Romanian Judges' Forum Association

WHITE PAPER
COOPERATION PROTOCOLS BETWEEN THE ROMANIAN INFORMATION SERVICE AND VARIOUS JUDICIAL AUTHORITIES WITH JURISDICTION IN CRIMINAL MATTERS

Corruption is - as envisaged in the National Defence Strategy of the Country - part of the category of vulnerabilities to national defence and security. Internally, this phenomenon weakens the state and its institutions, generates economic damage and affects Romania's development power, good governance, decision-making for citizens and communities, and the confidence in the act of justice. In the external field, maintaining corruption has a negative impact on the credibility and image of our country[1].

Certainly, no offense, however serious, can justify in a democratic state disproportionate measures that would hinder or suppress fundamental human rights and freedoms or the independence of justice, a fair balance between these measures and the need of the state to ensure the prevention and combating of crime, the national security and citizens' safety or the recovery of damages being required. These goals involve the gradual use of investigative means and the existence of a control of the criminal courts on the manner in which procedural safeguards were observed in order to exclude abuses of power. At systemic level, all these conditions are observed in Romania.

I. Evolution of the legislative framework in 2009-2016. Decision no. 51/2016 of the Constitutional Court

A brief history of the socio-legal context that generated ample debates in the Romanian society regarding the so-called "secret protocols", which materialized in the alleged "inadmissible interferences" in the act of justice, highlights the following:

[1] See GD no. 33/2015 on the approval of the National Defence Strategy of the country for the period 2015-2019.

Regarding the provisions of Article 142 paragraph (1) of the Criminal Procedure Code (which had the following content: "***The prosecutor enforces the technical surveillance or may order that it be carried out by the criminal investigating body or specialized police officers or by other specialized bodies of the State***"), by Decision no. 51 / 16.02.2016, the Constitutional Court decided that the phrase "*or by other specialized bodies of the State*" is unconstitutional.

According to Article 143 paragraph (1) of the Criminal Procedure Code, ***the recording of the technical surveillance activities*** shall be done by the ***prosecutor*** or ***the criminal investigation body***, drafting ***a report for each technical surveillance activity***. This report records the results of the activities carried out concerning the deed that represents the object of the investigation or which contribute to the identification or location of the persons, the identification data of the device containing the result of the technical surveillance activities, the names of the persons to whom it refers, if known, or other identification data and, where appropriate, the date and time at which the surveillance activity commenced and the date and time at which it was completed. Also, according to Article 143 paragraph (4) of the Code of Criminal Procedure, ***calls, communications and conversations intercepted and recorded regarding the deed which represents the object of the investigation or which contribute to the identification or localization of the persons, are filed by the prosecutor or the criminal investigating body in a report*** in which they specify the mandate issued for their performance, the telephone numbers of the units, the identification of the information systems or of access points, the names of the persons who performed the communications, if known, the date and time of each call or communication. According to the final thesis of the same paragraph (4), the report is authenticated by the prosecutor.

In defining **the notion of "enforcement of the technical surveillance mandate**", the Constitutional Court held that "***the acts performed by the bodies provided by Article 142 paragraph (1) second thesis of the Code of Criminal Procedure are the evidential procedures*** underlying the report of the technical surveillance activity finding, which is a means of evidence. For these reasons, *the bodies that can take part in their enforcement are only the prosecution bodies*. The latter are those listed in Article 55 paragraph (1) of the Code of Criminal Procedure, namely the prosecutor, the criminal investigation bodies of the judicial police and the special criminal investigations bodies".

Regarding the provision of technical support for carrying out the technical surveillance activity, the Constitutional Court held, in paragraph 26, that ***they are obliged to cooperate with the criminal investigation bodies, when enforcing the supervision mandate, the persons referred to in Article 142 paragraph (2) of the Code of Criminal Procedure and these are clearly and unambiguously specified*** by the words "*providers of public electronic communications networks or providers of electronic communications services destined to the public or of any type of communication or financial services".*

Starting from the fact that these "specialized bodies of the state" were not defined either expressly or indirectly in the Code of Criminal Procedure and referring to the fact that, besides the Romanian Intelligence Service (SRI), which has exclusive national security responsibilities, there are also other services with responsibilities in the field of national security, as well as a multitude of specialized

bodies of the state with attributions in various fields, such as National Environmental Guard, Forest Guards, National Authority for Consumers Protection, Construction State Inspectorate, Competition Council or the Financial Supervisory Authority, none of them having criminal investigation duties, the Court concluded that the phrase "***or other specialized bodies of the state"*** appears ***to be lacking clarity, precision and predictability***, not allowing subjects to understand what organs are empowered to take measures with a high degree of intrusion into the privacy of individuals.

Thus, the decision of the Constitutional Court therefore led to the deprivation of the criminal prosecution bodies by the SRI's strict and exclusively technical support, consisting in making them available the technique of intercepting communications, the Romanian Intelligence Service being the only national institution in possession of which there is an infrastructure capable of ensuring proper enforcement of the technical surveillance mandates required by all units of the Public Ministry and authorized by judges.

Following this decision, GEO no. 6/2016 was adopted, in the preamble of which we find the explanation of the urgent need to adopt measures, namely the clear specification that, although the "special method of technical surveillance itself is not affected by the Court's unconstitutionality criticisms, without the agreement of the legislation with the constitutional norms considered to be breached, it would not be possible to use such evidence in the criminal prosecution for a time that cannot be estimated, so that in the activity of achieving the general social interest that the judicial bodies are called upon to defend, they create the premise of an **operational loophole**, taking into account the fact that the activity of the prosecutor's offices would be seriously affected in the absence of technical support and specialized human resources for the management of a communication infrastructure, both from the point of view of the operability of the acts criminal prosecution, as well as in terms of the administration of a complete evidence based on all the investigative methods provided by the Code of Criminal Procedure."

In connection with the above, Article 8 of the Law no. 14/1992 was amended as follows: "for the relationship with electronic communications providers destined to the public, the National Centre for Interception of Communications within the Romanian Intelligence Service is designated with the role of obtaining, processing and storing information in the field of national security. At the request of the criminal investigative bodies, **the Centre shall ensure their direct and independent access to the technical systems for the purpose of performing the technical surveillance provided in Article 138 paragraph (1) letter a)** of the Code of Criminal Procedure. Verification of the implementation of these technical surveillances within the National Centre for Interception of Communications shall be carried out according to Article 301 of the Law no.304 / 2004 on the judicial organization, republished, as subsequently amended and supplemented.

II. About the necessity of concluding cooperation protocols

The specific conditions for access to the technical systems of the judicial bodies have been established through *cooperation protocols* concluded by the Romanian Intelligence Service with the Public Ministry, the Ministry of Home Affairs, as well as with other institutions in which they operate, under Article 57

paragraph (2) of the Code of Criminal Procedure, special criminal investigation bodies".

Article 13 of GEO no. 6/2016, in order to delineate the strictly operational, exclusively of technical support, carried out by SRI staff and that of the criminal investigation bodies, established that "*the bodies of the Romanian Intelligence Service cannot carry out criminal investigation, cannot take the measure of detention or preventive arrest, or to have their own arrest premises* ".

The **strictly technical** support referred to above has been exemplified in 2009 by the conclusion of a cooperation protocol aimed at issuing national security mandates between the Romanian Intelligence Service, the High Court of Cassation and Justice and the Prosecutor's Office attached to the High Court of Cassation and Justice, the effects of which ceased on 18.09.2012 (declassified on 14.06.2018) and which provided in Article 3.b. "***Insurance by S.R.I. and making available to P.I.C.C.J. and the ICCJ, in accordance with the legal provisions, the technical infrastructure of the system necessary to carry out the activities covered by the cooperation areas***", as defined in Article 2, as being the activities for the fulfilment of the responsibilities of the parties in accordance with the legal provisions that govern their activity.

In addition to the obligation to provide technical support, the Romanian Intelligence Service has a legal obligation to provide and make available to the prosecutor's offices the data and information it holds, an obligation which derives from the corroborated interpretation of several legal provisions, as follows:

- **Law no. 304/2004 regarding the judicial organization**, at Article 66 paragraph 3 stipulates that "The services and bodies specialized in the collection, processing and archiving of information have the obligation to immediately make available to the competent Prosecutor's Office, at its headquarters, all data and all information, unprocessed, held in connection with the commission of crimes";

- **GEO no. 43/2002 on the National Anticorruption Directorate (DNA)** - according to the provisions of this normative act, the Romanian Intelligence Service is obliged to make available to the National Anticorruption Directorate the data and information held regarding the commission of corruption offenses, both in processed form - obligation stipulated by Article 14 paragraph (3) of GEO no. 43/2002 (for example in the form of informative materials), as well as in unprocessed format - obligation stipulated by Article 14 paragraph (4) of GEO no. 43/2002 (for example, intercepted communications based on national security mandates).

Thus, in Article 14 paragraphs (3) and (4) of this Act it is stated that:

"(3) *The services and bodies specialized in the collection and processing of information have the obligation to provide to the National Anticorruption Directorate, immediately, the data and information held in connection with the commission of corruption offenses.*

(4) *The services and bodies specialized in the collection and processing of information shall, at the request of the chief prosecutor of the National Anticorruption Directorate or of the designated prosecutor, provide it the data and information provided in paragraph (3), unprocessed ".*

- **Law no. 14/1992 on the organization and operation of the Romanian Intelligence Service**: according to the provisions of this normative act, the Public Ministry (together with other state institutions), on the one hand, and the Romanian

Intelligence Service, on the other hand, are obliged to grant mutual support in the fulfilment of legal duties.

Thus, Article 14 of the Law no. 14/1992 states that:

"*In fulfilling its duties, the Romanian Intelligence Service cooperates with the Foreign Intelligence Service, the Protection and Guard Service, the Ministry of National Defence, the Ministry of Home Affairs, the Ministry of Justice, the Public Ministry, the Ministry of Foreign Affairs, the Ministry of Economy and Finance, the General Directorate of Customs as well as with the other bodies of the public administration.*

The bodies referred to in paragraph 1 ***have the obligation to grant each other the necessary support in fulfilling the duties provided by the law. "***

- **Law no. 535/2004 on preventing and combating terrorism**:

Article 7 - "For the purpose of preventing and combating acts of terrorism and the acts assimilated to these, the public authorities and public institutions of SNPCT carry out specific, individual or cooperative activities in accordance with their legal powers and competences and the provisions of the General Protocol on Organization and Operation of the National System for Prevention and Combating of Terrorism, approved by the Supreme Council of Defence of the Country ".

According to Article 6 paragraph 1 and paragraph 2 letters a and q of the same law, "at national level, the activity of preventing and combating terrorism is organized and carried out in a unitary manner, according to the present law. To this end, the cooperation in this field is carried out as a National System for Prevention and Combating of Terrorism, hereinafter referred to as SNPCT, with the participation of the following public authorities and institutions: a) Romanian Intelligence Service with a technical coordination role; [...] q) Prosecutor's Office attached to the High Court of Cassation and Justice; [...] ".

- **By GD no. 1065/2001 on the approval of the National Program for the Prevention of Corruption and of the National Action Plan against Corruption**, it was expressly stipulated the conclusion of "collaboration protocols", as well as "access of the prosecutor to all the information necessary for the corruption investigation, including to those held by intelligence and investigative structures."

In general, the risk of deviating in fact from the legal duties exists also in the absence of a protocol of cooperation, and the liability of civil servants or dignitaries is the same, but the existence of working standards or of a rigor to enable the audit of this process (established by protocol) can only make it easier for them to be subject to criminal, disciplinary or material liability, if any. However, it cannot be argued that the mere fact of the existence of a secret protocol constitutes a presumed misconduct from the legal duties, the observance of which must be verified on a case-by-case basis, just as in the absence of any protocol, by the competent authorities.

III. The reminiscent tendency of the Romanian authorities to encrypt when, most likely, it would not be necessary

It is notorious the institutional reflex to encrypt some normative acts, inter-institutional documents or even evidence, although in some cases the appearance is that they only have a "sensitive" character.

For example, even if the opportunity is challenged even by trade unions in the Ministry of Home Affairs, it has the status of classified information Government Decision

no. 0292/2011 on establishing functions on military degrees or professional degrees, on salary classes and coefficients of hierarchy of position wages / position salaries for military personnel in activity, policemen, civil servants with special status in the penitentiary system and military priests from defence public order and national security institutions,. Also, the classification of the MIA Order no. S / 214/2011 on the application of the legal provisions regarding the salaries of the military personnel, police officers and civilian staff from the Ministry of Administration and Home Affairs took into account its character as a follow-up act to the higher-level normative acts regulating the salaries of the Ministry of Administration and Interior Affairs staff.

Although we disagree with the non-transparent mode in which these operational procedures have been established through the cooperation protocols between S.R.I. and various entities in the judicial system because they could not be affected by public knowledge, as far as they take over and correlate legal duties that could be known anyway from the Official Gazette or activity reports of SRI, beyond that inappropriate secrecy aspect, all evidence administered under legality conditions cannot be questioned, even if their discovery was made possible by the disclosure of SRI information within the limits of its competencies at that time.

IV. Parliamentary Control Committee over the activity of S.R.I. knew or could and should have known the existence of cooperation protocols, under the obligation of surveillance

Limiting the authorities' actions to what is "necessary in a democratic society" obliges the states to ensure "**adequate and effective control**" in order to verify the legality of the measures. Key elements include careful research into the implementation process, important in entrusting the initiation of court proceedings or parliamentary supervision of the executive. Although judicial control is considered the most important means of supervision, offering the best guarantees of independence, impartiality and effective compliance with the procedure, its absence is not but fatal where there are other independent bodies with sufficient powers in controlling **continuously and effectively.**

The key point was the need to determine whether there are adequate and effective safeguards against abuse. In the case of ***Klass v. RFG*** (judgment of September 6, 1978), the European Court of Human Rights held that the German law provided for two bodies appointed by the Parliament, the Committee made of 5 MPs and the G10 Committee, where the opposition is represented, the duties of which are the control and review of surveillance measures. In conclusion, it was noted that the German authorities ensure adequate and sufficient, albeit indirect, control of possible irregularities in the recording of communications.

In Romania, according to Article 1 of the Law no. 14/1992, "the activity of the Romanian Intelligence Service is controlled by the Parliament. Annually or when the Parliament decides, the Director of the Romanian Intelligence Service presents to it reports on the fulfilment of the duties of the Romanian Intelligence Service, according to the law. In order to exercise concrete and permanent control, a joint committee of the two Chambers is established. The organization, operation and modalities for exercising control are established by a decision adopted by the Parliament".

The fact that the Romanian authorities did know (or should have known) the status of concluding protocols, even secret, is clear from the above-mentioned report, as well as from the annual reports of the SRI. approved in the permanent joint meetings of the Chamber of Deputies and the Senate for the exercise of parliamentary control over the activity of S.R.I.

Thus, in the report approved in 2010, referring to the activity of the years 2007 and 2008, S.R.I. reported 643 information sent to authorized bodies, including 185 DNA and 218 DIICOT, as well as the fact that it provided operative assistance in 27,553 specific activities. It also shows that in 2007 the National Centre for Interception of Communications ensured the implementation of **10,272** authorization documents having as beneficiaries, besides the Public Ministry, all the institutions of the national defence system, of public order and national security, 7,746 people. being intercepted

Compared to these figures, **42,263** technical surveillance mandates are reported to be enforced in 2014, up by 15.11% as compared to 2013.

In 2014, there was a total activity of **3,128,541 criminal cases**, out of which 1,880,309 criminal cases, including the volume of activity of the Prosecutor's Office attached to the High Court of Cassation and Justice, DNA and DIOCT activity and of the military prosecutor's offices. As far as the courts are concerned, in 2014, only the criminal section of the High Court of Cassation and Justice had a volume of **10,310 criminal cases** (13,305 cases in 2013) and the courts of appeal had a number of **39,930** new files (36,559 files in 2013) in 2014, and to all this we add the files settled by the district courts (**87,441** files in 2014, and 63,669 files in 2013) and judges (**278,515** files in 2014) [2].

It follows that the percentage of mandates is not disproportionate in relation to the total volume of activity of the criminal investigation bodies and of the courts.

We therefore observe that the figures are far from the apocalypse circulated in the public space, namely the interception of "*millions of Romanians*". As I pointed out earlier, the authorities were fully aware of the massive budget resources infused over time to create the National Centre for Interception of Communications and strengthen the SRI's position as the only national authority in the field of interception of communications, making absolutely necessary the collaboration with the institutions for the benefit of which the specific activities were carried out, including the Public Ministry, and being also natural for the rules of cooperation to be drawn up by the conclusion of protocols.

What is to be emphasized from the analysis of these reports approved by the Permanent Common Committee of the Chamber of Deputies and the Senate for the exercise of parliamentary control over the SRI[3] 's activity is that, although it was noted,

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[2] See the Superior Council of Magistracy - Report on the State of Justice 2014 available on the web site https://www.csm1909.ro/ViewFile.ashx?guid=0cf16c02-2b4c-4c33-888a-a55679cbce57|InfoCSM [last accessed on 02.10.2018].

[3] As an example, see the SRI activity reports for years:

2009 - http://www.cdep.ro/caseta/2011/05/27/hp101011_SRI.pdf [last accessed on 02.10.2018];

2010 - http://www.cdep.ro/caseta/2011/09/27/hp110530_SRI.pdf [last accessed on 02.10.2018];

2011 - http://www.cdep.ro/caseta/2012/11/28/hp12536_SRI.pdf [last accessed on 02.10.2018];

2012 - http://www.cdep.ro/caseta/2013/12/10/hp13023_SRI.pdf [last accessed on 02.10.2018];

2013 - http://www.cdep.ro/caseta/2014/09/24/hp14021_SRI.pdf [last accessed on 02.10.2018];

2014 - http://www.cdep.ro/caseta/2015/09/22/hp15023_raportSRI_2014.pdf [last accessed on 02.10.2018].

for example, that this control also consisted in "visits to central and territorial units of the Service, direct discussions with the SRI representatives, assuring the members of the Committee of the possibility of verifying the correctness and efficiency of the activity carried out", although it is expressly stated that "from the perspective of the issues addressed, the interinstitutional cooperation activities concerned corruption, fraud and money laundering ", express reference is made to the cooperation with the Public Ministry, **the Parliamentary Control Committee has not taken into account, over time, any concrete irregularity related to the existence of protocols.** For example, the conclusion was:

"The Committee found that the Romanian Intelligence Service in 2014 has carried out its work with strict observance of the constitutional provisions, of the national regulations in the field, as well as of the national, community and international norms regarding the protection of citizens' fundamental rights and freedoms, a fact which ensured the legality and fairness of the projects for achieving national security. "

"Protocols are a legal, natural and normal form of interinstitutional cooperation that establishes the responsibility of each institution," said the chairman of the Parliamentary Control Committee on S.R.I., Senator Adrian Ţuţuianu, on February 28, 2017, also pointing out that there are decisions of the CSAT in 2004 and 2007 that provided for the cooperation between S.R.I. and the Public Ministry.

Beyond the reason of the law, the practical "advantage" of these protocols in case of abuse of power is that it ensures traceability of the activities carried out on the basis of the interinstitutional relationship and it is possible to check at any time how the institutions collaborated, what kind of documents were issued, by what persons, if the legal duties were observed, etc.

Therefore, the attitude of some representatives of the legislative power, some of them members of the Permanent Committee, to accurse the judiciary system, is at least inappropriate, since the indirect control over intelligence services was within their competence, it is presumed that it was an appropriate and effective one, and the annual approval of the SRI's activity reports excludes, in principle, a generalized discourse on the alleged infringement of the same services of the legal duties in the sense of interference in criminal prosecution.

The so-called "remedies" in the public space (such as review of all court decisions, amnesty or collective pardon) cannot be based on the mere fact that the protocols were secret, although unnecessary, as it was assumed that the control authority had access to them.

V. Activities carried out by S.R.I. available to the criminal investigative bodies and the courts

Subsequently to the declassification of the cooperation protocols, public space has been invaded by many speculations about the "interference" of the information bodies in criminal investigations, culminating in circulation of generalized presumption, unsubstantiated by any legal document or proof that they had carried out even criminal prosecution acts. Subsequent to these "legal rumours", there were indictees accused in

particular in cases instrumented by the National Anticorruption Directorate who requested the annulment of all the evidence obtained by implementing the technical surveillance methods with technical support from the Romanian Intelligence Service.

In order to facilitate an accurate understanding by public opinion of the way these procedures work, referred to in the common language "of listening", we point out that, in particular, the enforcement work of technical surveillance authorizations / mandates previously issued by a the judge was materialized, under the legal provisions criticized by the Constitutional Court, by forwarding to SRI the authorizations accompanied by optical devices previously inserted to a Prosecutor's Unit, followed by the granting by S.R.I. of **technical support consisting** of recording calls on these devices.

Recordings of telephone calls were made, **in terms of technical perspective,** by officers from the SRI, **who provided logistical support** and procedural documents rendering these calls and telephone communications, namely **the reports were drawn up by judicial police officers** on the basis of the requests and delegation orders issued by the case prosecutor, after having previously carrying out the optic devices listening activity.

It is worth mentioning, with regard to the criticism of the probationary procedure of the technical surveillance executed with the technical support of SRI, that until the date of publication in the Official Gazette of Romania, Part I, of the Constitutional Court Decision no. 51/2016, the evidence obtained in this way, materialized in the reports of rendering interceptions, were in perfect harmony with the criminal procedural law, as there was absolutely no basis for their annulment from this perspective.

The provisions of Article 142 paragraph 1 of the Code of Criminal Procedure, invalidated by the Constitutional Court, according to which "the prosecutor enforces the technical surveillance or may order it to be carried out by the criminal investigating body or by specialized personnel of the police *or by other specialized bodies of the state*" was in force at the time of the ruling of the special methods of technical surveillance, of the enforcement of the technical surveillance, of its extension at the time of the termination of the technical surveillance and at all times when the results of the technical surveillance were valued as evidence in the criminal cases, until the moment when the aforementioned decision was taken.

Concerning the various claims, according to which S.R.I. had provided information used as evidence in the criminal case show, from a scientific perspective, the protocols refer exclusively to business information-operative nature classified (secret) typical and intrinsic battle worn by any state law against crime , and not to acts of criminal prosecution, the performance of which is exclusively circumscribed to the duties and functions exercised by the prosecutor and the judicial police in a criminal case. In fact, any inscription issued by S.R.I. has, according to art. 45 of the Law no. 14/1992, the character of "state secret", its attachment or "use" to a criminal file is as illegal as impossible, given the provision in the same article according to which "the documents, data and information of the Romanian Service Information may become public only after a period of 40 years has elapsed since archiving."

Concerning the various claims, according to which S.R.I. had provided information used as evidence in the criminal case we show, from a scientific perspective, the fact that **the protocols refer exclusively to information-operative activity with classified (secret) nature, typical and intrinsic to the battle worn by any state law**

against crime, and not to acts of criminal prosecution, the performance of which is exclusively circumscribed to the duties and functions exercised by the prosecutor and the judicial police in a criminal case. In fact, any writing issued by S.R.I. has, according to Article 45 of the Law no. 14/1992, the character of "state secret", its attachment or "use" to a criminal file is as illegal as impossible, given the provision in the same article according to which "the documents, data and information of the Romanian Service Information may become public only after a period of 40 years has elapsed since archiving."

According to the "*need to know*" principle, **based on Article 14 of the Law no. 14/1992, S.R.I. may at the same time forward information to the prosecutor of the case, of a secret nature, destined exclusively to him and being classified information on the basis of which the prosecutor can independently draw up an investigation plan regarding the persons or telephone numbers subject to technical** surveillance and on which he will ask the judge, if he considers it appropriate in the economy of the investigation, to issue authorizations.

Referring to the highly publicized effects of the **S.R.I. - P.I.C.C.J. Protocol**, declassified on March 29, 2018, we notice that Article 2 states that "*the Parties shall cooperate, in accordance with the powers and duties provided by the law, in the activity of **capitalizing on information** in the field of prevention and combating of crimes against national security, terrorist acts, crimes that correspond to threats to the national security and other serious crimes, according to the law ".*

It is important to stress that, with regard to the allegations made by S.R.I. bodies of some non-permissible criminal prosecution acts, Chapter III (Articles 32-38) of the Protocol, it details how the prosecutor may request "technical checks" prior to the enforcement of the technical surveillance mandates, reaching, in a clearly way, the idea that the authorization had already been issued by the judge, on his basis, the prosecutor going to make to SRI a written request, referred to as a "secret of service", detailing how to transmit and transcribe the obtained results. *None of those provisions concludes that the "technical" activity of implementing a court authorization, of rendering and transcription of communications would be circumscribed to a criminal procedural act.*

In connection with the object provided in Article 3 letter g, respectively "***the establishment of joint operational teams*** *acting on the basis of action plans for the exercise of the specific competencies of the parties, in order to document the facts provided by Article 2", in conjunction with Article 22 "In complex cases, effective co-operation is carried out on the basis of common plans, approved by the leaders of the two institutions, specifying the duties of each party*" publicly denounced as the **famous "joint investigation teams",** which are supposed to be at the disposal of the prosecutor (as an independent decision-maker) of the technical expertise of SRI specialists (engineers, electronic workers, computer scientists) who presented to the former the viable alternatives for implementing technical surveillance and the range of applicable options (video recording, GPS location, IT system access, etc.), referring to the specificity of each case, considering that at that time the Code of Criminal Procedure did not regulate the variety of supervisory methods distinctly.

In an independent report drafted by the European Union Agency for Fundamental Rights[4], it was noted that "*the lack of expertise in classified information and technical issues is also a problem for both judicial and non-judicial actors. In the judicial context, Member States have found several ways to address this issue, including the development of contradictory alternative procedures to allow the use of classified information, the establishment of cooperation mechanisms, including intelligence services, in order to overcome the lack of expertise; the establishment of quasi-judicial entities ".*

For example, the FBI's (*Federal Bureau of Investigation,* Federal Investigation Agency of the United States Department of Justice) success in combating corruption is largely due to the co-operation and coordination of federal, state and local anti-corruption agencies. These partnerships include, but this is not limited to, the Department of Justice, agencies within the General Inspectorate offices, federal, state and local law enforcement bodies, state and local prosecutors[5].

Another provision of the understanding that has given rise to heated criticism is the provisions of Article 6, respectively the obligation of the Prosecutor's Office to communicate within 60 days from the date of registration of the transmission of an information or notification, the way in which to use it.

The content of the provision is summed up in its essence to a simple administrative request, this being obvious from the manner of formulation that the meaning of the "interrogation" is purely statistical, meant to quantify the "*valorisation of information*" indicator, constituted in the very purpose of the institution's activity. As in the previous article, **media distortion has exacerbated the meaning of the text, and nothing in its substance provides indications that contribute to the conclusion that the prosecutor is given procedural directions to settle the file in a certain sense, but that he is required to confirm or invalidate the qualitative aptitude of information.**

We therefore reiterate that the only guiding line and substance of protocols concluded over time between S.R.I. and P.I.C.C.J. had the sole role of drawing up the administrative framework for providing information, which allegedly the prosecutor later objected to in his own independent investigation plan. If the investigation sometimes led to the need for technical surveillance authorizations, S.R.I. had the obligation to provide, as we have seen before, the technical support necessary only for the implementation, respectively the provision of the necessary infrastructure for the interception of

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[4] See European Union Agency for Fundamental Rights, ***Surveillance by intelligence services: fundamental rights safeguards and remedies in the EU***, Volume II: field perspectives and legal update, Luxembourg: Publications Office of the European Union, 2017, p. 10.

[5] See for details https://www.fbi.gov/investigate/public-corruption [last accessed on 02.10.2018]. Collaboration protocols concluded with intelligence services are not a Romanian creation, being also encountered in the Eastern European space, in transition societies with endemic corruption. For example, on November 11, 2013, a **Memorandum for Fighting against Corruption Crimes** was signed between the General Prosecutor's Office, the Ministry of Home Affairs and the Intelligence Service of Albania, its text being available on the website http://www.pp.gov.al/web/memorandum_pp_mpb_shish_857.pdf [last accessed on 02.10.2018]. **A Memorandum of Institutional Co-operation on Money Laundering** had been concluded between the General Prosecutor's Office, the Ministry of Home Affairs, the National Bank, the Ministry of Finance and the Intelligence Service in Albania since 2002, its text being available on the websitehttp://www.fint.gov.al/doc/Memorandumi%20i%20Mirekuptimit%20Nderinstitucional.pdf [last accessed on 02.10.2018].

communications, in its capacity of national authority in the field of interception, through the exclusive management of the National Centre for Interception of Communications.

In fact, in Report no. XXVI / 90 // 15.10.2008, the Joint Parliamentary Committee of Investigation for the check of the information provided on interception of communications found at that time that the Romanian Intelligence Service is the only legally empowered institution with specialized technical equipment for intercepting communications for the purpose of collecting, verifying and analysing information. In order to carry out its legal duties, the Committee found that S.R.I. has developed a technical system for intercepting communications used on the basis of the authorizations obtained according to the law, both for its own needs and for the information structures of the Ministry of Defence, the Foreign Intelligence Service, the Protection and Guard Service, the Ministry of Home Affairs and Administrative Reform and the Ministry of Justice.

It is noted, by the same Committee, that law enforcement agencies have requested and obtained communications interception authorizations exclusively appealed to S.R.I. to carry out the technical operations of their implementation, the Romanian Intelligence Service being designated by the Decision no. 0068/2002 of the Supreme Defence Council of the Country as a national authority in the field of interception of communications and of relations with the communication operators.

The conclusions of the same report show that the DNA (central structure) and DGIPI within the Ministry of Home Affairs have only workstations (computer systems) that allow only the transcription of the intercepted calls by the system managed by the Romanian Intelligence Service.

It is easy to imagine that this situation has imposed logistical needs in terms of conducting in the optimum conditions the criminal investigation activities, impossible to meet in the absence of "connection" to the SRI's technical resources, activity which naturally requires operational regulation by concluding some protocols which was materialized in the provisions of the above-mentioned Protocol, see Articles 39-45, stating precisely that "technical support consists in the transmission of signal, management and maintenance of signal transmission equipment, from the interception centres of the Service to the spaces destined to the Direction".

As the protocols referred to various offenses (not just corruption, but also organized crime and terrorism), from a technical-legal perspective it is well-known the impossibility of logistics in which the Public Ministry was placed, which, without receiving additional funding for the amputation of an important the operative component of its activity, could face the inability to prevent some of the most violent criminal acts that could harm the fundamental right to life. But the "cancellation" of their protocols and "effects" would have general effects on all offenses.

For example, after this "Parallel State Conspiracy Theory", it has been argued that a "injustice repair law" is required in order for a person to be acquitted by the law effect, only because the discovery of the criminal offense was made by to the SRI (even accidentally, in connection with other facts) and reported to the prosecutor's office under the law and protocol, no matter if the discovery could be done without the SRI, perhaps with a short delay, directly by the prosecutor or the judicial police, without counting that the evidence was legally administered, that the crime is one of the most serious, that its victims would not be able to obtain equitable satisfaction, etc.

In a society crushed by corruption, it is necessary to increase the institutional capacity to fight corruption, including the recovery of damages, which discourages the phenomenon.

Obviously, we claim as optimal option, with maximum efficiency and extensive procedural safeguards, the provision of prosecutor's office units with equipment and personnel destined to support all technical activities so that no SRI operation is required, but this decision did not belong to magistracy.

Under no circumstances can such a context be used by the political decision-maker, who also had the control over the activity of S.R.I. through the Permanent Parliamentary Committee, as the only pretext to promote legislative projects that would hinder the fight against corruption or crime in general, provided that legislation provides for sufficient remedies to penalize possible abuses in isolated cases, as we will show below.

VI. Legal remedies for individual cases where the activities actually carried out in the context of the cooperation protocols exceeded the legal framework

The attempt to distort the content of the protocol concluded by S.R.I. with P.I.C.C.J. in the case of generalized invocation in all criminal cases, of the functional lack of competence of the intelligence bodies in conducting criminal prosecution, punishable by absolute nullity and the consequence of the exclusion of all the evidence obtained in this context, is devoid of legal basis and must be countered by the attainment of the very security of the legal relations that at one time grounded criminal convictions that can no longer be challenged by unlawful fireworks and in breach of ECHR jurisprudence (see convictions against the Romanian State for the past exercise of the appeal for annulment by the General Prosecutor of Romania).

According to the factual and legal point of view, which must be observed until a contrary decision of the competent authority has been taken, the cooperation protocols concluded by the Public Ministry and the Romanian Intelligence Service have not changed the normative acts, have not added to the law or are contrary to the legal provisions, these being internal documents that take over and operationalize provisions from several normative acts, clarifying the steps to be taken when implementing the primary and secondary legislation.

Recent jurisprudence, both in civil and criminal matters, has stated that the cooperation protocols of P.I.C.C.J. - S.R.I. are not regulatory acts of a normative nature; as a result, have no effect on other persons, being only documents of internal organization of some institutions.

In a recent case of the Bucharest County Court, in file no. 15884/3/2016, ruling on the preliminary issue raised by the parties, by the authentication of September 5, 2018, the court decided that "*in particular, in this case, it is required to find that the Protocol concluded between the Romanian Intelligence Service and The Prosecutor's Office attached to the High Court of Cassation and Justice is an administrative act the validity of which depends on the lawfulness of evidence administered during the criminal prosecution and the interceptions made by that service, the transcript of which is in the case file. Regarding the above-mentioned doctrinal arguments, it is noted that the Protocol does not meet the requirements of an administrative act, namely it was not issued by the public authority stipulated by the law. The two entities that participated in*

the conclusion of this Protocol are not public authorities within the meaning of Article 1 paragraph 1 of the Law no.554 / 2004, but each of them represents a public institution which is not similar to the notion of public authority as defined by the Administrative Law of administrative. As such, the issue raised in the defence is assessed by the County Court as exceeding the provisions of Article 52 Code of Criminal Procedure since it is not a matter of priority on the settlement of which the merits of the case depend."

The above solution is consistent with the consistent jurisprudence of the supreme court. For example, the High Court of Cassation and Justice, the Administrative and Fiscal Law Section, by decision no. 4257 of November 12, 2014, final, concluded **that a protocol concluded on the basis of the collaboration of two public authorities is not an administrative act,** as provided by Article 2 letter c) of Law no. 554/2004, not being a unilateral administrative act of an individual or normative nature, issued by a public authority, under a regime of public power, in order to organize the law or the concrete enforcement of the law, which gives rise to, amends or extinguishes legal relations.

Regarding the claims made in the more and more frequent criminal cases of annulment of such evidence, the High Court of Cassation and Justice established, by the sentence no. 292 / 11.05.2018 (not final), that "*the technical surveillance activities carried out under a national security warrant (issued under the conditions of Articles 14-21 of Law no. 51/1991) are not subject to the effects of this decision, considering both the regulation source (the special law and the Code of Criminal Procedure) and the object of those activities not related to the scope of the criminal investigations referred to in paragraph 34, but a criminal investigation justified by the defence of national security."*

By the same judgment, the High Court of Cassation and Justice pointed out that the effects of Decision no. 51/2016 of the Constitutional Court refers to the technical surveillance measures ordered under the current Code of Criminal Procedure and cannot be extended to the provisions stating in the same matter of the previous code criminal rules presumed as constitutional and appreciated as such by the court of constitutional law in several decisions, otherwise the action leading to disregard of the principle established by Article 147 paragraph 4 of the Constitution and to giving broader valences to the effects of the decision in terms of their extent over time than those of the abrogation of the rule.

The High Court of Cassation and Justice also held that the effects of Decision no. 51/2016 can also be invoked and analysed in cases pending before the court at the time of its publication in the Official Gazette, even if the stage of the preliminary chamber was exceeded, and it was stated that the doctrine was considered to be in compliance with the principle of non-retroactivity, in which case the decision to declare unconstitutionality would apply to pending cases, as a court invested with the settlement of the case cannot disregard the effects of the unconstitutional declaration of a legal text (Decision ruled on appeal in the interest of Law No. 477/2012 of the High Court of Justice Cassation and Justice - United Sections, published in the Official Gazette, Part I, no. 761 of 15.10.2012).

In conclusion, **the High Court of Cassation and Justice held that any technical surveillance activities carried out by bodies other than criminal prosecution bodies are sanctioned with relative nullity in relation to the succession in time of Constitutional Court Decisions no. 51/2016 and no. 302/2017 and the presumption of constitutionality of any legal provision,** requiring

consideration of the additional condition of causing damage to the rights of the parties or of other main procedural subjects, and the possibility of removing the injury other than by the abolition of the act.

By this judgment, **the High Court of Cassation and Justice thus establishes the principle of sovereign judgment of the courts on possible breaches of the legal provisions occurred in the course of enforcement of the evidence-based procedures of technical supervision, the appreciation of their corroboration with other evidence and their relevance in support of allegations made to the defendants.**

Moreover, Decision no. 54/2009 of the Constitutional Court, ruled on the unconstitutionality of some provisions that eluded the judicial authorities' appreciation of the evidence, requiring an automatic finding thereof, the Court having held that "*this regulation, together with the previous provisions establishing absolute nullity of the means of evidence and of the procedural acts obtained with strict disregard of the legal provisions, make no distinction between the two types of nullity, as the injury produced can be removed only by the annulment of the procedural act or the injury is formal or insignificant and can be remedied by the court or by prosecutor. Nullity is found by a court order, at the request of an injured party, in case of controversial debates, by the administration of evidence and with the right to appeal to judicial review by means of legal remedies.* ***Neither the prosecutor's resolution nor the authentication of the court can establish the nullity of means of evidence which, although they may have certain imperfections and can be obtained without strict adherence to the specific rules, are essential in terms of evidentiary content. Only the courts, following a specific procedure, may find the nullity of such legal acts which may also be means of evidence.*** *The process of deliberation of the judge or of the prosecutor involves the critical and comparative analysis of the evidence administered and excludes the process of annulment of means of evidence or their removal from the file by circumventing the judicial control and the process of assessing them "(s.n.).*

Insofar as there are isolated cases of magistrates who have breached the obligation of independence and impartiality, who have violated the rules of criminal procedure, the prohibition from the statute of the profession not to collaborate with the secret services, etc., they bear the criminal, disciplinary or material liability, from this point of view being indisputable that such deviations were caused by a cooperation protocol or not. Under no circumstances, however, a generalizing discourse can be accepted, which throws an anathema over the entire judiciary system.

VI. ECHR jurisprudence in cases where the unlawfulness of telephone interceptions was found but not the breach of the right to a fair trial by using them together with other evidence in the criminal proceedings

The European Court of Human Rights has ruled in several cases against Romania that, although there has been a violation of Article 8 of the Convention, because of the legislative framework that did not provide guarantees in cases of intercepting and transcribing calls, of archiving relevant data and destroying those that are not relevant, there was also a violation of the right to a fair trial through the use of the evidence thus obtained:

• ***Case Dumitru Popescu v. Romania, no. 2, application no. 71.525 / 01, decision of April 26, 2007***

"2. On the use by national courts of transcripts of intercepted telephone conversations [...]

109. The Court notes that the unlawfulness of the interception of telephone conversations invoked by the petitioner before national judges relates solely to the breach of national law, as a result of the lack of authorization of the Prosecutor's Office to personally target the petitioner and the complete transcription of the calls intercepted by the special services. The petitioner has never denied the content of the disputed registrations and has neither challenged their authenticity before the national courts (see, *per a contrario*, *Schenk*, § 47) or even before the Court. [...]

110. Lastly, the Court notes that, in matters of evidence, the Romanian procedural law provides that the evidence has no pre-established value and is not hierarchical, their force of evidence depending on the judge's intimate conviction as to the whole of the administered evidence, without existing, therefore, a presumption of precedence of an evidence over another. It considers that it is important in the present case that the contested registrations were not the only means of evidence subject to the sovereign assessment of judges (see mutatis mutandis *Schenk,* §§ 47 and 48; *Turquin v. France,* no. 43,467 / 98 (Dec.), 24 January 2002]. Indeed, the Bucharest Territorial Military County Court and the higher courts corroborated the recordings with other means of evidence, such as the statements of the co-defendants, the testimonies of the Otopeni airport security officers and the reports of confrontation, reconstitution and search, among which the litigious registrations of course, mattered in the decision of national judges to condemn the petitioner, but without having constituted the unique element that created their intimate conviction regarding his guilt.

111. In the light of the foregoing, the Court considers that the use of the disputed records as evidence in the process of intimate persuasion of national judges did not deprive the petitioner of a fair trial and therefore did not infringe Article 6 paragraph 1 of the Convention."

• ***The case of Viorel Burzo v. Romania, applications no. 75109/01 and 12639/02, judgment of June 30, 2009***

"141. The Court considers that, in the present case, the circumstance that the litigious recording was not the only means of evidence subject to the sovereign assessment of judges (see *Dumitru Popescu (no 2),* section 110) must be given importance. In fact, the Prosecutor's Office and the higher courts compared the recording with other means of evidence, such as witness testimony, search report, forensic expertise and other elements, of which the litigious registration mattered, of course, in the decision of national courts to condemn the petitioner, but without, however, establishing the sole element underlying their conviction regarding his guilt. In addition, the petitioner had the possibility to require that G.L. to be heard on the substance of his statements before the Supreme Court of Justice. In addition, the Supreme Court based its decision on the petitioner's testimony during the investigation of the criminal case after giving reasons for choosing to prefer this statement rather than the one made at the trial stage. As regards the elements provided, nothing suggests that their assessment by the Supreme Court was arbitrary or that the petitioner's rights of defence have not been sufficiently complied with.

142. In the light of the foregoing, the Court considers that the use of the litigious registration as evidence of the prosecution did not deprive the petitioner of a fair trial. It follows that this head of claim is manifestly ungrounded and must be dismissed on the basis of Article 35 paragraphs 3 and 4 of the Convention."

• Case Ulariu v. Romania, application no. 19267/05, decision of November 19, 2013

"66. The petitioner complains that he has been convicted on the basis of means of evidence which had not been legally obtained under domestic law. In particular, he considers that the recordings could not be used as evidence insofar as they had been authorized and carried out during the pre-trial deeds and not after the commencement of the criminal proceedings. [...]

69. In the present case, the petitioner claims, in particular, that the recordings of his conversations and their transcripts could not constitute evidence lawfully obtained under national law on the ground that these had been authorized and carried out during the preliminary investigation and not after the criminal proceedings had begun against the person concerned. The Court finds that the national courts responded to the petitioner's argument by interpreting the provisions of the Code of Criminal Procedure applicable in the present case (see *Niculescu,* paragraph 123). In addition, the petitioner had the opportunity to listen to the recordings in the case during the first trial procedure and to check the accuracy of the transcripts. He did not dispute the reality of those conversations nor the authenticity of their content (see, *a contrario*, *Schenk v Switzerland,* July 12, 1988, section 47).

70. Lastly, the Court points out that, as regards evidence, the Romanian procedural law provides that the evidence has no pre-established value and is not hierarchical (*Dumitru Popescu (No 2*), previously quoted paragraph 110). He considers that, in the present case, it is necessary to attach importance to the fact that the litigious registrations were not the only means of evidence subject to the sovereign assessment of judges. In fact, the Prosecutor's Office and the domestic courts compared the records with other means of evidence, such as the witness statements, so that those recordings did not constitute the sole element underlying their personal conviction as to the petitioner's guilt. The petitioner also had the opportunity to interrogate T.C., L.S. and L.M.

71. In the light of the foregoing, the Court considers that the use of the litigious (contested) registrations as evidence of the prosecution did not deprive the petitioner of a fair trial. It follows that that head of claim is manifestly unfounded and must be rejected in accordance with Article 35 paragraph 3 letter a) and Article 35 paragraph 4 of the Convention".

VI. The unconstitutionality of the legal provisions that would introduce the possibility of reviewing final court judgments for the mere fact of referring in the documents of the file to activities within the scope of the cooperation protocol.

By Decision no. 126 of March 3, 2016 regarding the exception of the unconstitutionality of the provisions of Article 88 paragraph (2), letter d), Article 452, paragraph (1), Article 453 paragraph (1) letter f) and of Article 459 paragraph (2) of the Code of Criminal Procedure, published in the Official Gazette no.185 of 11.03.2016, the Constitutional Court (which comprised the current Minister of Justice) stated as follows:

"25. [...] With regard to the cases which are not pending before the courts when the decision of admission of the Court was published, being an exhaustive legal relationship - *facta praeterita*, the Court holds that the party can no longer request the application of the admission decision, since the decision of admission of the Court can not constitute a legal basis for legal action, otherwise the effect of the Court's decision would be extended on the past. [...]

27. On the other hand, the Court observes that, *as regards the cases settled before the publication of the Constitutional Court's decision and where the referral of the Constitutional Court was not ordered with an exception having as object a provision of a law or ordinance declared unconstitutional, these represent a fact praeterita, since the cause was definitively and irrevocably settled. The Court observes that, from the moment the application was brought before the court and until the case was finally settled, the incident rule had a presumption of constitutionality, which was not overturned until after the judgment which finally settled the case. Thus, the Court finds that the incidence of the decision to admit the constitutional law court in such a case would be equivalent to attributing to the Court's jurisdiction act ex tunc effects, contrary to the provisions of Article 147 paragraph (4) of the fundamental Law, and would deny, unjustifiably, the rex judicata authority attached to final judgments. [...]*

30. The Court then notes *that the activity carried out in the ordinary course of the criminal proceedings, to the extent that it was lawful and well founded, ends with a final criminal judgment in which the facts dealt with express the truth and the criminal law and civil law were applied correctly. However, the practice also cites cases of final judgments which contain serious errors of fact and law which can persist in the ordinary appeals, and all the more so if ordinary appeals have not been exercised. In such a case we find the reason for which the legislator instituted the extraordinary remedies, as criminal procedural means of abolishing the judgments with the res judicata authority, but which do not correspond to the law and the truth. The establishment of such procedural means is detrimental to the judicial authority, and thus to the stability of the final court decisions aimed at conferring trust to the activity of justice, but only in the cases and under the conditions strictly regulated by the legislator, with a view to restoring the legal order.* So, in view of the effects of extraordinary appeals on judgments which constitute the final act and the order of the court to settle the case with res judicata authority, the Court notes that the legislator's choice in regulating an appeal seeking reformation of a court judgment must be made within constitutional limits"(sn).

It follows from these principles that the regulation of a case for the review of court judgments in criminal matters cannot have retroactive effect, in the sense of targeting cases with final judgments. The rule *mitior lex* concerns exclusively the rules of the substantive criminal law and not the rules of criminal procedural law.

VI. The impossibility to legally regulate a "repair" on the path of amnesty and collective pardon

According to Article 152 of the Criminal Code ("Effects of Amnesty"), the amnesty removes the criminal liability for the offense committed. If it intervenes after the conviction, it also removes the enforcement of the sentence ruled, as well as the other consequences of the conviction. The fine collected before amnesty is not refunded. Amnesty has no effect on safety measures and on the rights of the injured person.

However, the amnesty must pursue the same purpose as the application and enforcement of the punishment, the adoption of such measure having an exceptional character.

According to Article 160 of the Criminal Code ("Effects of pardoning"), pardon has the effect of removing, in whole or in part, the enforcement of the punishment or its switching to another easier one. Pardoning has no effect on complementary punishments and non-custodial educational measures, unless otherwise ordered by pardoning document. Pardoning has no effect on safety measures and on the rights of the injured person. Pardoning has no effect on punishments the enforcement of which is suspended under supervision, unless otherwise ordered by pardoning document.

According to Article 12 of the Law no. 546/2002 on pardon and the procedure for granting pardon, "collective pardon is granted to a number of persons for convictions *determined by the amount of punishments or by the offenses for which they were ruled."* Therefore, the law does not allow the establishment of the beneficiaries of collective pardon according to factual circumstances such as the existence of cooperation protocols, but only according to strictly established general criteria: categories of offenses and the amount of punishment.

Therefore, the adoption of an act of amnesty or collective pardon must be based on considerations which concern the general interests of the society and not of individuals[6]. In motivating a separate opinion of a Decision of the Constitutional Court of Romania[7], Professor Costică Bulai, who was the judge of the Constitutional Court at the time, pointed out that "***there is no constitutional right to pardoning, but only a right of Parliament to grant by organic law, amnesty or collective pardon, as extraordinary measures determined by criminal policy reasons and taking into account the general interests of society and not the interests of individuals benefiting from such measures."***

The European Commission drew a first alarm signal on the situation in Romania through the MCV Country Report in 2015[8], which noted that "Parliament's rejection of the amnesty law in November 2014 gave a positive signal, because it demonstrated opposition to a law that would have the effect the spotlessness of individuals who were convicted for corruption offenses. At the same time, the fact that, in less than a week since this vote, a new bill on collective amnesty has been taken out from the drawers in the Parliament, proves that this issue is not closed."

VII. Conclusions

In essence, on the basis of currently available data in the public space, we appreciate that we cannot take advantage of the highly promoted media ambiguity of the "illegitimate character" of the S.R.I. - P.C.C.J. protocol, in order to cancel all the efforts of criminal justice from recent years, insofar as there has been no

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[6] V. Dongoroz, Drept penal (Criminal Law) (re-editing of the 1939 edition), Asociația Română de Științe Penale, Bucharest, 2000, p. 578.

[7] Decision no. 86 of February 27, 2003 of the Constitutional Court of Romania, published in the Official Gazette, Part I, no. 207 of March 31, 2003.

[8] Available online at http://ec.europa.eu/cvm/docs/com_2015_35_fr.pdf [last accessed on 02.10.2018].

evidence of real substantive issues for which there are anyway legal remedies in individual cases.

In the case of a reasonable suspicion of a breach of the functional competence in conducting the criminal investigation, the verification of the lawfulness of the administration of evidence is the exclusive competence of the criminal courts, given that all magistrates have the right to access classified information and the defendant's lawyer may be granted this access upon request.

We argue that there is a concrete need to moderate a real public hysteria on this topic, likely to result in direct pressure on the courts, for example, to rule solutions for acquittal of all offenders discovered based on information provided by S.R.I..

A legislative intervention in this field, generated exclusively and undifferentiated only by this context of "secret protocols", would seriously harm the prosecution of many serious crimes, such as organized crime or terrorism, because the technical measures performed by S.R.I. at the disposal of the prosecutor's offices or of the courts did not only regard the corruption offenses, these being the only ones that fuelled the "conspiracy theory" the most because of the quality of the active subjects of public servants, senior civil servants or dignitaries.