

REFLECTIONS ON THE NEW CONDITIONS FOR ORDERING SPECIAL INVESTIGATIVE MEASURES IN THE LEGAL REGULATION OF THE REPUBLIC OF MOLDOVA

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Abstract

This study is dedicated to the field of special investigative activities and the criminal process, addressing a topic of particular importance for sustaining democracy in the Republic of Moldova, and being relevant for both academics and legal practitioners. Special investigations are essential tools for the protection of constitutional values, but at the same time, they may constitute interference in the rights of the individual, which constantly imposes the need to balance private and public interests. To maintain this balance, Moldovan legislation has undergone significant changes in the conditions for ordering special investigative measures, which are essential safeguards against possible abuses. The role of doctrine is significant in interpreting and analyzing these legal changes, providing relevant explanations, and formulating reasoned proposals for improving national legislation, which is also the objective of the present research.

Keywords: *special investigative activity, special investigative measures, special investigative techniques, criminal trial, criminal prosecution, conditions, investigative officer.*

JEL Classification: [K 14]

1. Introduction

Special investigations are essential tools for protecting constitutional values, but at the same time, they can constitute interferences with individual rights, which constantly require a balance to be struck between private and public interests. To maintain this balance, the legislation of the Republic of Moldova in 2023 underwent significant changes in terms of the conditions for ordering special investigative measures, which are essential safeguards against possible abuses. The role of doctrine is significant in interpreting and analyzing these legal changes, providing relevant explanations, and formulating reasoned proposals for improving national legislation, which is also the objective of the present research.

2. The methodology of the study includes traditional research methods: logical, grammatical, analysis and synthesis, deduction and induction, observation and comparison. Based on the analysis of relevant material (national and foreign

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legislation, literature, ECHR judgments and decisions of national courts, and other relevant material), conclusions and proposals are drawn.

3. Results and discussion

The term "condition" in literary interpretation is the meaning of someone's circumstance, clause, event, or social situation¹. In the doctrinal interpretation, both national (Botnari, 2022: 67), and abroad (3AXAPIQEБ 2015:156-168), this term has the meaning of legal requirement, rule, or norm. Combining these two sources of knowledge, it seems that it would be correct to *understand a condition for carrying out special investigative measures as a factual circumstance laid down by a legal rule*.

The legislation of the Republic of Moldova provides for the conditions for carrying out special investigative measures in two separate laws: Law No 59/2012², which sets out the conditions for carrying out special investigative measures outside the criminal proceedings, and the Code of Criminal Procedure³, which sets out the conditions for carrying out special investigative measures within the criminal proceedings.

In Article 133 para. (1) of the CCP, the legislator has laid down three conditions for ordering and carrying out special investigative measures: "1) criminal proceedings are initiated about the preparation or commission of a serious, particularly serious or exceptionally serious crime, with the exceptions set out in this section; 2) the action is necessary and proportionate to the restriction of fundamental human rights and freedoms; 3) otherwise it is impossible to achieve the purpose of the criminal proceedings and/or the work of administering evidence may be considerably prejudiced".

In Article 19 para. (2) of Law no. 59/2012 also provides three conditions for special investigative measures outside the criminal proceedings: a) the fulfillment of the tasks of this law is impossible by other means; b) the action is necessary and proportionate to the restriction of fundamental human rights and freedoms; c) a legitimate aim is pursued.

The legislator's requirement in both pieces of legislation is that special investigative measures shall not be authorized and shall not be carried out unless the above conditions are cumulatively met.

The existence of a criminal prosecution about the preparation or commission of a criminal offense is a new condition for national law, before the legislative changes in 2023, the requirement of reasonable suspicion of the

¹ DEX online. Available: <https://dexonline.ro/definitie/condi%C8%9Bie> (visited on: 15.01.2024)

² Law on special investigative activity: no. 59 of 29 March 2012. In: Official Monitor of the Republic of Moldova, 2012, no. 113-118, 373.

³ Code of Criminal Procedure of the Republic of Moldova: no. 122 of 14-03-2003. In: Official Monitor of the Republic of Moldova, 2013, no. 248-251 art. 699.

preparation or commission of a criminal offense was imposed. This condition is also reflected in Article 134(1) of the CCP, stating that special investigative measures may be carried out in the course of criminal proceedings, which means that after the end of this procedural phase, no special investigative measures may be ordered. An exception to this rule is the provisions of Art. 134 para. (2) of the CCP, according to which only two special investigative measures may be ordered and carried out from the beginning of the criminal proceedings until the start of the criminal proceedings, namely "identification of the subscriber or user of an electronic communications network" and "collection of information".

It is worth noting that the term "*reasonable suspicion*" has raised serious discussions both in judicial practice⁴ and in academia (Dolea, 2020: 426; Pântea, 2016:14-18; Udriou, 2009:88-89), even becoming the subject of doctoral research (Pântea, 2018: 213).

The term "*reasonable suspicion*" is defined in Article 6(4)³) of the CCP as "suspicion arising from the existence of facts and/or information which would convince an objective observer that an offense attributable to a specific person or persons has been committed or is being prepared and that there are no other facts and/or information which would make the offense less criminal or prove that the person was not involved".

However, scientifically, it has been concluded that "reasonable suspicion, as an institution of criminal procedural law, is not identical with "reasonable suspicion" in the field of special investigative activity, or this activity concerning the criminal process is subsidiary, being governed by special principles and carried out to achieve the specific tasks set out in Law No 59/2012 (Pântea, 2018: 174).

During the working sessions on the draft amendment to the legislation on special investigative activity, there were contradictory discussions on the term "reasonable suspicion" as a mandatory condition for carrying out special investigative measures, and the legislator finally decided to replace it with the expression "criminal prosecution is initiated".

The change raises questions about how this change will work in practice. At the moment, our observation reveals a discrepancy between this condition for carrying out special investigative measures - namely that the prosecution be initiated "concerning the *preparation or commission of a criminal offense*" (s.n.) and the provisions of Art. 274 CC. According to these, the procedure for initiating criminal proceedings presupposes the existence of "at least a reasonable suspicion that an offense has been committed" (s.n.).

⁴ The case of Musuc v. Republic of Moldova. Application No 42440/06. Judgment of the ECtHR of 06.11.2007, final of 06 February 2008 (Strasbourg). Available: <https://hudoc.echr.coe.int/?i=001-83081> § 31 (visited on:13.02.2024); Aquilina v. Malta. Application No. 25642/94. ECtHR judgment of 29 April 1999 (Strasbourg). Available: <https://hudoc.echr.coe.int/?i=001-58239> § 52 (visited on:13.02.2024); Erdagöz and Others v. Turkey. Application No. 127/1996/945/746. ECtHR judgment of 22 October 1997 (Strasbourg). Available: <https://hudoc.echr.coe.int/?i=001-58108> § 51 (visited on:13.02.2024).

There is a significant difference between situations where the offense is in the preparatory or committal stage, on the one hand, and where the offense concerns a committed, i.e. completed, act, on the other. In the first case, the present tense is used, while in the second case, the past tense is used. From a criminal law point of view, these situations are distinct, at least in the case of preparation for the offense there is always the possibility that the offense will not take place. This is due to the circumstance that the offense may not be committed because of the intervention of the voluntary renunciation of the offense, a circumstance which excludes the criminal nature of the act (Glavan, 2008: 93-96).

The legislator likely had these aspects in mind when establishing the difference between the commencement of criminal proceedings and the commencement of prosecution (Glavan, 2022: 92-106). According to Art. 1 para. (1) of the CCP, "Criminal proceedings shall be deemed to have begun when the competent body is notified of the *preparation or commission of an offense*_(s.n.)". On the other hand, the criminal prosecution, according to Art. 274 para. (1) of the CCP, is initiated only if it is presumed that *a crime has been committed*_(s.n.), i.e. the crime is considered to have occurred in the past. Therefore, it cannot be argued that an offense has been committed when it is only at the preparatory stage.

To be understood correctly, we do not see a problem in the fact that the prosecution should start with the preparation or commission of a crime, according to the condition of carrying out special investigative measures stipulated in Article 133 para. (However, the problem arises in the provision of Art. 274 para. (1) of the CCP, which provides that criminal proceedings shall commence if it is established that a crime has been committed.

Our proposal for a possible legislative amendment in this regard would be that the provisions of Art. 274 para. (1) of the CCP be brought into line with Art. 134 para. (1) CP. Thus, the prosecution should start with the preparation or commission of an offense, including where an offense has been found to have been committed. In the absence of such harmonization, we do not see the rationale of establishing the condition that criminal proceedings be initiated with the preparation or commission of an offense (Art. 134 para. (1), para. 1 of the CCP), as long as Art. 274 para. (1) of the CCP states that prosecution begins not when an offense has been prepared or committed, but when an offense has been committed.

This proposal makes sense especially as in Art. 19 para. (2) and in Art. 20 para. (11) of Law no. 59/2012 provides that special investigative measures carried out outside the criminal proceedings shall cease from the moment when it is established that a crime has been prepared, and committed, including that a crime has been committed, following the procedure provided by the Code of Criminal Procedure. If in such cases the criminal prosecution will not start, then a discrepancy in the continuity of control of the criminal act is formed: special investigative measures carried out outside the trial will cease, and those admitted during the criminal prosecution will not start. We do not see the point of a lack of harmony between the rules concerned.

The phrase "necessary and proportionate to the restriction of fundamental human rights and freedoms" in the second condition of Art. 133 (1) CPP, corresponding to Art. 19 (1) CPP, is not included in the second condition of Art. 133 (1) CPP. (3) of Law no. 59/2012 means that to be compatible with the European Convention, the interference must correspond *inter alia* to a pressing social need and be proportionate to the legitimate aim pursued. The European Court examines *specifically* whether the interference with the right protected by the European Convention, which is provided for by law and necessary in a democratic society⁵, also satisfies the requirement of proportionality with the aim pursued, in terms of maintaining a fair balance between the interference and the aim (Dolea, 2020: 428)⁶.

It has been pointed out in the doctrine that many commentators on the European Convention fail to understand that there is no well-established case law on the requirement "necessary in a democratic society". The "necessity" requirement is almost always brought back to the issue of proportionality, in some cases complemented by the requirement that the reasons for interference be relevant and sufficient⁷.

Special investigative measures, which involve interference in the rights and privacy of individuals, are subject to strict criteria by Article 8(8). (2) of the ECHR. The European Court applies a detailed analysis to assess the legality and proportionality of these measures. First, the Court checks whether the relevant legislation and state practice provide sufficient safeguards to prevent abuses. This is essential as there must be adequate safeguards to ensure that the special investigative measures are applied fairly and equitably. Secondly, the European court looks at the specific circumstances of the case to determine whether the interference was proportionate to the aim pursued⁸. This "proportionality test" involves assessing several key factors:

⁵ Any measure of covert surveillance that does not meet the criterion of strict necessity could be considered abuse by the authorities (Roman Zakharov v. Russia. *op. cit.* § 232; Szabó and Vissy v. Hungary. Application Nos. 11327/14 and 11613/14. ECtHR judgment of 13 October 2015, final as of 13 January 2016. Available: <https://hudoc.echr.coe.int/?i=001-157765>, § 72-73) (visited on: 15.02.2024).

⁶ Handyside v. United Kingdom. Application No. 5493/72. ECtHR judgment of 07.12.1976. (Strasbourg). Available: <https://hudoc.echr.coe.int/?i=001-57499>, § 48-49 (visited on: 20.10.2023); Klass v. Germany. Application No. 5029/71. ECtHR judgment of 06.09.1978. (Strasbourg). Available: <https://hudoc.echr.coe.int/?i=001-57510>, § 42 (visited on: 20.10.2023); Silver and Others v. United Kingdom. Application No. 7136/75. ECtHR judgment of 25.03.1983. (Strasbourg). Available: <https://hudoc.echr.coe.int/?i=001-575779>, § 7 (visited on: 20.10.2023).

⁷ DE HERT, P. Balancing security, and liberty within the European human rights framework: A critical reading of the Court's case law in the light of surveillance and criminal law enforcement strategies after 9/11. In: *Utrecht Law Review*, vol. 1, 2005. p. 68-96. (visited on: 20.10.2023). Available: <https://utrechtlawreview.org/articles/10.18352/ulr.4>, p. 92.

⁸ Camenzind v. Switzerland. Application No 136/1996/755/954. ECtHR judgment of 16 December 1997 (Strasbourg). Available: <https://hudoc.echr.coe.int/?i=001-58125>, § 45-47 (visited on: 20.10.2023).

1. The seriousness of the offense: the Court takes into account the seriousness of the offense which justifies the authorisation of the special investigative measure. The interference must be reasonable and justified about the alleged nature of the offense.

2. Manner or circumstances in which the warrant was issued: the Court examines the circumstances in which the order authorizing the special investigative measure was issued. It takes into account whether other evidence was available at the time the warrant was issued and whether there were less intrusive alternatives for obtaining the necessary information.

3. Content and purpose of the order: The content and exact purpose of the home entry order are subject to review to determine whether it was properly issued and whether it was proportionate to the purpose of the investigation.

4. Impact mitigation measures: The court checks whether measures have been taken to minimize the impact of the interference on the data subject's right to home. This may include ensuring confidentiality, protecting personal data, and minimizing disruption.

5. Reputational repercussions: Possible repercussions on the reputation of the person affected by the interference are taken into account in the proportionality assessment of special investigative measures⁹.

The third condition is laid down in Art. 133 para. (1) of the CCP refers to the carrying out of special investigative measures only if the purpose of the criminal proceedings could not be achieved in any other way and if the work of administering evidence could be considerably prejudiced. We note that the legislator has conditioned the performance of special investigative measures according to two situations: the first implies the absence of other ways of achieving the purpose of the criminal proceedings, and the second, which is concurrent with, but also an alternative to, the first condition, concerns situations where the taking of evidence could be prejudiced.

The purpose of criminal proceedings is indicated in Art. 1 para. (2) of the CCP, and the fact that the legislator has made the special investigative measure conditional on the impossibility of achieving it in any other way indicates extremely difficult situations. These are situations in which all possible avenues have been

⁹ Chappell v Great Britain. Application No 10461/83. ECtHR judgment of 30 March 1989 (Strasbourg). Available: <https://hudoc.echr.coe.int/?i=001-57459>, § 60 (visited on: 15.01.2024); Camezind v. Switzerland. Application No. 136/1996/755/954 Judgment of 16 December 1997 (Strasbourg). Available: <https://hudoc.echr.coe.int/?i=001-58125>, § 46 (visited on: 15.01.2024); Silver and Others v. United Kingdom. Application No. 7136/75. ECtHR judgment of 25.03.1983. (Strasbourg). Available: <https://hudoc.echr.coe.int/?i=001-57577>, § 97 (visited on: 20.10.2023); Handyside v. United Kingdom. Application No. 5493/72. ECtHR judgment of 07.12.1976. (Strasbourg). Available: <https://hudoc.echr.coe.int/?i=001-57499>, § 48-49 (visited on: 20.10.2023); Klass v. Germany. *op. cit.*, § 42; Buck v. Germany. Application No. 41604/98. ECtHR judgment of 28 April 2005, final of 28.07.2005. (Strasbourg). Available: <https://hudoc.echr.coe.int/?i=001-68920>, § 45 (visited on: 20.10.2023).

exhausted, in the sense that the prosecution has become useless for the achievement of this aim, and, as a last resort, special investigative measures are resorted to. The use of the special investigative measure in this case comes as a lifeline in situations where there is no other solution.

As regards the situation where the taking of evidence could be considerably prejudiced by using only traditional evidentiary procedures, we must qualify this situation. The meaning of the legal provisions on the authorization of special investigative measures is to allow them to be carried out only in situations where evidence could be obtained with difficulty through the special efforts of the prosecution (Suian, 2021: 82).

Such a provision indeed runs the risk of abuse by prosecuting authorities, who might easily consider that prosecution would involve particular difficulties, simply by invoking the risk of prejudicing the evidence process. This is a real problem, but it should not be left to the legislator to solve it, but there is a need for more rigorous control by the prosecutor and the investigating judge over the conduct of special investigative measures in these situations, to avoid any abuse. If there is a particular danger that the taking of evidence would be seriously prejudiced and this situation has not arisen intentionally or through negligence on the part of the prosecution, we consider that the condition under consideration should be met (Udroiu, 2009: 168).

According to Article 133(2) of the CCP, special investigative measures may be applied to a suspected or accused person or to another person who contributes to the preparation or commission of the offense, or who receives or transmits money, goods, or information relevant to the criminal case, and there is evidence of his or her involvement.

Special investigative measures are also admissible concerning the victim, the injured party, civil party, witness, or relative of the persons concerned when: 1) there is an imminent danger to their life, health, or liberty; 2) it is necessary to prevent the crime; 3) there is a clear risk of irreparable loss or distortion of evidence. Such measures shall be ordered only with the written request or agreement of the persons concerned. The agreement to order the measures shall be signed if the initiator is the law enforcement body; the prior request shall be written when the initiative to order the measure comes from special subjects. The special investigative measures thus ordered shall cease as soon as the reasons for ordering and authorizing them disappear or if a request has been submitted by the person who requested the special investigative measures (Article 133 (2) CCP).

We note that the legislator, through these provisions, has extended the range of measures that can be ordered against the victim, the injured party, the civil party, the witness, or the relative of the persons concerned. Previously, for such situations, the law allowed the ordering of only one measure, namely "Interception and recording of communications" (art. 132⁸ para. (4) CCP).

The legislator in the provision of Article 133 (2) CCP did not make any derogation from the conditions indicated in Article 133 (1) CCP, which could be

interpreted as meaning that the MSI is disposed of in respect of special subjects only if it is presumed that the offense will not be of the light or less serious category. On the other hand, the legislator has provided for exemptions from Art. 133 para. (1) CPP about ordering and carrying out measures of interception of communications (Art. 138¹ CPP), monitoring or control of financial transactions and/or access to financial information (Art. 138³ CPP), collection of information from providers of electronic communication services (Art. 138⁴ CPP), accessing and/or intercepting computer data (art. 138⁵ CPP), controlling the transmission or receipt of money, services or other material or non-material values demanded, accepted, extorted or offered (art. 138⁷ CPP), these measures are also allowed in the case of minor or less serious offenses. Therefore, it can be said that these derogations from the conditions of Art. 133 para. (1) CCP is also valid concerning the provisions of Art. 133 para.(2) CCP.

In terms of comparative law, the Romanian Code of Criminal Procedure (Art. 140 para. (9) of the CCP) has made an exception to the general condition regarding the nature of the offense that is the subject of the special investigative measures, allowing the interception of communications or their recording, as well as any type of communication made by the injured person by any means of communication regardless of the nature of the offense (Neagu, 2020: 535).

As regards the condition stipulated in Art. 19 para. (2) of Law no. 59/2012, which refers to the impossibility of achieving the tasks of this law by other means, it should be noted that this refers to the tasks provided for in Art. 2 of the same law. Of course, the tasks are diverse and are not specific only to the special investigative activity, which means that priority will be given to measures with a less intrusive degree of the person's rights with the special investigative measures.

The necessity and proportionality as a condition for carrying out special investigative measures have been mentioned above and the comments remain valid in this case.

Concerning the legitimate purpose pursued as a condition for carrying out special investigative measures outside criminal proceedings, it should be noted that special investigative measures should not be allowed for purposes other than those provided for in this Law.

In Article 1 para. (1) of Law 59/2012 lists the purposes of special investigative activity, including the collection of information necessary to prevent crime, and ensure public order and security in places of detention. By logical deduction, special investigative measures as elements of special investigative activity should not be carried out for purposes other than those mentioned in the law.

Under national law, special investigative measures may be carried out only after appropriate authorization, i.e. when there is an act of disposition issued, under the specific jurisdiction, by the investigating judge (Art. 134 para. (1) p. 1) CCP and Art. 27 para. (1) p. 1) of Law no. 59/2012), by the public prosecutor (Art.

134 para. (1) p. 2) CPP and Art. 27 para. (1) p. 2) of Law no. 59/2012), or by the head of the specialized subdivision (Art. 27 para. (1) item 3) of Law no. 59/2012).

From the legal provisions, two procedures for authorizing special investigative measures can be distinguished: authorization in ordinary situations and authorization in exceptional situations.

The concept of "ordinary situations" must be understood in contrast to the concept of "exceptional situations" referred to in Article 135(1). (6) of the CCP, according to which exceptional situations are those situations where the delay in obtaining authorization from the investigating judge would lead to the loss of evidentiary information or would imminently endanger the security of persons.

Contrary to this, the situation considered "usual", in which special investigative measures may be requested, is that in which the context of the investigation allows a possible delay in obtaining authorization from the investigating judge without causing loss of evidentiary information or endangering the immediate safety of individuals. However, it must be recognized that these terms - "delay", "loss of evidential information" and "immediate danger" - are not clearly defined and require individual assessment on a case-by-case basis.

Also, what may be considered a "delay" in one situation may be different from what is considered a "delay" in another situation. For example, a four-hour delay (Art. 305 para. (3) CCP) could be considered a "delay" in one case, but not in another. Likewise, what might appear to be a situation that would lead to "loss of evidentiary information" or "immediate danger to the security of persons" in one case may not be valid in another, depending on the specifics of each particular criminal investigation.

The phrase "loss of evidentiary information" requires the use of the authorization procedure only in exceptional situations, such as those where a delay of a few minutes or hours could lead to the loss of data essential for the detection of criminal activities or the identification of participants in such activities, or for the evidence of other essential elements that could contribute to a thorough investigation of the case. In the absence of such an assumption, where a wait of a day or even several days for authorization is possible without compromising the investigation, we may consider that we are in a situation that is not exceptional (Tudoran, 2012: 90).

Authorization in ordinary situations of special investigative measures takes place both within and outside criminal proceedings, in fact outside criminal proceedings authorization of special investigative measures takes place only in ordinary situations, authorization in exceptional situations being specific only to the criminal procedural framework¹⁰.

¹⁰ CC Decision no.8 of 09.11.2015 on the inadmissibility of application no.41g/2015 on the exception of unconstitutionality of Article 4(4) of Law no. 333 of 10 November 2006 on the status of the criminal prosecution officer.

According to the law, special investigative measures are authorized by the following documents: 1) Resolution - special investigative measures authorized by the head of the specialized subdivision; 2) Order - special investigative measures authorized by the prosecutor; 3) Closure - special investigative measures authorized by the investigating judge.

Special investigative measures referred to in Article 27 (2) shall be authorized by the head of the specialized subdivision by *Resolution*. (1) item 3) Law no. 59/2012, this being applied directly on the order of the investigating officer. The previous wording of Law No 59/2012 provided that the measures shall be authorized by the head of the specialized subdivision 1) ex officio, or 2) at the request of the investigating officer, the prosecuting officer, or the prosecutor. The current wording has retained only one way of authorizing such measures - at the request of the investigating officer.

Special investigative measures both within and outside the criminal proceedings are authorized by the Prosecutor's *Order*. The procedure for the authorization by the prosecutor of special investigative measures outside criminal proceedings is governed by the provisions of Article 20(2) of the Ordinance. (3) of Law no. 59/2012. According to these provisions, the prosecutor shall issue the order authorizing the measure based on the reasoned request of the head of the specialized subdivision, indicating the arguments justifying the impossibility of carrying out the tasks of this law in another way, the necessity and proportionality of carrying out special investigative measures and the expected result. The order on order to carry out special investigative measures and the materials confirming the need to carry out such measures shall be attached to the application. The law does not specify who issues the order for special investigative measures, presumably only the investigating officer and the head of the specialized subdivision. Therefore, we note that, unlike the previous procedure for authorizing special investigative measures, the prosecutor no longer has the right to authorize measures ex officio, nor can the prosecution officer submit requests to the prosecutor to authorize special investigative measures.

The procedure for authorizing a special investigative measure in criminal proceedings differs from that outside criminal proceedings. According to Article 135 para.(1) of the CCP, special investigative measures are carried out based on a reasoned order of the prosecutor or the criminal investigation officer¹¹, issued, as the case may be: 1) at the request of the investigative officer; 2) ex officio; 3) at the

¹¹ According to the provisions of Art. 135 para.(2) of the CPC "The order on the order for the special investigative measure shall contain, in addition to the elements provided for in Art. 255, the special investigative measure ordered to be carried out, the identification data of the person in respect of whom the measure is ordered to be carried out if known, the evidence justifying the interference in private life, the mention of the involvement of persons whose identity constitutes a state secret, the identification data of the investigative officers appointed to carry out and record the special investigative measure, as well as other data that are important for the ordering, authorization and carrying out of the special investigative measure".

written indication of the prosecutor; 4) at the request of the parties; 5) to execute requests for letters rogatory from law enforcement bodies of other states, at the request of international organizations or the request of European Union agencies, following international treaties to which the Republic of Moldova is a party.

At the same time, Article 135 (3) of the CCP stipulates that the prosecutor shall authorize special investigative measures provided for in Article 134 (1) (2) of the CCP ex officio or upon a reasoned request of the prosecution officer to which the order issued in this regard shall be attached.

Conclusions

This study has made it possible to highlight the importance and topicality of the correct understanding of the legal rules on the conditions for carrying out special investigative measures in the legal regulation of the Republic of Moldova, which in turn are essential guarantees against possible abuses. The interpretations and analysis of the legal norms on the conditions for ordering and carrying out special investigative measures claim to be relevant for the academic environment and practitioners engaged in special investigative activity.

It was found that the term condition for carrying out special investigative measures presupposes a circumstance provided for by a legal rule. The study in question also points out that the legislative amendments of 2023, which replaced the expression "reasonable suspicion of the preparation or commission of a criminal offense" with the expression "criminal proceedings have been instituted concerning the preparation or commission of a criminal offense", restrict the possibility of ordering special investigative measures strictly within the limits of the criminal proceedings, the exception to this rule being the provisions of Article 134 para. (2) of the CCP, according to which only two measures may be ordered and carried out before the initiation of criminal proceedings, namely "identification of the subscriber or user of an electronic communications network" and "gathering of information".

Our observation also highlights the discrepancy between this new condition for ordering and carrying out special investigative measures and the provisions of Art. 274 of the Criminal Procedure Code establishes the start of the criminal prosecution, which may begin with the existence of a reasonable suspicion that a crime has been committed, but not with the existence of a reasonable suspicion that a crime is being prepared or committed (this being the moment of the start of the criminal proceedings - Art. 1 para. (1)). In this context it is proposed that the provisions of Art. 274 para. (1) the CCP should be brought into line with Art. 133 para. (1) (1) CPP.

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