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PROTECTION OF PERSONAL DATA IN CRIMINAL PROCEEDINGS

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CONCEPTUAL GUIDELINES OF THE RESEARCH

Topicality of theme. It is dictated by the entry into force of the EU Regulation 679/2016 on the protection of natural persons with regard to the processing of personal data and the free movement of such data, as well as the EU Directive 680/2016, on the protection of natural persons regarding the processing of data with personal character by the competent authorities for the purpose of preventing, detecting, investigating or prosecuting crimes or executing punishments, regarding the free circulation of this data and repealing Framework Decision no. 977/2008/JAI of the Council, but also of the fact that there was not and is not an analysis in the Republic of Moldova and Romania of the protection of personal data in the criminal process. Within the criminal proceeding, we can face technical and normative issues concerning submission of solutions, collection of data, storage of data obtained inside the criminal proceeding, storage of data obtained as a result of the application of the judicial control measure within the criminal proceeding, as well as storage of data resulting from criminal convictions. The existing regulatory framework must be analyzed and evaluated in order to reduce the unauthorized disclosure of Personal Data.

Description of the situation in the domain of research and identification of the research problem.

EU Regulation 679/2016 and EU Directive 680/2016 provide an updated legal framework based on responsibility and Personal Data protection within the criminal proceeding, which thus require the creation of a unitary framework for the application and compliance with the rights conferred by Personal Data Protection legislation for the Parties involved in the criminal proceeding. In this regard, Personal Data Protection legislation must provide more rights to Parties by applying the provisions of the Criminal Procedure Code and control facilities different from the ones over their own data, therefore more obligations and responsibilities for the organizations that process Personal Data. Possibilities must be identified within the the criminal proceeding, on the one hand, for the Parties to be able to verify the manner in which their Personal Data is collected and processed and to be able to use Personal Data in a controlled manner, and on the other hand, for the authorities to control and protect Personal Data. In order to deal with the complexity of the types of threats regarding the security of Personal Data and because this security must be permanently ensured, the shortcomings must be identified in order to establish, implement and maintain a security management system for the Personal Data.

The important scientific research problem consists in the development of the conceptual framework regarding the processing of Personal Data in general and the

protection of Personal Data within the criminal proceeding, in particular, according to the latest legislative amendments. Due to the latest legislative acts, an analysis of the way in which activities are carried out within the criminal prosecution and trial stage - from the Republic of Moldova and Romania - was required, fact that allowed the identification of shortcomings regarding the application of the Personal Data Protection legislation within the criminal proceeding, being followed by norms and application methods in order to ensure the protection of Personal Data of the Parties.

The purpose of the paper is to perform a complex research of the legislation, doctrine and jurisprudence concerning the protection of Personal Data within criminal proceedings of the Republic of Moldova and Romania, with the final purpose of evaluating the opportunity to consolidate the legal framework and to establish good practices in the application practice.

In order to achieve the purpose of the present research, the following objectives were established:

- determination of the degree of study for Personal Data Protection within the criminal proceedings;

- determination of the the concept of Personal Data Protection;

- elucidation and analysis of the standards concerning Personal Data Protection established through international and regional documents;

- identification of the similarities and differences of the procedural - criminal regulation for Personal Data Protection in the Republic of Moldova and Romania;

- elucidation and characterization of the particularities of Personal Data Protection in the criminal prosecution phase and the trial phase, as well as the evaluation of the quality of the procedure norms that ensure Personal Data Protection during the respective stages of the criminal proceedings;

- determination of the methods to access Personal Data within the criminal proceeding of the Parties depending on the person's agreement or judicial authorization;

- identification of the legislative norms that would approve the violation of data confidentiality within the criminal proceedings in the Republic of Moldova and Romania;

- argumentation of the general conclusions and issuing of recommendations of Lex Ferenda nature concerning the perfection of the procedural-criminal norms that guarantee the protection of Personal Data for the Republic of Moldova and Romania, so that they correspond to the quality requirements.

Research hypothesis. The legislation for Personal Data Protecton within criminal proceedings from the Republic of Moldova and Romania that ensures the protection of Personal Data within criminal proceedings, representing one of the multiple aspects of the fundamental right to private life that must be protected, has to comply with the International Treaties on Human Rights, the Constitution of the Republic of Moldova and Romania, the Decisions of the European Court of Human Rights and the Constitutional Court, fact that stimulated us to evaluate the quality of procedural norms, starting from the reiteration and analysis of the standards from the respective domain.

Synthesis of the research methodology and justification of the chosen research methods.

In order to fulfill the established objectives, the scientific research methods included the study of specialized scientific works and publications, the relevant domestic and foreign normative framework, including the framework from the EU area and the capitalization of knowledge, skills and experiences regarding the use of Personal Data. At the same time, some examples mentioned in the studied publications and cases from the ECtHR and CJEU jurisprudence were highlighted during the study process, precisely for the observation of various violations of private life and the understanding of the current need faced by the states.

A series of specific methods dedicated to legal research were applied to the analysis of the thesis, such as: the logical method, the analytical method, the historical method, the comparative method, the empirical method.

The judicial practice research methodology offered the possibility of documenting the ways to protect Personal Data, within the criminal prosecution and trial phase, according to the new legislative framework, based on the empirical study.

The scientific novelty and originality is marked by the fact that the present Thesis represents the first paper at the national level in the Republic of Moldova and Romania that covers the protection of Personal Data within criminal proceedings, with an extensive analysis of the legal provisions and internal practices in the domain, but also from abroad. Through the alignment with the European standards, starting from domestic and international materials and publications, the chosen theme was researched, being followed the processing and protection of Personal Data within criminal proceedings in order to consolidate the criminal procedure norms.

The theoretical significance of the study resides, on the one hand, in the systematization of the works in the domain and the laws in force both in the country and

abroad by highlighting the most important ideas related to the object of study. At the same time, the research was imposed by analyzing the controversial aspects and formulating some own ideas regarding the processing and protection of Personal Data in general, especially within the criminal proceedings. The study carried out in the paper allows the establishment of the directions and trends of the procedural-criminal policy promoted in the Republic of Moldova and Romania on the line of ensuring and performing the right to protect Personal Data.

Applicative value of the Thesis. Practical aspects concerning Personal Data Protection within criminal proceedings were covered in order to highlight the technical and procedural difficulties faced by law enforcement authorities. The conclusions with the highlighted proposals can represent a support both for the persons and the enforcement authorities that apply procedural - criminal rules as Personal Data Operators, as well as for the persons participating within the trial, regardless of their procedural quality. Highlighting the guiding principles of Personal Data Protection can be of real use not only within criminal prosecution and trial phase, but also in training specialists in the domain of reference. By developing the thesis, interpreting the rules in force, justifying the proposals to change some rules of the Criminal Procedure Code, it is possible to obtain greater confidence in the justice act.

Implementation of scientific results. The undertaken research is able to contribute to the effective protection of the right to private life in general and to ensure the protection of Personal Data within the practice of applying criminal procedure norms. The results of the study were reflected by the author in the articles published in various magazines, collections of articles. The Thesis analyzed in the paper were presented and discussed in a series of national and international conferences (17), published in 21 scientific papers and present professional interest for practitioners (Investigating Officers, Criminal Prosecution Officers, Prosecutors and Judges), also being useful for training specialists in the domain of reference.

Approval of results. The results obtained during the elaboration of the Thesis were debated within several national and international scientific forums, as follows:

1. International Scientific Conference "Exploration, education and progress in the third millennium", 2019 edition, Galati, Romania;

2. Scientific - Practical Conference "Special Investigation Activities and Human Rights Compliance: Current Doctrine, Legislation and Practice Issues", 2019 edition, Chisinau, Republic of Moldova;

3. Doctoral Candidates' Scientific Conference "Contemporary Trends in the Development of Science: Visions of Young Researchers", editions 2019, 2020, Chisinau, Republic of Moldova;

4. National Conference of Law Doctoral Candidates, 2019 edition, Craiova, Romania;

5. Scientific - Practical Conference "The Role of Science in Reforming the Legal and Political-Administrative System", 5th Edition, 2019, Cahul, Republic of Moldova;

6. International Scientific Conference "Promotion of Social and Economic Values in the Context of European Integration", 2019 edition, Chisinau, Republic of Moldova;

7. National Scientific Conference with International Attendance, "Contemporary Concerns of Criminology, Law and Psychology in Pandemic Conditions", 2020 edition, Chisinau, Republic of Moldova;

8. Scientific - Practical Conference with International Attendance: "State, Security and Human Rights in the Digital Era", 2020 edition, Chisinau, Republic of Moldova;

9. National Conference concerning Personal Data Privacy and Protection, Romania 2021, Association of Specialists in Personal Data Privacy and Protection from Romania (ASCPD);

10. International Inter University Scientific Conference of Doctoral Candidates: "Prevention and Fight against Crime - Problems, Solutions and Perspectives", 2021, 2022 editions, "Stefan cel Mare" Academy, Chisinau, Republic of Moldova;

11. Scientific Conference of Doctoral Candidates, "Contemporary Research and Evaluation Methodologies", 2021 edition, Chisinau, Republic of Moldova;

12. National conference of Students, Master Candidates and Law Doctoral Candidates, 2021 edition, Sibiu, Romania;

13. International Conference of Law Doctoral Candidates, 2021 edition, Timisoara, Romania;

14. Biennial International Conference "The Legal System between Stability and Reform", 2021 edition, Craiova, Romania;

15. International Scientific Conference "The role of Science in Ensuring National Security and Anti-Crime activity", 2021 edition, Chisinau, Republic of Moldova.

Publications on the topic of the Thesis – 21 scientific publications

The expected results represent the fulfillment of the objectives and providing answers to the research questions.

Volume and structure of the thesis: basic text 181 pages, annotation in Romanian, English and French, list of abbreviations, introduction, four chapters divided into paragraphs, general conclusions and recommendations, bibliography from 378 sources, appendices.

Keywords: personal data, data protection, private life, criminal process, rules, measures, data collection, disclosure of personal data, criminal prosecution, judgment.

CONTENT OF THE THESIS

The content of the Thesis is preceded by the *Introduction* that represents the beginning form of the actual research in which the following aspects are covered: actuality and importance of the researched theme, classification of the theme inside international, national and regional concerns, purpose and objectives of the Thesis, research hypothesis, synthesis of the research methodology and justification of the chosen research methods, presentation and analysis of chapter and paragraph structure, as well as approval and implementation of scientific results.

In ***Chapter I "ANALYSIS OF PUBLICATIONS CONCERNING THE PROTECTION OF PERSONAL DATA",*** consisting of two paragraphs, the need to analyze the scientific situation in the domain was demonstrated. The publications of the authors from Romania and the Republic of Moldova covered the protection of Personal Data "as a general subject", not within criminal proceedings. As a result, the analysis of Personal Data Protection in general was scientifically documented since there is a close connection with the application of Personal Data Protection within criminal proceedings. The publications of the authors Adrian Roșa, Constantin Lazari and Constantin Lazari, Bogdan Manolea, Sergiu Bozianu, Sârcu Diana și Rusu Valentin, Gheorghe Avornic și Veronica Mocanu, Natalia Rusu, Valeriu Băeșu, Alexandru Țărnă, Natalia Suceveanu, Aricov Gheorghii, Tatiana Vizdoagă, Nicolae Oboroceanu, Adriana Eșanu, Gabriela Alexandra Filip, Radu Carp and Simona Șandru, Gabriela Zanfir, Ion Craiovan, Daniel-Mihail Șandru and Irina Alexe, Irina Alexe and Constantin Mihai Banu, Grigore Gr. Theodoru and Ioan-Paul Chiș, Maria Năstase Georgescu, Jérôme Deroulez, Vera Jourová, Malika Ongaro, Nadege Rispoli, Domnița Vizdoagă, were subject to a detailed analysis.

The analysis of the publications thus highlights the actuality and importance of research concerning Personal Data Protection within criminal proceedings, the missing

scientific novelty of research that is debated in the other chapters of the present Thesis, the applicative nature of scientific publications in the application by identifying the issue of Personal Data Protection within criminal proceedings. At the same time, the specifics of the main statements concerning Personal Data provided by the authors consolidate the Personal Data Protection subject that we are debating within criminal proceedings. The analysis of the papers published in Romania and the Republic of Moldova, on the one hand, and the ones from other EU states, on the other hand, covering the subject of Personal Data Protection within criminal proceedings allowed us to draw the following conclusions:

1. The interest for the study of Personal Data Protection within criminal proceedings appeared and developed because no references were made and only the protection of Personal Data "as a general subject", not within criminal proceedings was studied over the years. The scientific researches published in The Republic of Moldova and Romania also covered the research of issues concerningn criminal proceedings, tangentially, but not particularly approaching the subject of Personal Data Protection. I did not manage to identify the publication of a monographic paper in any of the states mentioned above.

2. The publications of the reference authors highlight the following aspects:

- topicality and importance to research Personal Data Protection within criminal proceedings, the scientific novelty of the research, the applicability of the findings by identifying the issues related to Personal Data Protection within criminal proceedings;

- unsatisfactory level of protection for Personal Data;

- awareness of issues related to Personal Data Protection and the active settlement of the respective issues within the criminal process;

- disclosure of Personal Data must be controlled;

- performance of control over any Personal Data processing activity, verification of the processing purpose;

- obligation to protect Personal Data against abuse and to file complaints and obtain remedies in case operational data is not used in a proper manner;

- anonymization of Personal Data inside Court Decisions;

- defective application of national legislation by law enforcement authorities, especially police authorities;

- absolutely necessary reconfiguration of the entire operating procedure concerning Personal Data by the law enforcement authorities from the Republic of Moldova;

3. Complex research of the theoretical aspects is needed, as well as a research of the criminal proceeding norms from the Republic of Moldova, by similarity with the

criminal proceeding norms from Romania and a research of the jurisprudence of the European Court of Human Rights, the Court of Justice of the European Union and the Constitutional Courts, with reference to Personal Data Protection within criminal proceedings, in order to identify shortcomings, as well as to establish efficiency and the need to modify the legislation concerning criminal proceedings and judicial practice.

Chapter II"THE CONCEPT OF PERSONAL DATA" was positioned as a liaise between the analysis of the publications stated in Chapter I and the need for the analysis that was carried out on the subject of Personal Data Protection within criminal proceedings and in the trial phase specified in the other chapters, the right to private life and Personal Data Protection standards and the development of the legal framework concerning Personal Data Protection in the Republic of Moldova and Romania. We started from the definition of private life expressed by numerous authors at different stages. Even if it is stated and protected by the Constitution of the Republic of Moldova and Romania, private life is associated to privacy and the right to respect private and family life must follow and defend the individual against any arbitrary interference by public power, including inside criminal proceedings.

Within this context, the following cases were analyzed: CC ROM Decision No. 440 of July 8, 2014 concerning the exception of unconstitutionality of the provisions of Law No. 82/2012 concerning the retention of data generated or processed by providers of public electronic communications networks and providers of publicly available electronic communications services, as well as for the amendment and completion of Law No. 506/2004 concerning the processing of Personal Data and the protection of private life in the electronic communications sector, as well as Decision No. 1258 of October 8, 2009.

At the same time, the Decision of the Constitutional Court of the Republic of Moldova No. 22 of August 6, 2020 inside File No. 18g/2020 concerning the exception of unconstitutionality of some provisions of art. 226^{16} align. (11) from the Fiscal Code of the Republic of Moldova was analyzed.

In support of the need for protection, some cases from The European Court of Human Rights jurisprudence that cover a violation of private life were used as reference, respectively: *Bruggeman and Scheuten case v. Federal Republic of Germany* of 12.07.1977; The case of Căşuneanu v. Romania, (Decision No. 22018/10 of April 16, 2013); The case of Bédat v. Elveţiei (Decision of 29.03.2016); The case of Ben Faiza v. France (Decision of 08.02.2018); The case of Bruneu v. France (Decision of 18.09.2014); The case of O S. and

Merper v. Great Britain, (Decision of 4.12.2008); Cauza X v. Moldova, (Decision of 30.11.2021).

The European Court of Human Rights serves as a reference point in the application of the legislation in the Republic of Moldova and Romania. The conclusions of this chapter were summarized in the following manner:

1. In the most important international documents that guarantee and ensure the application of the fundamental rights and freedoms of the individual, there are no express rules concerning Personal Data Protection because information technologies were not developed at the time of adoption and access to various data was limited in that period. Subsequently, the right to Personal Data Protection was regulated at the European level through several regional documents.

2. The emergence of the new EU legislative framework, through the adoption of Regulation No. 679/2016 and Directive No. 680/2016 requires new changes to be made and created in the domain of criminal proceedings in order to fully ensure the protection of Personal Data.

3. The analysis of the definitions of private life expressed by numerous authors at different stages, being protected by the Constitution of the Republic of Moldova and Romania, allows us to conclude that private life is associated to privacy and the right to respect private life must aim to protect the individual against any interference arbitrariness of the public power, including within criminal proceedings.

4. The link between private life and Personal Data within criminal proceedings, in the sense of privacy in a broader sense, is given by the EU Committee of Ministers since 2013. It connects the right to confidentiality regarding personal identity with Personal Data Protectio as a guarantee to be applied within criminal proceedings.

5. The notion of "Personal Data" includes information related to the private life and family life of a natural person, strictly speaking, but also information concerning his.her activities, what they are about, as well as how his/her relationships work and his/her behavior. Therefore, it can be any information that leads to the identification of a natural person and causes a violation of his/her right to private life. Presented in this way, the concept of Personal Data within criminal proceedings therefore includes information available in any form, such as photographic, graphic, acoustic, biological video, etc. that involves updating the existing rules concerning the right of the natural person to Personal Data Protection and guaranteeing the correct processing of Personal Data by the decision factors.

Inside ***Chapter III"GUARANTEES FOR PERSONAL DATA PROTECTION WITHIN CRIMINAL PROCEEDINGS"***, the entire evolution of the pre-judicial stage centered on the theme of the present Thesis was debated in six paragraphs.

In the first paragraph, entitled ***"Confidentiality of the Criminal Prosecution as a Guarantee for Personal Data Protection",*** the confidentiality of the criminal prosecution applicable to Personal Data was discussed, which involves ensuring this guarantee throughout the procedural phase. Since "criminal procedural law is the legal and binding guide"[1] of the criminal proceeding, it must also be the legal and binding guide of Personal Data Protection for all Participants in the criminal proceeding and "establishing procedural guarantees for the proper application of the rights of the Participants inside the criminal proceeding represent precise tasks of the criminal procedural law"[2], which must be applied. Even if the criminal prosecution is applied differently in the Republic of Moldova and Romania, the beginning and the end have the same objective, respectively the collection or gathering of the necessary evidence regarding the existence of crimes, the identification of the perpetrator or the persons who committed a crime and the establishment of his/their criminal liability in order to determine whether or not it is necessary to order the referral to Court. So, within these limits we can talk about criminal prosecution but also about the need to guarantee confidentiality throughout this process from the perspective of Personal Data Protection.

On the one hand, Personal Data Protection implies exactly the right of the natural person to have those characteristics that lead to his identification protected and the correlative obligation of the state to adopt adequate measures in order to ensure effective protection and on the other hand, the object of the criminal prosecution is the collection of evidence regarding the criminal act and respectively the person who committed it, in other words nothing more than Personal Data Processing. The problem that was settled during the criminal prosecution phase consisted in identifying that balance between the investigative needs on the one hand and the interest of the person for Personal Data Protection, on the other hand, a problem that is otherwise a fundamental one for the whole criminal proceeding, regardless of the phase at which it is carried out and the right in question.

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[1] Dongoroz V., in collaboration, *Theoretical Explanations of the Criminal Procedure Code of Romania*, Vol. I, Bucharest, Academiei Publishing House, 1975, Apud Păvăleanu V. *Criminal Procedural Law*, Bucharest, Pro Universitaria Publishing House, 2016, p.55.

[2] Neagu I. (Coordinator), Damaschin M., Iugan A.V. *Criminal Procedural Law. General Presentation*, Bucharest, Universul Juridic Publishing House, 2018, p.278.

Within the framework of the second paragraph, ***"Interference Between the Access of the Parties to the File Documents and the Opportunity to Protect Personal Data"***, the limits that must be clearly defined regarding the application and protection of Personal Data have been established and argued. *The case of Jacobus Lorsé v. Holland*, (Judgment of January 27, 2004, No. 44484/98) contributed to the strengthening, understanding of the presented issues and the need to establish in the application of the Criminal Procedure Code for the protection and confidentiality of Personal Data of the Parties.

In the third paragraph, ***"Procedural Guarantees for Personal Data Protection inside Criminal Proceedings"***, examples from The European Court of Human Rights jurisprudence elucidated and established the ways of ensuring Personal Data Protection concerning the disclosure of video images to the mass-media, obtained as a result of the committed crimes. I discussed the cases where the photos of the authors, which also contain Personal Data, are displayed in the police headquarters, and not only, the case of disclosing the images accompanied by Personal Data to the mass-media, images that were obtained at the time of the criminal proceedings. In this context, The European Court of Human Rights jurisprudence was also examined in the matter: *Case of Elena Pop Blaga v. Romania*, (Judgment of The European Court of Human Rights of April 10, 2012); *The case of Toma v. Romania*, (Decision of The European Court of Human Rights of February 24, 2009); *The case of Amarada and others v. Romania*, (Decision of The European Court of Human Rights of 26.04.2016); *The case of Khuzhin and others v.* Russia (Decision of The European Court of Human Rights of October 23, 2008); *The case of Giorgi Nikolaishvili v. Georgia* (Decision of The European Court of Human Rights of 13.01.2009).

In the fourth paragraph**,** ***"Procedural Guarantees for Personal Data Protection within the Framework of Special Investigative Measures",*** we start from the question: *What happens to the obtained data and information containing Personal Data following the implementation of the special investigation measures provided for in the Republic of Moldova and special surveillance or research methods in Romania*? Obviously, given the nature of these activities, an appropriate balance is needed between investigative needs and appliance of the individual rights, especially the right to privacy through Personal Data. Many investigative tools are based on general rules concerning the search, acquisition, storage and possibility to disclose Personal Data / confidential information, which are usually obtained without the knowledge of the respective person. It was presented, by reference to obtaining information through these measures and methods, why it represents

an intrusive measure in private life. The conclusion is that what is crucial for the criminal proceeding is not only the possibility to carry out surveillance and interceptions in a proactive stage, but also to ensure that their use is proportionate, including from the perspective of Personal Data Protection.

In the fifth paragraph, ***"Measures for the Preservation of Confidentiality and the Protection of Aggrieved Parties and Witnesses within Criminal Proceedings"***, I examined the guarantees of the protection of Personal Data of the Aggrieved Parties and Witnesses. These guarantees are provided from the very first moment of the criminal proceeding, as stated by art.277, art.293, align. (5) from the Criminal Procedure Code from the Republic of Moldova.

The intentions to obtain the Personal Data of the Aggrieved Parties and Witnesses were analyzed for this purpose. As solutions, the examples from the European Court of Human Rights jurisprudence led to the method of application through protection norms.

In the sixth paragraph, ***"Guarantees for Personal Data Protection in the Framework of the Judicial Control of the Pre-Judicial Procedure",*** the procedural guarantees concerning the protection of Personal Data were studied, where the role is held by the Investigating Judge in the Republic of Moldova and by the Judge of Rights and Freedoms in Romania, as well as the institutions that exercise control during the criminal prosecution phase.

EU Directive 680/2016 brings clear benefits in the prosecution phase as a result of the fact that it enderlines the importance of maintaining limited access to Personal Data, as well as the importance of such data in preserving personal integrity and fundamental freedoms.

In the criminal prosecution phase, being a non-public and confidential rule stage, neither Personal Data, nor the information that leads to the identification of this data must be disclosed, thus imposing restrictive measures in order to protect it. For the most part, these guarantees are provided by the criminal procedural legislation of the Republic of Moldova and Romania.

As a conclusion to this chapter, I determined that the rules of criminal procedure in both countries (with some differences that do not change the essence) establish the following rules in this regard:

- Lack of publicity and confidentiality of the criminal prosecution;

- Anonymization of the identity data of the Participants inside the process, upon request or ex officio;

- Legal prohibition to disclose the Personal Data to which the Participants in the process had access and registration of written commitments, when required;

- Special conditions for hearing Witnesses and the Aggrieved Parties, which imply not only the change of identity data, but also the exclusion of the possibility of identifying these Participants based on their voice or image;

- Judicial control of evidentiary procedures that would allow interference in the sphere of private life and the collection of Personal Data;

- Closed sessions in front of the Investigating Judge for the examination of the procedures for authorizing some evidentiary procedures that would admit intrusions into the sphere of private life and the maximum limitation of the persons admitted in these procedures as well as at other sessions in front of the Judicial Control Court within the criminal prosecution;

- Prohibition for the Parties to have access to all materials of the criminal case before the end of the criminal prosecution (In Romania, the rule is access to all investigation materials; the exception is at the discretion of the Prosecutor, who has the right to temporarily restrict access);

- Judicial control of the claims of the Parties concerning access to the documents from the File in certain stages of the criminal prosecution;

- Limitation of access to some Personal Data even after the end of the criminal prosecution, based on the authorization ordered by the Investigating Judge;

- Storage of the materials of the criminal cases in which the refusal to start the criminal prosecution was decided, removal from criminal prosecution, ceasing of the criminal prosecution and closing of the process in the archives of the criminal investigation authority.

The following particularities for Personal Data Protection were identified in the pre-judicial phase of the process:

- The criminal investigation authority is obliged to ascertain the Parties who can access data and to what extent they can access them, but also to implement appropriate technical and organizational measures[3] to meet security requirements;

[3]Cristea D. Measures to Preserve Confidentiality and to Protect Aggrieved Parties and Witnesses during Court Hearings from the Perspective of Personal Data Protection, In:

- During the administration of evidence, private life may be damaged as a result of criminal prosecution actions or special investigative measures because Personal Data of the Parties in the process is collected.

- The criminal prosecution authority comes into possession of Personal Data, but the actions involving interference in private life must be stated by law, must pursue a legitimate goal and a public interest and proportionality must exist between public and private interests;

- The criminal investigation authority must evaluate and reduce the risks of disclosure of the identity of the Parties that have an interest in the case;

- The access of the Parties to the file documents during the criminal prosecution phase must be limited to the extent necessary to ensure the effective investigation of the crimes, the security of the Participants in the process and the protection of private life.

The procedural-criminal legislation of the Republic of Moldova and Romania, for the most part, ensures the protection of Personal Data to the extent that it does not affect other fundamental and concurrent rights.

However, there are some procedural norms that require revision in the context of ensuring the quality requirement and the protection of Personal Data within the criminal prosecution stage.

1. We believe that the protection of the Witness or the Aggrieved Party should not be made dependent on the seriousness of the crime in respect of which Statements are made, according to art.110, align.(1) from the Criminal Procedure Code from the Republic of Moldova. Also, inside the same article, it is not justified to condition the hearing under special conditions of the Witness and the Aggrieved Party with the appropriate technical means of the Courts.

2. It does not correspond to the quality requirements imposed by art.110, align. (7) from the Criminal Procedure Code from the Republic of Moldova, given that this text is outdated in relation to the procedural aspects it regulates, also suffering from legislative omission.

3. The provisions of art. 240, align. (5) from the Criminal Procedure Code from the Republic of Moldova in the part regarding the display of the *summonings on the main door of the building or at the place where the information is displayed* directly admits the

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"State, Security and Human Rights in the Digital Era". December 10-11, 2020, Chisinau. State University of Moldova, "Artpoligraf" Printing Press, p.190.

unjustified disclosure of the Personal Data of the Participants in the process, thus not excluding the prejudice of the investigations initiated by the criminal prosecution authorities.

4. Given that The European Court of Human Rights standards allow full or partial restriction of access to criminal prosecution documents or for a certain period, strict clarifications are required in the text of art.94 from the Criminal Procedure Code from Romania.

Chapter IV "PERSONAL DATA PROTECTION DURING THE TRIAL STAGE"

The publicity of the Court session was debated from the perspective of the definition, the performance mode and the need for the protection of Personal Data, the concrete measures and rules for the protection of Personal Data, the proposals and the performance mode regarding the protection of Personal Data, arguing and demonstrating their need and method of protection. In order to deal with the subject, the relevant norms from the Criminal Procedure Code from the Republic of Moldova and the Criminal Procedure Code from Romania related to possible violations and non-compliance with Personal Data Protection were also analyzed; The Decisions of the Superior Council of the Magistracy of the Republic of Moldova that indicate the need and that impose measures on how anonymization is applied in the Courts as a way of depersonalizing data and the need to protect Personal Data, as well as The European Court of Human Rights jurisprudence on the matter.

I also presented, within the framework of measures to preserve confidentiality and protect Aggreved Parties and Witnesses during Court hearings, the responsibility for Personal Data Protection and I provided arguments *why Parties should be given more control rights and facilities over their own Personal Data and, therefore, more obligations and responsibilities for Courts* that process Personal data during Court hearings.

The responsibility of the Judge was examined for this purpose, respectively his active role, the tasks in the application and protection of Personal Data, as well as the measure of risk assessment and I analyzed both the interpretation of caution from the perspective of respecting people in terms of possible violations of their rights, but also the right to confidentiality in return for audio and video recordings during Court hearings as a security treatment that is always required in terms of privacy protection. The final proposal concludes that the protection texts on Personal Data and audio recordings during Court hearings should be applied.

The measures applied by the Courts through anonymizing data and replacing this data with XXX symbols were also analyzed; the limits and imposition of disclosure and information measures undertaken for the future; the measures presented and applied within the Courts; the decision of the Court to deliberate; the secrecy of deliberation; the result of the deliberation; the requests of the Parties concerning the protection of their Personal Data; the pronunciation of the Decision; the introductory part, descriptive part and operative part of the Decision; the Agenda of the Decision; the manner of establishing the confidentiality of the Personal Data obtained by the Court Clerk and the Head Clerk; the motivation of the Decision or the understanding of the Court regarding the Personal Data known by the Parties from other circumstances of the case.

"Courts apply the law according to the Criminal Procedure Code. At the same time, with the application of the Criminal Procedure Code, the legislation concerning Personal Data Protection is also complied with and applied, the rules becoming mandatory in terms of their application."[4]

According to the ***conclusions*** to this chapter, the following particularities were determined within the trial phase:

- Judges are involved in the periodic and systematic monitoring of the protection of Personal Data of the Parties. "Trials designed and built taking into account the principles of the regulations in force concerning Personal Data Protection must provide guarantees for Personal Data Protection (for example: pseudonymization or anonymization, where appropriate) and use the highest possible privacy settings by default."[5]

- Courts must refrain from publishing information or other data that can lead to the identification of the Parties[6];

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[4] Cristea D. The Access of the Parties to the Report of the Court Hearings, as well as to Audio Recordings from the Perspective of Personal Data Protection, In: Materials of the Scientific Conference of Doctoral Candidates, "Contemporary Trends in the Development of Science: Visions of Young Researchers", Biotehdesign Printing Press, Chisinau, June 15, 2020, p.170.

[5] Cristea D. Measures to Preserve Confidentiality and to Protect Aggrieved Parties and Witnesses during Court Hearings from the Perspective of Personal Data Protection, p. 153-165, In: Collection of Specialized Scientific Papers of the Magazine of the Institute of Legal, Political and Sociological Research, Chisinau, Republic of Moldova, Part 2/2020. p.164.

[6] Cristea D. Publicity of Court Hearings and the Publication on the Web Pages of the Courts from the Republic of Moldova and Romania in Terms of Respecting and Protecting Personal Data, p. 804-819, In: Crisis Law / Law Crisis, 13th Edition , Timișoara, Universul Juridic Publishing House, 2021. p.816-817.

- The application and compliance with the Personal Data Protection legislation by the Courts that judge the cases in the first instance must also be transposed within the appeals, considering that at these stages the general conditions for judging in the first instance are properly applied, respectively by analogy.

The criminal prosecution legislation of the Republic of Moldova and Romania (with some differences) largely guarantees when the disclosure of Personal Data could affect the right to private life and the trials of criminal cases, through:

- Prohibition for mass-media representatives to record audio/video other stages of the session than the opening of the session and the presentation of the case that represents the object of the trial.

- Conducting Court hearings or part of the hearing behind closed doors based on a motivated agreement;

- Closed-circuit conference hearing, with distortion of the voice and image of Witnesses and Aggrieved Parties who are protected;

- Prohibition of audio/video recording by persons who take part in the session;

- Anonymization of Personal Data from Criminal Decisions that are published on the web pages of the Courts;

- Establishment of the prohibition to make copies of the Reports in which the Court session is recorded, as well as to make copies of the audio recordings of the session;

- Preservation of the materials of criminal cases during the trial in the Court premises and the Court archives - after the final and irrevocable Decision has been pronounced.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

The undertaken research allowed the following conclusions to be drawn through the formulated goal and the established objectives.

1. Personal Data appeared and developed as a human right due to the progress that has gained momentum in recent times and last, but not least due to the evolution of criminal proceedings as a major component of this progress, but also of the human condition of an imperative dictated by necessity. The subject of Personal Data Protection within criminal proceedings has not been subjected to a previous thorough research at the level of a monographic paper in the Republic of Moldova and Romania, a fact that allows me to draw attention upon the current research theme and the finding of the opportunity to study the respective domain. (Chapter 1 (1.3)

2. "Personal Data within criminal proceedings" includes information related to the private life of a Party or other participant in the process and information about his activities, what they are, how their relationships work, their behavior, in other words any information that leads to the identification of a person. The conceptual framework of Personal Data Protection within criminal proceedings includes the research of the doctrinal aspects, the legal framework and the jurisprudence regarding the observance of the standards resulting from the right to private life applicable in the criminal proceedings when the protection of Personal Data is required and the consolidation of the theoretical conclusions that are required as a result of the investigations. (Chapter 2)

3. The emergence of the new EU legislative framework, through the adoption of Regulation No. 679/2016 and Directive No. 680/2016, requires new changes to be made and created in the domain of criminal proceedings in order to ensure a complete protection of the Personal Data. The two types of competing rights in criminal proceedings - the right to defense, free access to justice on the one hand and the right to respect private life, especially Personal Data Protection on the other, are established in the Universal Declaration of Human Rights, The International Covenant on Civil and Political Rights, the European Convention on the Protection of Fundamental Rights and Freedoms, being declared constitutional rights in the Republic of Moldova and Romania. Taking into account the fact that there is no *a priori* hierarchy between these fundamental rights and none of these rights are absolute, according to The European Court of Human Rights jurisprudence, they are liable to be restricted in order to protect the legal interests of other persons. The criminal prosecution authorities or the Court have the capacity to ensure the correct balance, taking into account the procedural stage and the particularities of each individual case. (Chapter 2 (2.1)

4. If the procedural - criminal legislation of the Republic of Moldova is almost completely codified, according to the provisions of art. 2, align. (4) from the Criminal Procedure Code of the Republic of Moldova, then the approach of the Romanian Legislator is different in this sense, thus determining the lack of necessity to complete the Criminal Procedure Code of Romania with provisions that are actually contained in other normative documents.

5. Following the analysis carried out regarding the private life in relationship to the information that is necessary to be obtained by the criminal prosecution authorities or the Courts and the manner in which the respective information can be obtained, I can distinguish between the following categories, namely:

- Personal Data that is obtained without the person's consent (for example: information and data obtained from databases, the person's Criminal Record or from any other procedural action carried out without the person having knowledge about it);

- Personal Data that is collected without authorization by the Investigating Judge (for example: information obtained following hearings, findings and expertise, seizures, etc.);

- Personal Data that is obtained with the person's consent (for example: information and data obtained from on-site research performed at the residence of the person who gave consent for this action or the voluntary presentation of biological samples);

- Personal Data regarding private life that is obtained exclusively on the basis of a Judicial Warrant (for example: inquisitions, special investigative measures carried out on the basis of an authorization provided by the Investigating Judge).

"Where the Criminal Procedure Code does not expressly state the application of the confidentiality of Personal Data of the Parties, the criminal prosecution authority is the one that must refer to the guiding principles established by EU Regulation 679/2016 and EU Directive 680/2016 in applying the Criminal Procedure Code."[7] "Privacy settings should be implemented at a high level"[8]. Technical and procedural measures must also be undertaken in order to ensure that the processing of Personal Data throughout the entire life cycle complies with the Regulation and Directive concerning Personal Data Protection during the application of the criminal procedure. In other words, mechanisms must be implemented in order to ensure that Personal Data "is not processed unless necessary for each specific purpose"[9], in compliance with the established rules and in order to ensure the guarantee of the Personal Data Protection to the Parties. (Chapter 2. (2.2)

6. The procedural - criminal legislation of the Republic of Moldova and Romania mostly contains sufficient procedural guarantees to allow the optimization of the exercise of proportionality when it is necessary to protect Personal Data within criminal proceedings.

[7] Cristea D. Confidentiality of Criminal Prosecutions in the Republic of Moldova and Romania as a Guarantee for Personal Data Protection, In: Legal Carrier, Bucharest, Romania, Editura C.H.Beck, no 3/30.03.2022, Vol XXI, p.186.

[8] Cristea D. Guarantees for Personal Data Protection within the Framework of the Judicial Control during the Prejudicial Procedure, In: Materials of the Scientific Conference "The Role of Science in Reforming the Legal and Political-Administrative System" VIth Edition, December 10, 2020, "Centro Grafic" Printing Press, Cahul, Republic of Moldova, p.40.

[9] Cristea D. Confidentiality of Criminal Prosecutions in the Republic of Moldova and Romania as a Guarantee for Personal Data Protection, In: Legal Carrier, Bucharest, Romania, Editura C.H.Beck, no 3/30.03.2022, Vol XXI, p.186.

The complex researches of the theoretical aspects, of the criminal procedural rules from the Republic of Moldova, by similarity with the criminal procedural rules from Romania, The European Court of Human Rights jurisprudence, The Court of Justice of the European Union and the Constitutional Courts, with reference to Personal Data Protection within criminal proceedings, allowed the identification of shortcomings and of the need to adjust the criminal procedural legislation to the quality requirements that are mainly aimed at the criminal prosecution (Chapters 3, 4 (Conclusions to Chapter 3 and Chapter 4).

The obtained results derived from the objectives of the Thesis, contributing to the ***settlement of the important scientific problem***, that consists of - elaboration of the conceptual framework concerning Personal Data Protection within criminal proceedings, fact that allowed the debate concerning the adjustment of the norms of criminal procedure to international and regional standards within the context of the European integration process. So the conducted research has determined the opportunity to review the legal framework in the Republic of Moldova and Romania in order to increase the normative guarantees concerning Personal Data Protection within criminal proceedings. For this purpose, the recommendations of the *Lex Ferenda* were theoretically substantiated, along with proposals for the establishment of good practices for the interpretation and application of the criminal procedural guarantees aimed at this important aspect of private life.

With the title ***of Lex Ferenda***, I propose for the following for the Criminal Procedure Code from the Republic of Moldova:

1. Exclusion from art.110, align. (1) from the Criminal Procedure Code from the Republic of Moldova of the following text: *concerning a severe, particularly severe or exceptionally severe crime and if the respective technical means exist;*

2. Modification of the text of art.110, align. (7) from the Criminal Procedure Code from the Republic of Moldova:

The Statements of the Witness heard under the conditions of this article are recorded by audio and video means and are fully recorded in a Report set in compliance with art. 260 and 261. The Investigating Judge seals the informational support on which the Statement of the Witness was recorded and keeps the original document together with the copy of the hearing Report. A copy of the audio/video recording and the Report of the hearing are attached to the Criminal File.

3**. Exclusion of the text of the last sentence from art.240, align. (5) from the Criminal Procedure Code from the Republic of Moldova:**

Also, with the title of ***Lex Ferenda***, I propose adding the text highlighted by the author to art. 94 from the Criminal Procedure Code from the Romania:

(4) During the criminal prosecution, the Prosecutor may ***fully or partially*** *restrict, with justification, the consultation of the File,* ***for a reasonable period****, if this could help the proper execution of the criminal prosecution.*

The following directions were identified as perspectives for further research on the topic of the Thesis:

- Protection of Personal Data by the Lawyer who administers evidence during the criminal trial;

- Protection of Personal Data within the framework of international legal assistance;

- The impact of the digitization of the criminal proceeding on Personal Data Protection.

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ADNOTARE

Cristea Daniel „Protecţia datelor cu caracter personal în procesul penal", teză de doctor în drept la specialitatea 554.03- Drept procesual penal, Şcoala doctorală de Ştiinţe Juridice a Universităţii de Stat din Moldova. Chişinău, 2023

Structura tezei: 181 pagini text de bază, adnotare în limbile română, engleză şi franceză, lista abrevierilor, introducere, patru capitole, concluzii generale şi recomandări, bibliografia din 378 titluri, anexe.

Cuvinte-cheie: date cu caracter personal, protecţia datelor, confidenţialitatea datelor, viaţă privată, norme juridice, organ de urmărire penal, instanţă de judecată, responsabil cu protecţia datelor, etc.

Domeniul de studiu: Drept procesual penal.

Scopul lucrării: constă în realizarea unei cercetări complexe a legislaţiei, doctrinei şi a jurisprudenţei privind protecţia datelor cu caracter personal în procesul penal al Republicii Moldova şi României, având drept finalitate evaluarea oportunităţii de desăvârşire a cadrului legal şi de instituire a bunelor practici în practica de aplicare.

O**biectivele tezei:** constatarea gradului de studiu al protecţiei datelor cu caracter personal în procesul penal; determinarea conceptului de protecţie a datelor cu caracter personal; elucidarea şi analiza standardelor privind protecţia datelor cu caracter personal consacrate în acte internaţionale şi regionale; identificarea similitudinilor şi diferenţelor în procedurile penale a Republicii Moldova şi a Romîniei privite prin prisma protecţiei datelor cu caracter personal; elucidarea particularităţilor protecţiei datelor cu caracter personal la faza urmăririi penale şi la faza judecăţii, precum şi evaluarea calităţii normelor de procedură care asigură protecţia datelor în procesul penal; determinarea modalităţilor de acces la datele cu caracter personal în procesul penal al părţilor în funcţie de acordul persoanei sau autorizaţia judiciară; identificarea normelor legislative care ar admite încălcarea confidenţialităţii datelor în cadrul procesului penal din României şi Republica Moldova; argumentarea concluziilor generale şi formularea de recomandări cu caracter de *lege ferenda* privind perfecţionarea normelor procesual-penale care garantează protejarea datelor cu caracter personal pentru Republica Moldova şi România, astfel încât să corespundă exigenţelor de calitate.

Noutatea şi originalitatea lucrării: constă în faptul că este prima lucrare la nivelul naţional în Republica Moldova şi România ce abordează protecţia datelor cu caracter personal în procesul penal, fiind realizată o analiză amplă a prevederilor legale şi a practicilor interne din domeniu, dar şi de peste hotare. Prin prisna alinierii la standardelor europene, pornind de la materialele şi publicaţiile autohtone şi internaţionale, a fost cercetată

tema aleasă, fiind urmărită prelucrarea şi protejarea datelor în procesul penal, în vederea desăvârşirii normelor de procedură penală.

Rezultatele obţinute au derivat din obiectivele tezei, contribuind la ***soluţionarea problemei ştiinţifice importante,*** care rezidă în elaborarea cadrului conceptul privind protecţia datelor cu caracter personal în procesul penal, fapt care a permis de a argumenta ajustarea normelor de procedură penală la standardele internaţionale şi regionale în contextul procesului de integrare europeană. Deci cercetările realizate au determinat constatarea oportunităţii de revizuire a cadrului legal din Republica Moldova şi România în vederea sporirii garanţiilor normative privind protecţia datelor cu caracter personal în procesul penal. În acest sens au fost fundamentate teoretic recomandări *de lege ferenda,* deopotrivă cu propuneri de instituire a bunelor practici de interpretare şi aplicare a garanţiilor procesual penale ce vizează acest aspect important al vieţii private.

Semnificația teoretică rezidă, pe de o parte, în sistematizarea lucrărilor din domeniu și a legilor în vigoare atât din țară cât și de peste hotare, cu scoaterea în evidență a celor mai importante idei care se referă la obiectul de studiu. Totodată cercetarea s-a impus prin analiza aspectelor controversate și formularea unor idei proprii referitoare la prelucrarea și protecția datelor cu caracter personal în general cât și în procesul penal în special. Studiul realizat în lucrare permite a se stabili direcțiile și tendințele politicii procesual-penale promovate în Republica Moldova și România pe linia asigurării și realizării dreptului la protecția datelor cu caracter personal.

Valoarea aplicativă a lucrării. Au fost abordate aspecte practice ale protecției datelor cu caracter personal în procesul penal în scopul reliefării dificultăţilor tehnice şi procesuale cu care se confruntă organele de drept. Concluziile cu propunerile aduse sunt în măsură să fie un sprijin atât pentru persoanele și organele de aplicare a normelor procesual - penale, în calitate de operatori a datelor cu caracter personal cât și pentru persoanele participante în proces, indiferent de calitatea procesuală. Punerea în evidenţă a principiilor diriguitoare de protecţie a datelor cu caracter personal pot fi de real folos nu numai în activitatea de urmarire penală şi în faza de judecată, dar şi la pregătirea specialiştilor în domeniul de referinţă. Prin elaborarea tezei, interpretarea normelor în vigoare, argumentarea propunerilor de modificare a unor norme din CPP, este posibil a fi obținută o mai mare încredere în actul de justiție.

Implementarea rezultatelor ştiinţifice. Cercetarea întreprinsă este în măsură să contribuie la ocrotirea efectivă a dreptului la viaţa privată în general şi să asigure protecţia datelor cu caracter personal în practica de aplicare a normelor procesual penale. Rezultatele studiului au fost reflectate de autor în articolele publicate în diverse reviste, culegeri de articole. Tezele abordate în lucrare au fost prezentate și discutate în cadrul unui șir de conferințe naționale și internaționale (17), publicate în 21 lucrări științifice, sunt de interes profesional pentru practicieni (ofiţeri de investigaţii, ofiţeri de urmărire penală, procurori şi judecători) fiind utile şi pentru pregătirea specialiştilor în domeniul de referinţă.

ANNOTATION

Cristea Daniel, "Protection of personal data in criminal proceedings", PhD thesis in law to the specialty 554.03- Criminal Procedural Law, Doctoral School of Legal Sciences of the State University of Moldova. Chișinău, 2023

Thesis structure: 181 pages of basic text, annotation in the state languages, English and French, list of abbreviations, introduction, four chapters, general conclusions and recommendations, bibliography of 378 titles, appendices.

Keywords: personal data, data protection, data privacy, private life, legal rules, GDPR, criminal investigation body, court, data protection officer, etc.

Field of study: Criminal procedural law.

Purpose of the Thesis: The present Thesis carries out a complex research on the legislation, doctrine and jurisprudence concerning Personal Data Protection within the criminal proceedings of the Republic of Moldova and Romania with the purpose of evaluating the opportunity to consolidate the legal framework and to establish good practices in the practice of application.

Thesis objectives: Determining the degree of study for Personal Data Protection within criminal proceedings; determining the concept of Personal Data Protection; establishing and analyzing the standards concerning Personal Data Protection established in regional and international documents; identifying similarities and differences within the criminal proceedings of the Republic of Moldova and Romania from the perspective of Personal Data Protection; establishing the particularities of Personal Data Protection within criminal proceedings, both in criminal prosecution phase and in trial phase, as well as evaluating the quality of the procedural norms that ensure Personal Data Protection within criminal proceedings; determining the methods to acces the Personal Data of the Parties within criminal proceedings, depending on the person's agreement or judicial authorization; identifying the legislative norms that would admit the violation of data confidentiality within criminal proceedings in Romania and the Republic of Moldova; debating the general conclusions and formulating recommendations of a *Lex Ferenda* nature concerning the improvement of the procedural-criminal norms that guarantee the protection of Personal Data for the Republic of Moldova and Romania so that they fulfill the quality requirements.

Novelty and originality of the Thesis: The novelty and originality of the present Thesis are represented by the fact that it is the first paper at the national level in the Republic of Moldova and Romania that covers Personal Data Protection within criminal proceedings, focusing on an extensive analysis of the legal provisions and internal practices in the national domain and abroad. By aligning to the European standards, starting from domestic and international materials and publications, the chosen topic was researched with the aim of processing and protecting Personal Data within criminal proceedings in order to perfect the norms of criminal procedure.

The obtained results derived from the objectives of the Thesis, contributing to the ***settlement of the important scientific problem***, which resides in setting the conceptual framework concerning Personal Data Protection within criminal proceedings, a fact that allowed the debate upon the adjustment of the norms of criminal procedure to international and regional standards within the context of the European integration process. Thus, the conducted research has determined the opportunity to review the legal framework in the Republic of Moldova and Romania in order to increase the normative guarantees concerning Personal Data Protection within criminal proceedings. For this purpose, the recommendations of *Lex Ferenda* were theoretically substantiated, along with the proposals for setting good practices for the interpretation and application of the criminal procedural guarantees aimed at this important aspect of private life.

The theoretical significance resides, on the one hand, in the systematization of the papers in the domain and the laws in force both in the country and abroad by highlighting the most important ideas that cover the object of study. At the same time, the research came forward by analyzing the controversial aspects and formulating some own ideas concerning the processing and protection of Personal Data in general and particularly within criminal proceedings. The study carried out in the present Thesis allows the establishment of the directions and trends of the procedural-criminal policy promoted in the Republic of Moldova and Romania from the perspective of ensuring and applying the right to Personal Data Protection.

Applicative value of the Thesis. Practical aspects concerning Personal Data Protection within criminal proceedings were covered in order to highlight the technical and

procedural difficulties faced by law enforcement authorities. The conclusions and the proposals can represent a support both for the persons and the law enforcement authorities of the procedural - criminal rules, as Personal Data Operators, as well as for the persons taking part in the trial, regardless of the procedural quality. Highlighting the guiding principles of Personal Data Protection can be of real use not only in the criminal prosecution phase and in the trial phase, but also in training of specialists in the domain of reference. By developing the present Thesis, interpreting the rules in force, debating the proposals to change some rules of the Criminal Procedure Code, it is possible to obtain greater confidence in the judicial act.

Implementation of scientific results. The undertaken research can contribute to the effective protection of the right to private life in general and to ensure the protection of Personal Data in the practice of applying criminal procedural rules. The results of the study were reflected by the author in the articles published in various magazines, collections of articles. The papers covered by the present Thesis were presented and discussed in a series of national and international conferences (17), published in 21 scientific works. They also present a professional interest for Practitioners (Investigating Officers, Criminal Prosecution Officers, Prosecutors and Judges) and they have proven to be useful for training specialists in the domain of reference.

ANNOTATION

Cassidy „Protection des données à caractère personnel dans la poursuite criminelle", thèse de docteur de spécialité de droit 554,03-Loi de procédure pénale. École doctorale des sciences juridiques de l'Université d'État de Moldovie. Chisinau, 2023

Structure de la thèse: 181 pages de texte de base, annotation dans les langues officielles, anglais et français, liste des abréviations, introduction, quatre chapitres, conclusions générales et recommandations, bibliographie de 378 titres, annexes.

Mots-clés: données personnelles, protection des données, confidentialité des données, vie privée, règles juridiques, RGPD, police judiciaire, tribunal, délégué à la protection des données, etc.

Domaine d'étude: Droit procédural pénal.

Le but du travail: consiste à effectuer une recherche complexe de la législation, de la doctrine et de la jurisprudence concernant la protection des données personnelles dans le processus pénal de la République de Moldova et de la Roumanie, dans le but d'évaluer l'opportunité de perfectionner le cadre juridique et d'établir de bonnes pratiques dans le pratique d'application.

Les objectifs de la thèse: s'assurer du degré d'étude de la protection des données personnelles dans le processus pénal; déterminer le concept de protection des données personnelles; l'élucidation et l'analyse des normes relatives à la protection des données personnelles inscrites dans les documents internationaux et régionaux; identification des similitudes et des différences dans les procédures pénales de la République de Moldova et de la Roumanie du point de vue de la protection des données personnelles; l'élucidation des particularités de la protection des données personnelles au stade de l'enquête pénale et au stade du procès, ainsi que l'évaluation de la qualité des normes procédurales qui garantissent la protection des données dans le processus pénal ; déterminer les modalités d'accès aux données personnelles dans le cadre de la procédure pénale des parties en fonction de l'accord de la personne ou de l'autorisation judiciaire ; identification des normes législatives qui admettraient la violation de la confidentialité des données dans le processus pénal en Roumanie et en République de Moldova ; argumenter les conclusions générales et formuler des recommandations de nature ferenda concernant l'amélioration des normes procédurales pénales qui garantissent la protection des données personnelles pour la République de Moldova et la Roumanie, afin qu'elles correspondent aux exigences de qualité.

La nouveauté et l'originalité de l'ouvrage: il consiste dans le fait qu'il s'agit du premier ouvrage au niveau national en République de Moldova et en Roumanie qui traite de la protection des données personnelles dans le processus pénal, avec une analyse approfondie des dispositions légales et les pratiques internes sur le terrain, ainsi qu'au-delà des frontières. En s'alignant sur les normes européennes, à partir de matériaux et de publications nationaux et internationaux, le sujet choisi a été étudié, dans le but de traiter et de protéger les données dans le processus pénal, afin de perfectionner les normes de la procédure pénale.

Les résultats obtenus découlent des objectifs de la thèse, contribuant à la solution de l'important problème scientifique, qui réside dans l'élaboration du concept-cadre concernant la protection des données personnelles dans le processus pénal, un fait qui a permis d'argumenter l'ajustement des normes de procédure pénale aux normes internationales et régionales dans le cadre du processus d'intégration européenne. Ainsi, la recherche menée a déterminé l'opportunité de revoir le cadre juridique de la République de Moldova et de la Roumanie afin d'augmenter les garanties normatives concernant la protection des données personnelles dans le processus pénal. En ce sens, les recommandations de la loi Ferenda ont été théoriquement étayées, ainsi que des propositions pour l'établissement de bonnes pratiques pour l'interprétation et l'application des garanties procédurales pénales visant cet aspect important de la vie privée.

La signification théorique réside, d'une part, dans la systématisation des travaux sur le terrain et des lois en vigueur tant dans le pays qu'à l'étranger, avec la mise en évidence des idées les plus importantes qui se réfèrent à l'objet d'étude. Dans le même temps, la recherche s'est imposée en analysant les aspects controversés et en formulant ses propres idées concernant le traitement et la protection des données personnelles en général et dans le processus pénal en particulier. L'étude réalisée dans le document permet d'établir les orientations et les tendances de la politique procédurale pénale promue en République de Moldova et en Roumanie dans le sens de la garantie et de la réalisation du droit à la protection des données personnelles.

La valeur applicative de l'œuvre. Les aspects pratiques de la protection des données à caractère personnel dans le cadre de la procédure pénale ont été abordés afin de mettre en évidence les difficultés techniques et procédurales rencontrées par les organes répressifs. Les conclusions avec les propositions apportées peuvent être un soutien à la fois pour les personnes et les organes chargés de l'application des règles procédurales - pénales, en tant qu'opérateurs de données personnelles, ainsi que pour les personnes participant au processus, quelle que soit la qualité procédurale. La mise en exergue des principes directeurs de la protection des données personnelles peut être d'une réelle utilité non seulement dans les poursuites pénales et dans la phase de jugement, mais aussi dans la formation des spécialistes dans le domaine de référence. En développant la thèse, en interprétant les règles en vigueur, en argumentant les propositions de modification de certaines règles du CPP, il est possible d'obtenir une plus grande confiance dans l'acte judiciaire.

Mise en œuvre des résultats scientifiques. Les recherches entreprises sont susceptibles de contribuer à la protection effective du droit à la vie privée en général et d'assurer la protection des données personnelles dans la pratique de l'application des règles de procédure pénale. Les résultats de l'étude ont été reflétés par l'auteur dans les articles publiés dans divers magazines, recueils d'articles. Les thèses abordées dans l'ouvrage ont été présentées et débattues dans une série de colloques nationaux et internationaux (17), publiés dans 21 ouvrages scientifiques, présentent un intérêt professionnel pour les praticiens (enquêteurs, officiers de poursuite pénale, procureurs et juges) étant utiles et pour la formation de spécialistes dans le domaine de référence.

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PROTECTION OF PERSONAL DATA IN THE CRIMINAL PROCEDURE

Specialty 554.03 - CRIMINAL PROCEDURAL LAW

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