution. Thus, according to the provisions of para. (1) of Art. 274 of the Criminal Procedure Code, *„the criminal prosecution body or the prosecutor referred to it in the manner provided for in Art.s 262 and 273 of the Criminal Procedure Code shall, within 30 days, order the initiation of criminal prosecution if, from the content of the referral or the acts of ascertainment, there is a reasonable suspicion that an offence has been committed and there are no circumstances that preclude criminal prosecution, informing the person who submitted the referral or any other body that might be concerned.”*

According to para. (1) of Art. 262 of the Code of Criminal Procedure, *„the criminal prosecution body may be notified of the commission or preparation for the commission of an offence provided for in the Criminal Code by: 1) complaint; 2) denunciation; 3) self-reporting; 4) direct detection by the criminal prosecution body or prosecutor of reasonable suspicion of the commission of an offence.”*

In accordance with the provisions of para. (2) of Art. 273 of the Code of Criminal Procedure, the investigating authorities organele de constatare<sup>9</sup> *„have the right (...) to detain the perpetrator, to collect the corpus delicti, to request the information and documents necessary to establish the offence, to summon persons and obtain statements from them, to assess the damage and to carry out any other*

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<sup>8</sup> See, for example, Sentința Judecătorei Chișinău (sediul Buiucani) din 18.11.2019, emisă în Dosarul nr.12-1-19030-03042019 (1-1731/19).

<sup>9</sup> According to para. (1) of Art. 273 of the Code of Criminal Procedure, the investigating bodies are: a) the police - for offences which are not given by law within the competence of other ascertaining bodies; a1) the Border Police - for offences given by law within its competence; b) the National Anti-Corruption Centre - for offences given by law within its competence; c) the Customs Service - for offences given by law within its competence; d) the Intelligence and Security Service - for offences the prevention and counteraction of which are assigned to it by law; e) commanders of military units and formations, heads of military institutions - for offences committed by their subordinates, as well as by persons subject to military service during their cantonments; for offences committed by workers and civilian employees of the Armed Forces of the Republic of Moldova, in connection with the performance of their duties, or committed at the place of deployment of the unit, formation, institution; f) heads of penitentiary institutions - for offences committed in places of detention, during escort or in connection with the execution of sentences; also the heads of specialised curative institutions - in cases concerning persons to whom medical restraint measures are applied; g) masters of ships and aircraft - for offences committed on them while the ships and aircraft they command are outside ports and airports; h) courts of law or, where applicable, investigating judges - for hearing offences.

*actions that cannot be postponed, with the drawing up of findings of facts in which the actions carried out and the circumstances established will be recorded".*

It follows from the provisions of para. (2) of Art. 273 of the Code of Criminal Procedure that the investigating authorities, while carrying out the actions incumbent upon them by law, draw up reports of findings; respectively, they are entitled to refer the commission of the offence to the criminal prosecution body, drawing up a report to this effect.

The practice does not record cases of self-reporting persons as having committed the offence of organising illegal migration; but, except that, all the other forms of referral are common in Moldovan prosecution practice.

The following can be considered as sources of information for detecting cases of organised illegal migration, which can subsequently serve as a basis for referral to the criminal prosecution authorities and the initiation of criminal proceedings, as well as for the prosecution itself: advertisements in newspapers, magazines, on television, on the radio; agencies offering employment and tourism services; employees of advertising firms and those who rent out housing (houses, villas or apartments); the potential migrants themselves; databases of consular offices in embassies and consulates, etc.

Nor should we underestimate the special investigative measures that can be carried out before the start of the criminal proceedings, as long as their results serve in most cases as evidence prior to the criminal proceedings and, by carrying them out, provide essential evidence to prove the guilt of the active subjects of the crime.

When investigating the offence of organising illegal migration, the following circumstances specific to this offence must be established<sup>10</sup> :

a) Organization of arrival and stay of foreign citizens on the territory of the Republic of Moldova. Here it is necessary to establish: the way foreigners cross the state border, the route they take, the source of financing, the persons who helped them to complete their documents and travel tickets, the employment contracts, etc.;

b) What are the forms of manifestation for illegal entry or stay on the territory of the Republic of Moldova of foreign persons. In this circumstance it must be clarified: place and time of the illegal crossing of the state border, period of stay of the foreigner on the territory of the Republic of Moldova, reason for the lack of appropriate documents or for the extension of the temporary visa, etc.;

c) What can be interpreted as a form of illegal transit of the territory of the Republic of Moldova by foreigners. Here it will be determined: what is the country of origin of the foreigner, where he comes from, what countries he transited, what is the country of destination, the date of entry into the territory of the state, the reason for the lack of documents allowing entry into the Republic of Moldova or in general their lack, etc.

In order to establish the circumstances mentioned above, as well as for the purpose of an objective, complete and thorough investigation of all aspects of the

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<sup>10</sup> <http://www.crime.vl.ru/index.php?blog=4&p=1446&more=1&tb=1&pb=1>

case, the prosecution body, having been informed of the commission of an offence of organising illegal migration and having reasonable grounds for suspicion, shall initiate criminal proceedings and proceed to the investigation itself, in the framework of which it shall carry out the appropriate prosecution and special investigative measures.

In the following, we will refer to the activities undertaken by the investigating body up to the referral to the prosecuting body, the aspects that need to be determined in order to establish reasonable suspicion of the organised illegal migration offence, etc.

Whenever the law enforcement body has information and data on the preparation, commission or alleged commission of the offence of organising illegal migration, it shall submit a report describing the known facts and the alleged information and shall request that this report be recorded in the Register of Subsequent Information on Offences and Incidents, also referred to as Register No 2, with a view to initiating the necessary investigations<sup>11</sup>.

It is not allowed to carry out any investigation before the fact is registered in Register No. 2, but, referring to the procedural-criminal rule of Art. 55 para. (4): *"if there are indications of the offence, the prosecution body, upon registration of the notification of the offence, shall initiate the prosecution process and, guided by the provisions of the Code of Criminal Procedure, shall carry out prosecution actions with a view to discovering the offence and establishing the evidence confirming or denying the offence, shall take measures to ensure civil action or possible confiscation of illicitly acquired property"*. The same conditions are imposed on the criminal investigation body, because it is a procedural subject and according to para. (2) of art. 273 Criminal Procedure Code *"the criminal investigation body has the right, under the provisions of this code (...)"*. In other words, any action of ascertainment will be carried out under the terms of the Code of Criminal Procedure only after registration of the fact in the Register of Subsequent Information on Offences and Incidents.

Once the information has been introduced in Register No 2, the representatives of the investigation authority shall carry out the actions provided for in para. (2) of Art. 273 of the Criminal Procedure Code, with the drawing up of findings of facts of the acts of ascertainment. For the sake of clarity, we will divide the findings of facts into two categories: a) minutes of findings (finding of facts) and b) minutes of findings (finding of hearings).

The minute of findings (finding of facts<sup>12</sup>) must include: date and place of the finding, the representative of the body responsible for the finding (complete

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<sup>11</sup> n.a.: Register No 1 is for recording information on the offence (when the referral of the offence occurs) and Register No 2 is for recording other information on offences and incidents (when the referral of the prosecution is missing).

<sup>12</sup> This refers to the establishment of facts and actions taken by the investigating body (e.g. document collection, on-the-spot investigation, etc.). It should be noted that any action taken by the

name and position in the institution), participants, interpreter<sup>13</sup> (if necessary), specialist<sup>14</sup>, place where the report is drawn up, time of start and time of end of the action. After the end of the action, the participants have the right to make objections and statements concerning the drawing up of the findings of facts, which are included in the minute. The findings of facts shall also mention the objects and documents collected, examined, etc., which shall be attached to the minute. The minute shall then be read out and signed by all participants. The findings of facts shall be drawn up in accordance with Art.s 163, 260, 261 and 261(2) and (3). (2) of Art. 273 of the Code of Criminal Procedure.

The findings of facts of the hearing must include: date and place of the finding, the representative of the body responsible for the finding (complete name and position in the institution), the place where the findings of facts are drawn up, the time of the beginning and end of the hearing, the participants, the interpreter (if necessary), the specialist, the name and surname of the person heard, place of his/her birth, his or her place of residence and occupation, the document by which he or she was identified, the statements of the person heard. The findings of facts shall mention that the documents or objects presented by the person interviewed have been taken, specifying their quantity, particulars and characteristics and attaching them to the findings of facts. Similarly to the above mentioned, the findings of facts shall mention the objections and explanations of all the participants, if they persist. The findings of facts shall be signed by all participants in the action.

It is recommended that at the stage of investigation of the materials recorded in Register No. 2 (this stage is considered the pre-trial stage, i.e. until the referral to the prosecution body), the employees of the General Inspectorate for Migration, the employees of the General Inspectorate of Police, the border guards who detected the fact of illegal migration should be heard, so that it is possible to form a realistic frame of the circumstances of the alleged crime. Here, more attention shall be paid to the given circumstances, the place of detaining the migrants, the objects and documents they had on them, the time and place of passing the territory Republic of Moldova, etc.

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investigating body will be recorded in this report. At the same time, following the investigation, the investigating body will draw up a report to the prosecuting body describing the findings, analysis of the evidence, etc. (as a final act of the investigation);

<sup>13</sup> If the interpreter participates, he will be warned of criminal liability for intentionally false translation (Art. 312 of the Criminal Code) and for evading or refusing to fulfil his obligations (Art. 313 of the Criminal Code);

<sup>14</sup> The specialist will be warned of the criminal liability he bears in case of knowingly presenting false conclusions, in accordance with the provisions of Article 312 of the Criminal Code, and will be explained and made aware of his rights and obligations under Article 87 of the Code of Criminal Procedure.



At the hearing, illegal migrants will be questioned on the following issues<sup>15</sup>: when, for what purpose, in what way (type of means of transport, on foot, etc.) and through what crossing point they entered the Republic of Moldova, or in what way they crossed the state border illegally; how many times they have previously visited the Republic of Moldova, for what purpose, how they entered and left the country, etc. how long the migrant stayed on the territory of the Republic of Moldova, where he/she stayed and who was the person who hosted him/her during this time; when and where he/she completed his/her documents for entry into the Republic of Moldova, including for the completion of visas, with which bodies he/she submitted the corresponding documents; whether someone facilitated the crossing of the state border, specifying the name of the intermediary, and what this facilitation consisted of; what are his relations with the intermediary and whether he knows the identity of the person who helped him to cross the State border of the Republic of Moldova, what are his links with the collaborators of the law enforcement bodies, mentioning these bodies, what are his contact details, address, etc. who bought the plane tickets, train tickets, etc. and how much they cost, and from what sources the travel expenses were paid; whether the illegal migrant has receipts, tickets, tickets, etc. relating to the transport by which he arrived in one place or another, in one country or another, etc.; after crossing the state border of the Republic of Moldova, where he actually stayed and with whom, and for what reason in this place and not in another; how much money he brought into the country. If the illegal migrant has a very small amount of money or generally has no financial sources, then he/she will be asked from what sources he/she plans to rent accommodation, from what sources he/she will be supported, etc. In addition to this, it will be asked if someone has promised to support him/her, for what reason, what is the identity of this person, telephone numbers, address and other details considered relevant; has he/she informed the competent bodies (General Inspectorate for Migration) about his/her arrival in the Republic of Moldova, if not, for what reason; does the person interviewed have a residence permit, if so, who gave it to him/her or from where he/she picked it up; if he/she has or has a residence permit, why he/she did not leave the Republic of Moldova when it expired; why he/she does not have the appropriate documents for entry into the Republic of Moldova; with whom he/she made arrangements to meet him/her when crossing the border, who promised to provide transport, accommodation, food, etc.; what he did and with whom he was lodged from the moment of his entry into the Republic of Moldova until his detention; to

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<sup>15</sup> Сухарникова А.В., Методика расследования преступлений, совершаемых в сфере организации незаконной миграции, Диссертация на соискание ученой степени кандидата юридических наук, с. 123-127; Сухарникова А.В., Тактические особенности допроса свидетелей-иммигрантов по делам об организации незаконной миграции. Правоохранительная деятельность органов внутренних дел России и зарубежных государств в контексте современных научных исследований: Материалы международной научно-теоретической конференции адъюнктов и докторантов. Санкт-Петербург, 28.06.2008./Сост. Е.Д. Проценко, Н.В.Дементьева и др.-СПб.:Изд-во СПбун-та МВД России, 2008, с.220-222.

whom he paid for the rental of his accommodation; who brought him food and basic necessities; with whom he lived and their nationality; whether he was employed during that period; with whom; who paid his salary; where he worked and what he did at work; what his work consisted of; did he sign any contracts or documents relating to his employment and with whom, in what place (office, apartment, etc.)? ; how and with what he arrived at work; whether he admits that he entered the territory of the Republic of Moldova illegally; whether he wanted to reach the Republic of Moldova or it was only a transit country; which is the country of destination; through which crossing point or through which place of the state border he was going to reach Romania; who was supposed to meet him; with whom he discussed; by which means of contact he communicated with the persons who organized his illegal migration, etc.

At the same time, the investigating body will request the appropriate information from the General Inspectorate for Migration in order to find out whether the person has applied for asylum, for what reason, where he/she is staying, on the basis of which documents his/her legal entry into the country took place, who called him/her, what documents the person presented in order to obtain the necessary documents and visa to cross the state border, etc. The Migration and Asylum Office will request copies of the entire file in question in order to examine and analyse all the documents submitted. If there are any suspicions about these documents, a technical-scientific analysis will be ordered.

At the same time, information on the migrant's crossing of the state border will be requested from the General Inspectorate of Border Police (if the migrant has crossed the state border legally). Once this information is obtained, it will be analysed and attached to the material. Thanks to this information we can obtain detailed information on the date, place, border crossing point, by whom he/she was accompanied or with whom he/she entered the country, the type of the means of transport, who was driving the car (if applicable), who were the people accompanying - these persons will subsequently be summoned and heard on these matters as long as there are premises that the driver or the accompanying persons are themselves participants in the organisation of illegal migration. In case, according to the state border crossing database, the data on the migrant's border crossing are missing, these become important aspects indicating that the migrant entered the country illegally through the green sector of the border (i.e. crossed the state border illegally).

In this case, information will be requested on the documents submitted for the visa: for what period the visa was issued, for what purpose, etc. This information can be obtained from consulates and embassies, which are subordinate to the Ministry of Foreign Affairs and European Integration. The documents obtained will also be analysed and examined to find whether the person has presented genuine documents, the purpose for which the visa was issued (e.g. tourism, study, work, business, etc.) and any other relevant data.

Similarly, papers, documents, tickets, mobile phones, other means of connection, payment and transfer receipts, powers of attorney and other documents and objects will be collected, and, after examination, will be eventually identified as criminal objects and will help to identify the circumstances of the crime, the perpetrators, etc.

In the case of detention of migrants near the border or immediately after crossing it illegally, a report will be drawn up through the documents of ascertainment, in which it will be mentioned: the number of migrants, where they were detained, by whom, what objects and documents they possessed, how much money, how much food, how the migrants are dressed, traces of crossing the border, etc.<sup>16</sup>.

All documents and objects found on illegal migrants, as well as those obtained at the request of the investigating body (from the General Inspectorate of Border Police, General Inspectorate for Migration, etc.) will be examined and a report will be drawn up. This report will be similar to the examination report. Particular attention will be paid to: the data in the passports found and collected (to see which countries the migrant crossed through, whether he/she crossed legally or not, etc.), powers of attorney (if they still exist, in whose name they are issued, who the notary is, etc.), landing tickets, cheques or invoices for the transfer of funds (who is the sender, who received them, when the transfer was made, etc.), mobile phones in their possession (to establish the phone numbers in the phone book, who they belong to, when outgoing and incoming calls were made, whether someone was called at the time of the crossing or immediately after the crossing and who, etc.), picked up raised drafts, business cards, etc.

At the same time, the persons suspected of committing the crime of organising illegal migration will be interviewed in order to establish whether they are involved in the commission of this crime and to find out their initial position relative to the crime that took place and relative to the illegal migrants. They will be asked about the following aspects<sup>17</sup>: when, where and under what circumstances the illegal migration was organised; when, where and under what circumstances they met the illegal migrant and whether they know them, as well as their relationship with them; under what circumstances the crossing of the state border took place; if they did not organise the entry or transit of the Republic of Moldova, then what they know about these circumstances, who organised the crossing, etc.; for what purpose and under what conditions the migrant was assisted, i.e. namely, what actions he undertook, what attribution he has, what was the amount of the amount received or that he was supposed to receive for his services; who asked him

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<sup>16</sup> This report will be similar to the on-the-spot investigation report. The respective action of finding, in this case, will also be similar to the on-the-spot investigation, being carried out according to the tactics corresponding to this procedural action;

<sup>17</sup> Сухарникова А.В., Методика расследования преступлений, совершаемых в сфере организации незаконной миграции, Диссертация на соискание ученой степени кандидата юридических наук, Москва, 2010, с. 135-136.

to perform these actions, who paid him or promised to pay him for the services rendered; what documents do illegal migrants have, where are these documents located; through which place of the state border did the migrants cross, who brought them to the border, under what conditions; in which country of destination the migrants had to arrive, who had to receive them once they arrived in Romania and through which point of the state border they had to cross; what means of transport they used to transport illegal migrants; what phone numbers did they use, who did they talk to, who are their accomplices; where the illegal migrants were accommodated once they arrived in the country, etc.

There are situations in which illegal migrants can use the Republic of Moldova not only as a transit country, but also as a destination country, or as a transit country without leaving the territory of the Republic of Moldova for a long period of time. In such cases, illegal migrants can work (legally or illegally) to earn money in order to ensure their existence. In the respective cases, it is necessary to hear the head of the enterprise regarding the employment of the migrant, did he know that he is illegally in the territory of the Republic of Moldova; how long the migrant has been employed; who asked him to hire him; how many hours they work; what salary is paid to him; where he resides; what papers he has; there were checks of the company's activity by the Main State Fiscal Service, the General Inspectorate for Migration, the police, etc., during the period when the migrant was working at the company; as well as other circumstances relevant to the case. At the same time, the chief accountant, the head of the human resources department, the company administrator and other persons with positions of responsibility will be heard, who will be heard regarding the same aspects, such as: the date of employment, the salary granted to the migrant, the method of payment of the salary, whether it exists or not employment order, what the migrant's work consists of, etc.

If migrants are detected inhabiting an apartment, its owner will be questioned on the following aspects: how long he has been renting the apartment, if he has the appropriate license or if the rental contract is registered with the State Fiscal Service; how did the migrant find this apartment; who brokered the accommodation of the migrants; was aware that they are illegally in the territory of the Republic of Moldova; who pays the rent, in what way (cash, by transfer), how to communicate with the migrants (if the migrants do not know Romanian, Russian or English, and if the owner does not know the language spoken by the migrants, who translates, etc. ), how many migrants were accommodated; if migrants were previously accommodated until the moment of detecting the respective migrants, by which means did he give the notice regarding the granting of the apartment rental services, who called and from which phone number for the accommodation of migrants, did the owner check the identity documents of migrants, have concluded the rental contract, who still owns the keys to the apartment, who pays the utilities during the period corresponding to the migrants' stay, etc. At the same time, the real estate book will be requested to be examined in order to ascertain who else is registered in the respective apartment and if there are other persons on the record.

Neighbors will be heard to find out how long the migrants have been staying, who visited them, how many times they were visited, if they met the migrants, what they told them about their accommodation and stay on the territory of the Republic of Moldova, as well as other aspects relevant to the case.

In other cases, when the migrant or immigrant has violated the period of stay on the territory of the Republic of Moldova, copies of the respective contravention files, court judgements and other relevant materials will be collected. These will be examined, as the information contained therein may contain data that can later be used to detect indications of the crime of organising illegal migration.

At the same time, evidence of the offence in question may be established in another criminal case under consideration. In this case, the criminal case will be split in order to investigate the given offence. It may also happen that, while some special investigative measures are being carried out (e.g. interception of telephone conversations or other forms of investigation) in a criminal case, indications of the commission of the offense provided for in art. 362/1 Criminal Code to be traced as well. Obviously, in such cases, in order to detect the signs of the crime of organizing illegal migration, other investigative actions will be undertaken, along with special investigative measures in this regard.

Once the evidence of the offence in question has been found, the investigating body shall refer the matter, following the steps stipulated in Art. 273 of the Code of Criminal Procedure, to the criminal prosecution body, which shall proceed, by written order, initiate criminal prosecution and initiate the special investigative measures.

A common problem in practice that hampers the work of the prosecution bodies is the long delays in the examination of evidentiary material by the investigating bodies. Examination of material by these bodies can sometimes take 3 to 6 months or more. This practice is blamable and illegal due to the fact that, most of the time, it leads to a violation of the reasonable time limit.

Unfortunately, nor the criminal procedure legislation, neither the regulations of the special normative acts establishing the powers and duties of the representatives of the investigating body do not establish the time limit for the examination of subsidiary information on the crime (i. e. of the materials examined by the investigating body).

There is only one regulation on this term. According to Art. 11 para. (2) of the Law no. 216/2003<sup>18</sup>, „*other information about criminal offences shall be examined within the time limits set by the criminal procedure legislation for the examination of referrals of criminal offences*”, i.e. within the 30 days set by Art. 274 para. (1) Code of Criminal Procedure.

From our analysis, on the facts of organising illegal migration, some material can be examined for up to 30 days, while other material requires a longer

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<sup>18</sup> Law No. 216 of 29.05.2003 on the Integrated Automated Information System for the Recording of Offences, Criminal Cases and Offenders. Published: 08.08.2003 in the Official Gazette No. 170-172 art. 695.

examination, as it depends on objective circumstances and environments, e.g. time limit for drawing up the technical-scientific findings (forgery of documents), etc. For these reasons, our proposal is that, based on practical experience, the time limit for examining other information on offences should not exceed 60 days. To this end, it is necessary to supplement and amend Art. 11(11). (2) of Law 216/2003, so as to regulate the possibility of extending the period of examination of materials by the investigating body up to 60 days.

From the analysis of the ECHR practice<sup>19</sup>, as well as from the research of national rules, it appears that the requirement of reasonable interval starts from the moment of the referral to the investigating authorities, as they undertake procedural actions and the establishment of offences.

The time limit for the examination of the materials by the investigation bodies should be regulated in Article 273 of the CPC, which is why we propose to amend and supplement it, since the procedural actions of this body are regulated by the criminal procedure law, without setting specific deadlines for the preparation of the investigation documents.

## Conclusions

To sum up, we draw the following essential aspects of the problem studied and consider it necessary to formulate recommendations and proposals, as follows:

- Detection of criminal evidence and prosecution in cases of organised illegal migration is a very important process, which directly dictates both the correct qualification of the criminal offence, the respect of the reasonable time limit, and the discovery of the evidence of the crime, etc.
- The investigating body is obliged to play an active role in establishing reasonable suspicion and to immediately refer the matter to the prosecuting body;
- The most urgent referral of persons who are victims of the crime of organising illegal migration and their active participation in all phases of the criminal process, so as not to delay the examination of the case because of their behaviour;
- Amendment and completion of Art. 273 of the Code of Criminal Procedure and Art. 11 para. (2) of Law 216/2003, so as to regulate the time limit of up to 60 days for establishing reasonable suspicion of the offence.

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<sup>19</sup> ECtHR judgment, *Kalēja v. Latvia*, of 05.10.2017 (§§ 37, 38, 41, 45). Available: <https://hudoc.echr.coe.int/eng?i=001-177344>; ECtHR judgment, *Reiner and Others v. Romania*, of 27.09.2007 (§ 48). Available: <https://hudoc.echr.coe.int/eng?i=001-122797>.

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