

The need for a unitary approach in the national combat of the terrorist phenomena. Trends and obstacles

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Abstract: *In this paper, we bring to attention two constitutional solutions regarding the activity of combating terrorism on the national territory, solutions generated by the finding of legal conflicts of constitutional nature between the various institutional actors invested with the responsibilities of assuring the security climate that every Romanian citizen should enjoy. Thus, we argued the need to exclude political differences in the elaboration of a national security framework regarding terrorist offenses, emphasizing at times the deficiencies that determine the burden of the institutional elements regarding the specific activities for preventing and combating terrorism. Last but not least, we support the development of a systematic approach to consecrate legal obligations in the area of preventing and combating terrorism belonging to public institutions, in which we have elaborated a detailed presentation of the current normative framework regarding the functional attributions of the various institutional actors involved.*

Keywords: *constitutional conflict; national security; counterterrorism.*

Framing subdomain: *Criminal Law*

Introduction

The recent jurisprudence of the Constitutional Court of Romania regarding aspects related to the normative framework on the prevention and combating of terrorism reveals the need for an agreement of the institutional actors involved and the creation of an optimal working space for intervening bodies.

As a result, the present study does not intend to formulate hollow criticism, but to raise awareness on the degree of sensitivity with which national security must be treated in relation to terrorism. In this regard, we consider relevant the analysis on the obligations of police forces with attributions in preventing and combating terrorism in relation to the current legislative changes.

I. Controversial aspects on the investigation of terrorism

I.1. Aspects regarding the collaboration protocols between the Prosecutor's Office attached to the High Court of Cassation and Justice and the Romanian Intelligence Service. A first problem reported at the beginning of 2019 is represented by the Constitutional Court's finding of a constitutional legal conflict between the Public Ministry and the Parliament of Romania, on the one hand, and the High Court of Cassation and Justice and the other ordinary courts, on the other hand, generated by the conclusion between the Prosecutor's Office attached to the High Court of Cassation and Justice and the Romanian Intelligence Service (RIS) of two collaboration protocols, in 2009 and 2016 [1], having as object the mandate of the Intelligence Service with the performance of specific activities as criminal investigation bodies [2], the author of the complaint arguing mainly, in the sense of violation of the provisions of article 13 of Law no. 14/1992 [3], as a consequence the premise of distortion of evidence by prosecutors and intelligence officers being created [4].

Counter-arguing, the Public Ministry evokes the dimension of inter-institutional cooperation of the Intelligence Service, including with the PM, according to RIS activity reports [5], in the sense that *Interception of communications was carried out under the conditions of Law no.535/2004 or in those of the*

Code of penal procedure, for all structures in the national security system and for the Public Ministry [6], considering the possibility of correlating the acts that constitute threats to the national security by virtue of the special provisions, with offenses regulated by the Penal Code [7], concluding that the protocols envisaged are legal, motivating their purpose through the necessity of establishing unitary methodologies for the uniformization of the means, methods and criminal investigative or procedural techniques [8].

Further, in the recitals of the decision, the Constitutional Court admits the possibility of the general prosecutor to conclude protocols, even of collaboration with other public authorities, including the RIS, depending on the necessity of performing the act of justice in relation to the functional competences of the signatory authority, the acts concluded thus acquiring administrative quality with normative character [9], likewise in its jurisprudence, the Court retaining the administrative nature of such collaborative protocols, separate from the criminal judicial procedure itself [10].

By the solution pronounced, finding a constitutional conflict between the mentioned public authorities, the Court finds on the one hand unconstitutionality *in integrum* of the protocol concluded in 2009, and on the other hand, the partial unconstitutionality of the one concluded in 2016.

It was also held by the Court that the the two protocols formulation, respectively *the Parties cooperate (...) in the activity of exploiting information in the field of preventing and combating crimes against national security, acts of terrorism, crimes that correspond to threats to national security (...)* [11], the protocols expressly mention the offenses that form the object of competence of the RIS [12].

Thus, in relation to the provisions that regulate the activity of intelligence structures in the criminal process [13], the Court justly reminds that the special criminal investigation bodies can carry out the implementation of technical supervision mandates in the case of terrorist offenses, at the prosecutor's disposal, so that the regulation of certain tasks assigned to it in connection with the conduct of the criminal investigation phase has a legal basis [14], but without omitting that the activity of the RIS is limited to providing technical support, in the same manner being retained in the Court's jurisprudence [15].

Considering that the technical surveillance activities carried out by the RIS within a national security mandate consists in the generic monitoring, of several unforeseen circumstances, transposed in the criminal trial, it would have interfered with the people's rights, exceeding the democratic framework established by ECHR, it is worth mentioning the doctrinal opinion expressed in favor of regulating the operation of a Communication Interception and Registration System that has as main attribute the implementation of the technical supervision mandate [16].

Understanding that the solutions pronounced by the Constitutional Court of Romania have the power of law, we show that taking into account the punctual provisions of the protocols by which the RIS is invested with the accomplishment of specific activities for the execution of the technical supervision mandates for offenses that exceed the established powers, like those in the spectrum of *serious crimes*, these clearly contradict the purpose for which the RIS was nominated as a special investigative body.

As a consequence, in relation to the investment with certain specific activities of specialized bodies such as the RIS, which carries out its activity in the criminal prosecution phase for *the detection of crimes, the identification and capture of the offenders* [17], the constitutional forum claims that *the implementation of technical supervision mandates by "other specialized organisms of the state", without the quality of judicial organs, it determines both an infringement of material / functional competence and an infringement of the state organisms general competence* [18].

On the other hand, we agree with the opinions expressed separately from the final arguments of the Constitutional Court that have retained the partial legality of the analyzed protocols, affirming the need for collaboration between the Public Ministry and the RIS, in order to defend the order of law, the rights and freedoms of citizens and to achieve national security [19], motivated by the possibility of carrying out the technical supervision activities only by the criminal investigation bodies [20], as well as that the two protocols *represented only a detailed manner through which the two institutions exercise the powers conferred by the law* [21] and we also argue that an optimal solution could have been the adaptation of the two protocols to the constitutional requirements, in the sense of repealing only the precise unconstitutional provisions.

Finally, we mention that the need to conclude the two protocols is a compromise solution, considering that this resides not for an obscure purpose, but precisely because of the lack of logistical support [22], that the legislator should have taken into account when analyzing the opportunity of establishing a new procedural framework in which the technical supervision activities should be undertaken exclusively by criminal investigation bodies or by specialized police workers.

I.2. Aspects regarding the supplementation by law of some attributions of the Romanian Police. A second issue in the field of preventing and combating acts of terrorism, on which the constitutionality supervision was instituted, is represented by the notification of unconstitutionality raised by the Romania President on the Draft Law for amending and completing some normative acts in the field of public order and security.

Regarding the analysis of the terrorist phenomenon, the above mentioned law project intended to amend and supplement Law no. 218/2002 regarding the organization and functioning of the Romanian Police [23], as follows: article 26 paragraph (1) point 2 is modified mainly by supplementing the main tasks of the Romanian Police also in order to *apply the measures to prevent and combat terrorism*; article 26 paragraph (1) point 4 is supplementing the enumeration of the police duties regarding the execution of technical examination and the pyrotechnic interventions on the *radioactive, nuclear, chemical or biological devices* (activities that partially circumscribe the meaning of security counterterrorism control definiton, according to article 4 point 23 of Law no. 535/2004, red.); to article 26 paragraph (1), after point 4, two new points are introduced, points 4¹ and 4², with the following content: (the Romanian Police has the following main attributions:, red.) 4¹ *carries out negotiation activities and ensures the intervention, for the release of persons illegally deprived of liberty, immobilizing or neutralizing persons using firearms or other means that could endanger the life, health or bodily integrity of others (activities that fall within the meaning of the term counter-terrorist intervention according to article 4 point 21 of Law no. 535/2004, red.); 4² carries out specific activities, according to the competences established by law, in response to imminent or ongoing acts of terrorism in order to prevent or limit its effects, to neutralize the aggressive actions and / or the means and devices used by the terrorists*; is introduced article 32¹¹ which provides in paragraph (2) letter b) that *the policeman has the right to use handcuffs or other means of restraint if the person led to the police headquarters has committed or is suspected of committing a crime with violence or acts of terrorism*; is introduced to article 38 a second paragraph which provides in letter d) that the policeman has the right to enter a dwelling without the consent of the person serving the space, *to catch the perpetrator of acts of terrorism, if there are indications that he is in that space.*

In the contents of the Constitutional Court notification, the author shows that the mandate of the Romanian Police with attributions in the field of applying measures for preventing and combating terrorism, without the approval of the Supreme Council for the Country's Defense is devoid of legality [24], in violation of the provisions of article 6 of Law no. 51/1991, according to which *(1) State bodies with responsibilities in the field of national security are: Romanian Intelligence Agency, External Intelligence Agency, Security and Protection Agency, as well as Ministry of National Defense, Ministry of Interiour Affairs and Ministry of Justice, through specialized internal structures. (2) The activity for achieving national security is organized and coordinated by the Supreme Council for the Country's Defense.*

It is further argued that the legal norm would be lacking in clarity and precision in terms of its modification by introducing attributions in the field of preventing and combating terrorism, without making a correlation with the specific activities of other state bodies with attributions in the field of national security [25].

By the explanations expressed by the decision-making forum - the Chamber of Deputies, it is shown the lack of need to obtain the Supreme Council's approval [26], under the conditions that through the proposed modifications to be brought to Law no. 218/2002, *the Romanian Police did not acquire attributions in the field of national security* [27], the purpose of the modifications regarding the achievement of correlation with the international norms in the field of police cooperation and assistance, as well as of international judicial cooperation in criminal matters [28].

In the recitals of the decision envisaged, the Constitutional Court holds that *the regulation of the specific role and attributions of the Romanian Police are subsumed to the concept of national security* [29], concluding that the request of the Supreme Council's approval was required [30], thus finding that the law in question is unconstitutional as a whole.

Without questioning the legislator's intention to consolidate the role of the Romanian Police in the context of achieving national security, a concept that involves activities aimed at maintaining a pre-existing state of peace and internal security [31], we consider the decision of the Constitutional Court to be fair, given the obvious obligation to respect the external process to legislate in the field of national security, respectively with the approval of the Supreme Council for the Country's Defense, forum with organizational and coordinating role in the field.

On the other hand, although the Constitutional Court has not ruled on the intrinsic reasons invoked with raising the exception of unconstitutionality, we show that such a consolidation of the Romanian Police in carrying out specific activities in response to acts of terrorism, comes to fulfill the pre-existing spectrum of specialized state organisms with an active role in the prevention and combating of terrorism, offering clarity and predictability to the specific police activities to capture the perpetrators of terrorist offenses.

Accordingly, the national legislator restarts the Draft Law for amending and completing some normative acts in the field of public order and safety, retaining the same form as the first Project found to be unconstitutional, but this time respecting the procedural requirements for requesting the approval of the Supreme Defense Council [32].

To some of the substantive components of the Project, critics of unconstitutionality have been formulated against, arguing mainly about the lack of clarity and predictability of the normative text, as well as regarding the premises of potential abuses committed by law enforcement [33], but the Constitutional Court rejects the objections formulated, noting that through the law text envisaged, *the legislator clearly circumscribed the situations in which the behavior of the person justifies the use of policing measures* (the use of physical force, red.) *by the policeman* [34], thus the Draft Law analyzed obtaining the final form through Law no. 192/2019 [35].

Considering that the text of the draft law, intended by the legislator, led to a modernization of the national security system, after its unconstitutionality was ascertained in relation to the procedural tasks that had to be fulfilled by those in law, respectively to request the Supreme Defense Council's approval, was *recycled* in the form of a new legislative project, with the same purpose, this time being requested the specialized approval of the Council, we cannot fail to find that compared to the first legislative initiative, the national legislator was surprised not knowing the procedure to be followed in the process of legislation in the field of national security.

II. Actional obligations of the institutional actors with responsibilities for preventing and combating the terrorist phenomenon at national level

By developing a systematic approach to consecrate legal obligations in the area of prevention and combating terrorism of public institutions and bodies [36], in order to achieve objectives such as: *identification, monitoring and permanent evaluation of risks, threats and vulnerabilities of the national security system; protecting the territory of the country and its citizens; to prevent the involvement of citizens in terrorist activities* [37], the national legislator compresses the unitary cooperation in the matter through the *National System for the prevention and combating of terrorism* (NSPCT) [38], thus becoming a main tool for achieving the interinstitutional cooperation necessary for the management and optimal circulation of information [39].

According to article 6 paragraph (2) of Law no. 535/2004, within the NSPCT mainly participates *the Romanian Intelligence Service, having the role of technical coordination; Ministry of Internal Affairs; Ministry of National Defense; Ministry of Foreign Affairs; Ministry of Justice; External Intelligence Agency; Security and Protection Agency; Special Telecommunications Service; National Authority for Administration*

and Regulation in Communications, as well as other ministries, public institutions and authorities provided by law.

It is easily understood why within the NSPCT it finds its place the newly introduced National Authority for Administration and Regulation in Communications (hereinafter referred to as NACOM), given that, by virtue of its general duties, NACOM monitors and controls the application of the provisions in the field of *electronic communications, audiovisual communications, radio equipment and electronic communications terminal equipment*, electromagnetic compatibility and *postal services*, taking measures to prevent, remove and sanction their non-compliance [40], and in article 38² of Law no. 535/2004 are stated the specific tasks of NACOM regarding the prevention and combating of terrorist acts in relation to the obligations of the hosting service providers [41], the content providers [42], and the media service providers *to interrupt the transmission in an electronic communications network or to storage content (...), to block the access of Romanian users to the content, to block the functionality of a «.ro» domain, not to promote or facilitate the promotion of ideas, concepts, doctrines or attitudes*, if through the respective content or by the domain name «.ro» the apology of acts of terrorism is realised or it is urged to commit an act of terrorism, according to article 42 paragraph (3) of Law no. 535/2004, the authorized personnel of NACOM having the capacity to record contraventions and to apply sanctions regarding the violation of these obligations.

It's worth mentioning that according to the provisions of article 7 paragraph (1) of Law no. 535/2004, the activities for preventing and combating terrorist acts are carried out by the NSPCT component institutions, individually or in cooperation, for which, the prevention of terrorist acts is carried out mainly by *informative-operative activities, activities against supply flows with human or financial resources, logistical or informational resources of terrorist entities (...), security, protection, public order activities, counterterrorism check and special deterrent activities carried out by public authorities within the NSPCT*, as well as through other activities provided by law [43], while the fight against terrorism is carried out through *activities of identification of persons initiating, preparing, committing or promoting terrorist acts, through «anti-terrorist» intervention, in the event of the imminence of producing an act of terrorism, and, respectively, through counter-terrorist intervention, when terrorist acts have occurred or have been produced*, as well as through international cooperation [44].

III. Discordances regarding the counter-terrorist actions of the RIS

We emphasize first of all the distinction between the two methods of intervention, respectively «*anti-terrorist*» and «*counter-terrorist*», meaning that we show that the anti-terrorist intervention includes a system of defensive measures aimed at minimizing vulnerabilities and potential damages, when there is the certainty of producing an act of terrorism [45], while the counter-terrorist intervention involves all the offensive measures aimed at capturing or annihilating the terrorist factor, neutralizing the devices used by them, releasing the attacked or occupied targets, releasing the potential hostages and restoring the lawful order [46], during the execution or after the committing of certain acts of terrorism [47].

Observing the difference given by the temporal reference in ascertaining the two terms, in the contents of Law no. 535/2004, given the genuine of the two definitions stated, in relation to the provisions of article 37 of Law no. 24/2000 [48], we point out such a discrepancy in the normative framework that establishes the attributions of the RIS units, regarding the classification as anti-terrorist intervention, instead of counter-terrorist intervention, the measures aimed at annihilating the terrorists, releasing the hostages and restoring the order [49], that is, those executed during or after a terrorism crime was done, thus we consider the intervention of the legislator necessary in order to make the essential changes, although over time, the law in question has undergone modifications and completions, without the legislator notifying about the etymological discrepancies mentioned above.

Noting the role of RIS as national authority in the field [50], we show that within the NSPCT, it has the attribute of technical coordination [51], for this purpose establishing within its premises the Anti-Terrorist Operational Coordination Center as an organizational-functional structure [52], which constitutes the RIS interface with national institutions and authorities that are a part of NSPCT [53].

At the same time, on the line of preventing and combating terrorism on the Romanian territory, RIS *executes informative and technical activities to prevent and combat terrorism, executes the anti-terrorist [54], intervention to the objectives attacked or occupied by terrorists, ensures the anti-terrorist protection of the Romanian and foreign dignitaries [55], having the capacity to detain a perpetrator, in case of flagrant detecting of a terrorist act or of attempts or preparatory acts for such offenses, with the obligation of his near surrender to the competent judicial bodies together with the finding papers and other evidence [56].*

We also emphasize the role of RIS in carrying out the counter-terrorist intervention through its specialized unit, independently or in cooperation, with a prior approval of the Defense Council [57], having the ability to request to other authorities and public institutions the transfer of the operational control [58], depending on the extent and nature of the terrorist action, the counter-terrorist intervention being able to be executed by specialized units of the Romanian Police, the Romanian Gendarmerie, the Security and Protection Service or the Ministry of National Defense [59].

Last but not least, we pay attention to the role of strategic coordinator within the NSPCT cooperation mechanism of the Defense Supreme Council [60], that in case of the imminence or the occurrence of a terrorist act on the territory of the country, (...) can issue a decision on declaring the situation of terrorist crisis [61].

The triggering of such a terrorist crisis involves activating the impromptu structure to solve the terrorist crisis situation [62], called the National Center for Anti-terrorist Action as *an interinstitutional structure, without legal personality, directly subordinated to the Defense Supreme Council [63], set up under the Center of Anti-terrorist Operational Coordination, which ensures the management of the terrorist crisis, in order to eliminate the national security threats generated by the actual situation [64], thus centralizing a hierarchical organizational structure identified within the national bodies with a role in preventing and combating terrorism.*

Conclusions

Discussing concrete situations whereby the constitutional forum was vested for the delimitation of the constitutionality of certain actions taken by the central deliberative actors, we punctually noted moments when they showed a lack of professionalism in the legislative process, but also that at times the operative legislative framework in terms of terrorism appears as a consequence of political struggles, and not as a result of competent analyzes necessary for professionals *in the field* who need to consolidate a security space for citizens, having as tools, uncertain legislative norms.

On the other hand, we have highlighted the institutional framework in which the specialized agencies of the state carry out their activity of preventing and combating terrorism, noting the legislator's intention to streamline the punctual operational activities, by implementing the capacity of the intervening structures to carry out concerted and centralized operative actions.

References

- [1] Conclusion of the Romanian Constitutional Court's Decision no. 26/16.01.2019, published in the Official Monitor no. 193/12.03.2019.
- [2] Paragraph 6 of the Constitutional Court's Decision no. 26/16.01.2019.
- [3] According to which, the RIS bodies are forbidden to carry out criminal investigation proceedings, except for the disposition of these measures by the prosecutor and under his leadership and supervision, by limiting to the hypothesis of implementing the technical supervision mandates in the case of crimes against national security and crimes of terrorism.
- [4] Paragraph 38 of the Constitutional Court's Decision no. 26/16.01.2019.
- [5] Paragraph 67 of the Constitutional Court's Decision no. 26/16.01.2019.
- [6] The Activity Report of the RIS of 2014, p. 31, available at www.sri.ro/rapoarte-de-activitate, consulted on 28.10.2019.
- [7] Paragraph 72 of the Constitutional Court's Decision no. 26/16.01.2019.
- [8] Paragraph 100 of the Constitutional Court's Decision no. 26/16.01.2019.
- [9] Paragraph 149 of the Constitutional Court's Decision no. 26/16.01.2019.

[10] Constitutional Court's Decision no. 45/30.01.2018, published in the Official Monitor no. 199/05.03.2018.

[11] Article 2 of the *Protocol of Cooperation between the Prosecutor's Office attached to the Supreme Court of Justice and the RIS for carrying out their tasks in the field of national security* from 04.02.2009 – declassified, available at www.sri.ro/categorii/comunicate-de-presa/40, consulted on 28.10.2019.

[12] Paragraph 153 of the Constitutional Court's Decision no. 26/16.01.2019.

[13] According to article 55 paragraph (1) letter c) and paragraph (5) and (6) of the Code of criminal procedure.

[14] Paragraph 152 of the Constitutional Court's Decision no. 26/16.01.2019.

[15] According to paragraph 18 of the Constitutional Court's Decision no. 734/23.11.2017, published in the Official Monitor no. 352/23.04.2018, *regarding the technical support for carrying out the surveillance activity (...) it is provided by persons without criminal research attributions.*

[16] D. I. Cristescu, *Opinion on the implementation of the technical supervision mandate*, available at www.juridice.ro/432659/opinie-privind-punerea-in-executare-a-mandatului-de-supraveghere-tehnica.html, consulted on 28.10.2019.

[17] Paragraph 45 of the Constitutional Court's Decision no. 302/04.05.2017, published in the Official Monitor no. 566/17.07.2017.

[18] Memorandum of the presidents of criminal sections of the Supreme Court of Justice and the courts of appeal meeting from 16-17 May 2019, p. 8, available at www.inm-lex.ro, consulted on 28.10.2019.

[19] Paragraph 18 of the Separate opinion of Judge Daniel Marius Morar of the Constitutional Court's Decision no. 26/2019.

[20] Paragraph 34 of the Constitutional Court's Decision no. 51/16.02.2016, published in the Official Monitor no. 190/14/03/2016.

[21] Final considerations of the separate Opinion expressed by the judges Univ. Prof. phd Mircea Ștefan Minea and

phd Livia Doina Stanciu of the Constitutional Court's Decision no. 26/2019.

[22] Paragraph 82 of the Constitutional Court's Decision no. 26/2019.

[23] Art. II points 1, 2, 8, 13 of the Draft Law for the modification and completion of normative acts in the field of public order and safety, available [lawwww.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=17220](http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=17220) accessed on 28.10.2019.

[24] Article I point 1 paragraf 1 to 6 from the Notification of unconstitutionality on the Law for the modification and completion of some normative acts in the field of public order and security, available at www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=17220, consulted on 28.10.2019.

[25] Article I point 1 paragraph 7 from the above mentioned Notification of unconstitutionality.

[26] Paragraph 21 of the Constitutional Court's Decision no. 145/13.03.2019, published in the Official Monitor no. 319/24.04.2019.

[27] Paragraph 16 of the Constitutional Court's Decision no. 145/13.03.2019.

[28] Paragraph 18 of the Constitutional Court's Decision no. 145/2019.

[29] Paragraph 39 of the Constitutional Court's Decision no. 145/2019.

[30] Paragraph 42 of the Constitutional Court's Decision no. 145/2019.

[31] Paragraph 343 of the Constitutional Court's Decision no. 80/16.02.2014.

[32] According to the mentions found on the page dedicated to the Bill, with a deadline on 03.09.2019, available at www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=17867, consulted on 28.10.2019.

[33] Notification of unconstitutionality of the Law for amending and supplementing normative acts in the field of public order and security, formulated by deputies belonging to the Parliamentary Groups of PNL and USR from 08.07.2019, available at www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=17867, consulted on 28.10.2019.

[34] Paragraph 69 of the Constitutional Court's Decision no. 506/18.09.2019, published in the Official Monitor no. 856/23.10.2019.

[35] To amend and supplement some normative acts in the field of public order and security, published in the Official Monitor no. 868/28.10.2019.

[36] *Reason of Law* no. 535/2004 on the prevention and fight against terrorism, available at www.cdep.ro/pls/proiecte/upl_pck.proiect?idp=5758, consulted on 28.10.2019.

[37] Paragraph 19 of the *National Strategy on the prevention and combating of terrorism*, approved on 05.04.2002 by the Defense Supreme Council, available at www.sri.ro/upload/combatingterrorism.pdf, consulted on 28.10.2019.

[38] Article 6 paragraph (1) and (2) the introductory part of Law no. 535/2004.

[39] Gh. Muscalu, *Criminalitatea organizată și terorismul-factori de risc globali*, Ed. Hamangiu, Bucharest, 2017, p. 115.

[40] Article 10 paragraph (1) point 11 of the Government Emergency Ordinance no. 22/2009 on the establishment of the National Authority for Administration and Regulation in Communications, published in the Official Monitor no. 174/19.03.2009.

[41] According to article 4 point 28 of Law no. 535/2004, *hosting service provider* means a service provider of the information company which consists in storing the information provided by the content provider upon its request and in making the information available to third parties.

[42] According to article 4 point 29, *content provider* means a user who has provided information that is stored or that has been stored at his request by a hosting service provider.

[43] Article 10 of Law no. 535/2004.

[44] Article 11 of Law no. 535/2004.

[45] Article 4 point 20 of Law no. 535/2004.

[46] Article 12 paragraph (1) of Law no. 535/2004.

[47] Article 4 point 21 of Law no. 535/2004.

[48] Regarding the norms of legislative technique for the elaboration of normative acts, published in the Official Monitor no. 260/21.04.2010. According to article 37 paragraph (1) and (2) of the mentioned Law, (1) *In the normative language the same notions are expressed only by the same terms.* (2) *If a notion or term is not established or may have different meanings, its meaning in context is established by the normative act that establishes them, (...) destined to the respective lexicon, and becomes obligatory for the normative acts from the same subject.*

[49] Article 6 letter b) of Law no. 14/1992 regarding the organization and functioning of the Romanian Intelligence Service, published in the Official Monitor no. 33/03.03.1992.

[50] Article 6 paragraph (3) of Law no. 535/2004.

[51] Article 6 paragraph (2) letter a) of Law no. 535/2004.

[52] Article 14 paragraph (1) of Law no. 535/2004.

[53] Available at www.sri.ro/prevenirea-si-combaterea-terrorismului, consulted on 28.10.2019.

[54] We pointed out previously the need to replace the term *anti-terrorist intervention*, with *counter-terrorist intervention*.

[55] Article 6 of Law no. 14/1992.

[56] Article 12 of Law no 14/1992; we underline that *the competent judicial bodies* represent, according to the provisions of article 61 paragraph (2) of the Code of criminal procedure, *the criminal investigation bodies*, and *the recording document* represents according to the provisions of paragraph (1) of the same article, *the report on the circumstances found*.

[57] Article 12 paragraph (1) and (2) of Law no. 535/2004.

[58] Article 12 paragraph (3) of Law no. 535/2004. According to the provisions of article 4 point 26 of Law no. 535/2004, by **transferring the operational control**, is meant to grant the authority of unitary direction and coordination of the forces assigned to the commander designated by the institution with predominant responsibilities, according to the law, for the management of the concrete stage of manifestation of a terrorist crisis.

[59] Article 12 paragraph (5) of Law no. 535/2004.

[60] Article 6 paragraph (4) of Law no. 535/2004.

[61] Article 11^{^1} paragraph (1) of Law no. 535/2004.

[62] Available at www.sri.ro/prevenirea-si-combaterea-terrorismului, consulted on 28.10.2019.

[63] Article 11^{^1} paragraph (2) of Law no. 535/2004.

[64] Article 11^{^1} paragraph (4) of Law no. 535/2004.