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CONCEPTUAL APPROACHES REGARDING THE SPECIAL INVESTIGATION ACTIVITY UNDER THE CONDITIONS OF THE RULE OF LAW

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Summary of the thesis of doctoral thesis in law

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The summary and postdoctoral thesis can be consulted at the National Library of the Republic of Moldova, the "Tudor Roșca" General Library within the Academy "Ștefan cel Mare" of the MIA of the Republic of Moldova and on the website of the National Agency for Quality Assurance in Education and Research (www.cnaa.md) and on the webpage of the Doctoral School of Criminal Sciences and Public Law (https://academy.police.md/).

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LIST OF ABBREVIATIONS

para. – paragraph and derivatives;
NAP – National Administration of Penitentiaries;
Art. – the article;
SIA – special investigative activity and derivatives;
ECHR – European Convention on Human Rights;
NAC – National Anticorruption Center;
CC – Criminal Code;
CCP – Code of Criminal Procedure;
ECtHR – European Court of Human Rights;
MIA – Ministry of Internal Affairs;
SIM – măsuri speciale de investigații şi derivatele;
hair. or § – paragraph (ul).

CONCEPTUAL MARKINGS OF THE RESEARCH

The actuality and importance of the present study. This year marks 30 years since the promulgation of the first law devoted to the legal regulation of special investigative activity. During this period, the legal regulation underwent numerous changes, culminating in 2012 with the repeal of the first Law no. 45/1994[72], as a result of the conviction of our country at the ECtHR[4] for the insufficiency of the guarantees in this law against abuses [69], and the adoption of the current Law no. 59/2012[74], as well as the completion of the Criminal Procedure Code [7] with a new section dedicated to special investigations[60].

The legal reform of 2012 produced essential changes in the regulation of this type of activity, at the same time generating a multitude of questions to which in most cases it was practically impossible to find reasoned and logical answers[32], which had negative effects on judicial practice[39].

The numerous attempts to harmonize the legislation led to the new legal amendments of 2023, which, in addition to the good intentions of perfecting the normative framework, also generate other conceptual questions that neither the legislator nor the doctrine are in a hurry to answer.

The legislator's repeated attempts to define the concept of special investigative activity [24], four times, are an obvious proof of the fact that this topic is not only current and important, but also very complex. The entire architecture of the legal regulation of this matter depends on the correct understanding of this concept, its limits and content being determined, as well as the purpose, tasks, forces and means by which they will be achieved [44].

The solution of these problems, as well as other relevant questions, requires the realization of a complex study in accordance with the principles and values of the rule of law [42] which will develop a methodological support for revealing legalities, formulating conclusions, developing new proposals and recommendations that will have a great importance for the theory and practice of special investigative work and the criminal process.

Description of the situation in the research field and identification of research problems. In the past, the literature dedicated to special investigations was predominantly secretive, making it difficult

to understand and develop this field. The legal reform of 2012 led to an increase in the number of public scientific works, but also to debates regarding the position of these investigations in the national legal system. However, many researchers focus on narrow aspects, ignoring the broader conceptual approaches of SIA. There are also uncertainties in the legal regulations regarding these investigations. Even though there have been achievements in solving some fundamental problems, the existing theoretical model is still unclear and unpredictable. This paper aims to correct this lacuna.

The important researched scientific problem consists in the complex analysis of the problems of a conceptual nature regarding the special investigation activity under the rule of law, the emphasis being on the understanding and improvement of national legal regulations by aligning them with international standards. The research provided a deep understanding of the essential features of the concept of special investigative work, highlighting both commonalities and significant differences between it and related activities. This complex study contributed to the theoretical substantiation of the system of legal regulations in the field of SIA and to the formulation of ferenda law proposals, thus consolidating the legal framework in accordance with the principles of the rule of law and its requirements.

The purpose and tasks of the research. The aim of the thesis is to carry out a complex conceptual analysis of the SIA issue in relation to the requirements of the rule of law, aiming at the development of an updated methodological support that would clarify the theoretical, normative and application problems that have arisen in the context of recent legal reforms in the relevant field, as well as intervening with reasoned proposals to improve national legislation.

In order to achieve the set goal, the achievement of the following specific objectives was proposed:

- Investigating the origin and evolution of the SIA concept.
- Clarification of the concept, content and types of SIA.
- Appreciation of the notion, content and legal regime of special investigative measures.
- Examination of the procedure and methodology applied within the special investigative measures.
- Examining the relationship of SIA with other related activities.

• Revision of the concept of legal protection of participants in special investigations.

• Investigating the issue of capitalizing on the results of special investigative measures.

• Analyzing the concept of respect for the rights and freedoms of the person in the context of SIA.

• Identifying and addressing the guarantees of the person's rights within the SIA.

• Analysis of the configuration and prospects for the development of SIA norms.

• Appreciation of the legal position and competences of SIA subjects.

• Formulating proposals to improve the national legal framework in the field of SIA.

Research hypothesis. In the context of the legal reforms in the field of SIA, which generated multiple dissensions and ambiguities and led to the splitting of previous regulations into separate normative acts (Law no. 59/2012 and CCP), our hypothesis is that conducting a complex study dedicated to the conceptual approach of this kind of activity in accordance with the standards of the rule of law will clarify these uncertainties, as well as the existing theoretical, normative and application problems. Thus, this study could identify and substantiate recommendations for improving the national legal framework in the field of special investigations.

The scientific research methodology is composed of the fundamental theses of the general theory of the state and law, SIA, procedural-criminal law, criminal law and criminology [54]. The various methods included: the historical, grammatical, logical, systematic, comparative method for understanding the evolution of the concept of special investigation and the interpretation of legal norms in the context of the rule of law. Sociological methods, including document analysis, were used to assess the practices of applying special investigative measures. Legal methods, formal and comparative, were applied for the evaluation and objective interpretation of the relevant legal norms. Comparing national and international regulations facilitated a deeper understanding of the legal system and special investigations. The use of statistical methods allowed the evaluation of the frequency of spe-

cial investigations and other relevant aspects. Literature, normative acts and relevant national and international jurisprudence were consulted. The analysis of judicial practice, including the jurisprudence of the ECtHR and national courts, contributed to the formulation of conclusions and recommendations for improving the national legal framework in the field of special investigations.

The scientific novelty and originality consists in the realization of a complex monographic study dedicated to the conceptual approach of SIA in accordance with the standards of the rule of law, targeting a set of **major theoretical, methodological and applied problems** that appeared in the context of recent legal reforms in the field of special investigations, in which conclusions are formulated, innovative proposals and recommendations are developed and which claim to be of particular importance for the theory and practice of SIA and the criminal process.

The theoretical significance of the paper consists in the complex analysis of the current theoretical, normative and applied problems regarding the special activity of investigations in the context of the rule of law, which allowed the formulation and substantiation of the concept of SIA as a complex genre, composed of various types of activities, regulated by a system of hierarchically structured vertical and horizontal normative acts. The research contributes to the theoretical underpinning of SIA and criminal procedure. This improves practical approaches in the field, thereby supporting the rule of law and protecting citizens' rights in criminal justice.

The applicative value of the work is highlighted by the potential of integrating the theoretical knowledge and the conclusions obtained in the research activity, as well as in the practical activity of the law enforcement bodies. The main contributions include strengthening the theoretical background of SIA, support in practical activity, controlling the legality of the investigative process, influencing the legal regulatory process and integration into relevant educational programs.

The main scientific results are submitted for support. The fundamentally new results for science and practice obtained as a result of this monographic study represent a significant contribution to the understanding and improvement of the subject of the special investigation activity. For the first time in the local doctrine, the author obtained these results through the complex research and analysis of

the theoretical-normative and practical problems of a conceptual order faced by representatives of the academic environment and practitioners interested and involved in the ASI field. Within the work, a new direction of research was outlined and launched for debate - ASI under the conditions of the rule of law, based on several principal theses:

- Determining the consecutive stages of development of SIA through the lens of the evolution of methods and means specific to this field; substantiating the origin and transformations of the legal regulations of SIA; analyzing the legal normativity of SIA in different historical contexts;
- Revealing and analyzing the essential characteristics of SIA; arguing the predominantly secret nature of SIA alongside its public aspect; demonstrating the existence of SIA only under legal conditions and carried out only by competent state subjects; emphasizing the search and identification nature of SIA; highlighting the proactive and reactive nature of SIA;
- Analyzing the tactical and methodological components of SIA; highlighting other action procedures besides the collection of information specific to SIA;
- Assessing the social utility of SIA; arguing the importance and role of SIA in the field of ensuring national, penitentiary, and individual security, public order, as well as in combating crime, preventing, curtailing, discovering, and investigating offenses;
- Identifying the correlation between SIA and the institution of human rights; analyzing the concept of respecting the rights and freedoms of the individual in relation to SIA; arguing the difference between the restriction and violation of individual rights in the context of SIA; addressing the respect for the rights and freedoms of the individual as an object of protection for SIA and as a fundamental principle of SIA, as well as a condition for the admissibility of SIA results in the evidentiary process (art. 93 para. (4) CPP);
- Assessing the legal position and competencies of SIA subjects; arguing the distinction between the notions of „SIA subject," „subject conducting SIA," and „subject conducting MSI"; demonstrating through current legal regulations that the investigation officer is the only SIA subject authorized to conduct MSI; interpreting the grounds and conditions for conducting MSI;

• Redefining the concept of SIA from the perspective of the multiple types of special investigations it involves; demonstrating and arguing the complex nature of SIA; establishing the inseparable link between the purpose, tasks, forces, and means of SIA;

• Identifying the current direction of development of the legislative regulation level of SIA; determining and analyzing the different legal regimes for conducting MSI; arguing the differences in the content of MSI, the procedures for their implementation, and the utilization of their results; revealing the interdisciplinary nature of MSI as provided in the CPP.

• Determining the relationship between SIA and other related activities; outlining the special nature of SIA in relation to police activities, delineating the demarcation line between them; establishing the sectoral nature of information gathering activities concerning the verification of public office holders and candidates, and counterintelligence and foreign intelligence activities in relation to SIA; revealing the formal distinction between the activities of preventing and combating money laundering and terrorism financing, regulated by Law no. 308/2017, institutional integrity assessment and professional integrity testing, regulated by Law no. 325/2013, and SIA; noting the subsidiary nature of SIA in relation to the criminal process, including the acts of finding and criminal prosecution;

• Analyzing the current legal protection mechanism for participants in special investigations; interpreting the norms dedicated to this subject, such as: controlled crime - art. 14 of Law no. 50/2012; simulated crime/offense - art. 138^{10} para. (8) CPP; control of money transfer - art. 138^{7} para. (3) CPP; controlled purchase of prohibited goods - art. 138^{9} CPP, and identifying the deficiencies and discrepancies between these norms and the criminal law; arguing for the inclusion of a new cause in the criminal law that removes the criminal nature of the act - Execution of the law;

• Determining the current policy for the development of SIA regulations promoted through the 2023 legal amendments; revealing the tendency to prohibit the conduct of special investigations for investigating crimes, including during the preparation and attempt phases, outside of the criminal process;

• Promoting new SIA principles, such as the principle of respecting human dignity, the principle of operability, and the principle of sub-

sidiarity; arguing the importance of legalizing these SIA principles;

• Arguing the proposals of de lege ferenda intended to improve the normative framework in the field of SIA, presuming the efficiency of this complex type of activity in achieving the goal of ensuring and protecting the values of the rule of law.

The implementation of the scientific results consists in the possibility of using the knowledge obtained in the judicial practice of the competent authorities in the field of SIA. The present study can also be useful for the process of developing normative acts intended to regulate the social relations that appear within the SIA, as well as in the process of academic training to deepen knowledge in the relevant didactic disciplines.

Approval of work results. The present study was developed, discussed, approved and recommended for support within the „Special Investigation and Anticorruption Activity" and „Criminal Procedure, Forensic and Information Security" specialized chairs of the „Ștefan cel Mare" Academy of the MAI of the Republic of Moldova. The results and conclusions contained in the paper were reflected in detail in various national and international scientific-practical conferences, theoretical seminars, „round tables", etc.

The results of the research were discussed and used in the finalization works for the second reading of the draft law for the modification of some normative acts (regarding the special activity of investigations) no. 451 of 08.12.2022 under the auspices of the National Security Commission of the Parliament of the Republic of Moldova.

The theoretical theses, conclusions and recommendations obtained as a result of the investigations carried out are used in the educational process carried out in the „**Ștefan** cel Mare" Academy of the MAI of the Republic of Moldova.

Publications on the topic of the thesis. The results of the research were reflected in various journals and materials of scientific conferences published in the Republic of Moldova and abroad, in Romanian and English, as well as in a single-authored monographic study: Special investigative activity and the criminal process: common aspects and delimitations (2022).

Keywords: special investigative activity, special investigative measures, investigative officer, criminal process, special investigations, human rights, evidence, information.

SUMMARY OF THE CHAPTERS

Summary of the sections of the thesis. The present study is structured keeping in mind the aims and objectives of the research and provides logical consistency in the presentation of research progress and results. The thesis consists of an introduction, five chapters, including nineteen paragraphs, which consistently address the content of the identified issues, conclusions for each chapter, general conclusions and recommendations, bibliography and appendices.

Chapter 1 of the work entitled „The doctrinal and normative dimension of SIA" is dedicated to the analysis of the situation in the research field; it includes two paragraphs and conclusions. The first paragraph „The special activity of investigations in the national doctrine and legislation" was reserved for the theoretical and legal approaches of the Republic of Moldova. For easier analysis, it has been conditionally segmented into two parts, the first part covering the period up to the legal reform of 2012, and the second the following period extending to the present day. From the analysis carried out, it was observed that the scientific researches with reference to SIA were very few in number, a fact for which civil society was in real impossibility to know the particularities and importance of this matter.

The lack of knowledge about the architecture and principles of the rule of law was probably the main reason for refraining from public comment on a discrete field of activity and virtually unknown to the general public. Refraining from publishing open works in the field of SIA also seems to be the consequence of a stereotype left over from the previous period, in which all discussions were held behind closed doors and under conditions of maximum confidentiality. This reluctance to disseminate knowledge through the editing of public works could have negatively influenced the evolution of national legislation and judicial practice, inhibiting their development and refinement. The many problems encountered by practitioners involved in special investigations often remained unknown. It is possible that the government, lacking adequate awareness of these issues, has not shown the necessary interest to intervene in order to improve working conditions or to stimulate the growth of professionalism among practitioners [17, p. 166; 30]. This situation highlights a significant gap in the management of police bodies [1], which would have required a more insistent

and transparent approach to support the effective evolution of the field.

Thus, we determined that the 2012 reform was done almost without a theoretical busies that would have justified the trajectory of the development of the normative framework with reference to special (operative) investigations [39]. The post-reform period is marked by an obvious intensification of the number of researchers actively involved in addressing different topics related to SIA. This fact can only be welcomed, especially since the legal reform has made it difficult to understand the clear and unified legal norms in the relevant field. This period is also notable for the support of doctoral theses with specific SIA themes [2; 8].

The role of SIA within the rule of law becomes an essential tool for ensuring constitutional values and fighting against threats that undermine them. Capitalizing on the results of special investigations in the evidentiary process becomes a vital necessity. However, the legal reform of 2012 generated conflicting debates regarding the place and legal position of SIA in the system of criminal sciences. The literature analysis revealed two diametrically opposed views on this aspect. Some support the preservation of the SIA's autonomy and freedom of action in preventing and combating crime [2], while others opt for its full integration into the criminal process [8]. These views require a more detailed analysis and a coherent approach in order to outline an appropriate legal framework for SIA.

The second paragraph „The special activity of investigations in the doctrine and legislation of other states" aims to present the situation in the field of research abroad of our country, highlighting the fact that in this segment science has advanced much ahead of the national one. The Romanian, Russian, Ukrainian, Kazakh, etc. doctrine is particularly noteworthy. Who made important steps in the development of this subject?

The comparative analysis of the regulation of special investigations in the countries of the Eastern space [38] reveals the fact that the relationship between the criminal procedure and the special investigation activity is of two types: 1) countries that have integrated part of the legal regulations regarding the special investigation activity into the Code of criminal procedure (Lithuania (2002), Estonia (2003), Latvia (2005), Moldova (2012), Ukraine (2012), Georgia (2014), Kazakhstan

(2014), Kyrgyzstan (2019); 2) countries that still retain a very clear distinction between the legal regulations on SIA and the criminal process (Russian Federation, Belarus, Armenia, Azerbaijan, Tajikistan, Uzbekistan, Turkmenistan) [27].

The legislation of European countries allows special investigations to be carried out and provides different procedures for authorizing and carrying out SIM in the field of the criminal process and outside it. There is a tendency for information obtained outside the criminal process to remain secret and to be used confidentially for solving strategic tasks related to national security in the broad sense of this notion, which involves not only military security, but also social and economic security, the defense of constitutional values, of the population's well-being and last but not least the protection of the rule of law. Only in exceptional cases, the information obtained in this way is transmitted to the criminal investigation body to be used in the evidentiary process [27, p. 166].

The analysis of the Western space literature on special investigations reveals a rich and valuable source of knowledge. These works offer a wide range of theoretical and practical perspectives on investigative techniques, but it is important to emphasize that they also primarily address the laws and practices of other countries [13; 14; 76; 84; 88-93]. Thus, for the Republic of Moldova, the adaptation and integration of the concepts and ideas reflected in these works require careful and deep analysis to ensure that they are relevant and applicable within the specific framework of the Moldovan legal system.

The approaches presented in this chapter emphasized the close connection between SIA, the criminal process and the institution of human rights, which indicates the need to approach them in a complex manner under different aspects, such as historical, theoretical, practical, comparative law. Also, the lack of clarity of the concept of SIA, its content, the place and role of SIM within SIA, its relationship with other crime prevention and combating activities, with criminal prosecution and findings [11; 12], dissensions and uncertainties were noted regarding the legal regulations with reference to the capitalization of SIA and SIM results [56], the legal regime, types, content and procedure of SIM [57]. It was also pointed out the importance of the grounds and conditions for carrying out SIM [22; 59]. Increased atten-

tion has been drawn to the issues related to the achievement of SIA tasks [44; 52], ensuring the legal protection of investigative officers and other participants in conducting special investigations [45] and SIA control.

Chapter 2 of the paper „The legal nature and concept of SIA" was intended to analyze the concept of SIA. In the **first paragraph**, the emphasis was placed on approaching the historical aspect of the development of the concept of SIA alongside the criminal process and the institution of human rights, certain consecutive stages of development of that concept being established. The historical method allowed us to have a better clarity about the concept addressed.

The first stage, which stretches from antiquity to the 19th century, is characterized by the absence of concern for respect for human rights in conflict resolution. In this phase, the rights of individuals were not fully recognized or, at most, were limited only to certain privileged social categories. The majority of the population, including those considered freemen, had no rights. This context led to the use of various methods and procedures to establish the truth, including public or secret methods, intimidation, provocation, blackmail or torture. During this period, the relationship between the special investigation activity and the criminal process was undefined, because individual rights were not yet a priority [27, p. 21-28; 28].

The second stage, which extends from the 19th century to the end of the 20th century, is marked by the recognition and guarantee of the rights of the person in the resolution of conflicts on the busies of legislation. This led to the emergence of criminal procedure codes that regulate the collection of evidence to establish the truth in accordance with legal norms. With this development, the standards for respect for human rights, including for special investigations, have increased. During this period, SIA was covered by classified documents, providing information useful for criminal proceedings and other purposes such as searching for missing persons or ensuring state security. As the rights of the person became a priority, the special investigative work gradually became more transparent, with fewer secret aspects [27, p. 28-41; 29].

The third stage started with the legalization of SIA. In the Republic of Moldova, this stage coincided with the adoption of Law no.

45/1994. This law brought legal tools for information gathering to the attention of the general public for the first time, while ensuring safeguards for the rights of individuals subject to investigations. The role of the SIA in relation to the criminal process remained the same as in the previous stage: providing relevant information for the formation of the evidence collection strategy and the performance of tasks adjacent to the criminal process [27, p. 41-44].

The fourth stage begins with the integration of the elements of SIA and the criminal process. This stage was marked by the emergence of two distinct models of integration: the Western European model and the Eastern European model. The first model involves a complete integration of the SIA within the criminal procedural legislation, informatively covering all phases of the criminal process, and its results being used as evidence only in exceptional cases. The Eastern European model, on the other hand, maintains separate laws for the regulation of SIA. This allows for the coexistence of distinct laws that address special investigative work and the criminal process. The Republic of Moldova adopted this model in 2012, by reforming the SIA into two distinct parts: one reactive, regulated by the Code of Criminal Procedure, and the other preventive, detecting and preventing crimes, regulated by Law no. 59/2012 [27, p. 44-50].

The second paragraph wanted to highlight the concept of SIA as a complex type of protection of the values of the rule of law [64]. The existence of a separate law, such as Law no. 59/2012, can be explained by the multidimensional nature of the SIA, which includes attributions that go beyond the scope of criminal investigations. From this point of view, there is a tendency to develop two distinct legal regimes for the regulation of SIA: 1) CCP regulates the special investigations carried out within the criminal process; 2) Law no. 59/2012 regulates special investigations carried out outside the criminal process [25].

Practically unanimously, at the international, national and doctrinal level, the irreplaceable importance of SIA is recognized in terms of protecting the values of the rule of law, especially in the current conditions in which these values are threatened by complex forms of crime, especially of an organized nature, which skillfully applies increasingly new and more sophisticated methods and techniques for camouflaging criminal actions and traces [33].

Until now, there has not been a very clear and unanimously recognized perception in society regarding the meaning of the notion of SIA. Nor did the legislator show consistency in appreciating this concept. In the 30 years since special investigative activity has been considered a legal activity, it has been perceived in different ways [37; 43]. Initially, between the years 1994-2012, it was appreciated as a means of defending certain values (art. 1 of Law no. 45/1994), later, between the years 2012-2023, that a public and secret procedure (art. 1 of Law no. 59/2012) and at the same time as a total of criminal prosecution actions (art. 132^1 CCP), and starting from the current year, the special investigation activity is defined as an information gathering activity (art. 1 of Law no. 59/2012).

Protecting certain values and gathering information to protect them are not identical notions. These should be viewed through the lens of the relationship between ends and means. Protecting assets is the purpose of SIA, and gathering information is the means to achieve this purpose. The difference between them is essential, and the change of place between them considerably narrows the perception of the social purpose of this kind of activity [33]. Although information gathering occupies a very important place in the content of SIA, yet this link cannot fulfill the purpose function of SIA. From this point of view, we find unsuccessful the legal definition of SIA set out in art. 1 of Law no. 59/2012, because it highlights the collection of information as the only direction of this type of activity, noting that the purpose of SIA is to collect the information necessary to prevent crime, ensure public order and safety in places of detention[44]. This definition contravenes the provisions of art. 2 of Law no. 59/2012 in which the tasks of the SIA are laid down, as it imposes actions that go beyond the stage of gathering information, such as the prevention of crime, but not the gathering of information for the prevention of crime.

In the absence of a clear and unambiguous definition, a careful review of the legal provisions is necessary to ensure that the purpose and tasks of SIA are correctly defined and that this activity is exercised in accordance with legal and ethical standards [91; 92]. Therefore, taking into account the essential features of SIA, we propose the following definition: ***Special investigative activity*** *represents a legal and complex type of activity of state bodies specially empowered to carry out*

physical and intellectual actions primarily in secret, in order to ensure public order, preventing crimes, protecting the rights, freedoms and dignity of the person, preventing the disclosure of confidential information.

The next paragraph was dedicated to addressing the legal position and powers of SIA subjects [55]. The problem of subjects in the SIA theory remains a topical one, until now there has not been a unanimously recognized opinion on this research segment. The question remains open regarding the assignment of the judge, the prosecutor and the criminal investigation body to the list of subjects that perform SIA, or whether these bodies also have certain powers in this field. The study carried out based on the analysis of the current legal regulations in the field of SIA allowed us to distinguish between the notions „subject of SIA", „subject who performs SIA" and „subject who performs SIM", these being in a relationship of derivation from one to another other. This makes it clear that not every subject of SIA automatically has the competence of a subject performing SIA, respectively not every subject performing SIA is immediately also a subject performing SIM. At the same time, it can be stated that any subject performing SIM is at the same time a subject of SIA, but not every subject of SIA is also a subject performing SIM.

From the perspective of the current legal framework, only the investigating officer is authorized to directly carry out the SIM [94], being endowed with the necessary powers to fulfill the purposes and tasks of the SIA. It is important to highlight that this does not exclude the valuable contribution made by the other subjects of SIA, i.e. participants, including natural and legal persons involved in providing material resources for conducting SIA and carrying out SIM [55].

The more precise definition of the categories of subjects of SIA should be of strategic importance for the further development of the science and practice of SIA, which would make it possible to analyze the legal relations that arise between these subjects, in the sense that a number of persons would be analyzed physical and legal as bearers of rights and obligations involved in the special investigative activity and, finally, it would be possible to eliminate legal and organizational gaps that would have a negative impact on the implementation of SIA.

The **last paragraph** of this chapter was reserved for the analysis

of the concept of ensuring the rights of the person within the SIA [51]. Within it, the complex of legal measures and guarantees designed to protect and respect the individual rights and freedoms of citizens during the conduct of special investigations was analyzed.

Ensuring the rights of the person within the SIA is essential for maintaining a balance between the need to defend constitutional values and respect for civil liberties, as well as for maintaining the integrity and credibility of the judicial system. This requires finding adequate safeguards against abuses and implementing effective mechanisms to monitor and control strict compliance with legal and constitutional norms, guaranteeing that any interference with a person's rights is necessary, proportionate and legal.

The national legislation contains enough guarantees against possible abuses in the performance of SIA and SIM aimed at ensuring the balance between the common and the individual interest. These include the obligation of the competent bodies to apply the SIA potential only for the purpose and to achieve the tasks strictly regulated by law; SIM authorization by the investigating judge, prosecutor and head of the specialized subdivision; restricting the carrying out of these measures to the investigation of serious crimes and threats endangering public order and security in places of detention; time limitation of SIM; protocol procedure of SIM; the examination procedure, use and storage of the obtained data; determining the categories of persons regarding whom special investigations are ordered; the circumstances in which the SIA results can or will be deleted or destroyed; SIA control and coordination; the strict prohibition of disclosure of information obtained within this activity; notifying the investigated person and ensuring his right to appeal; And so on [4]

Despite the existence of multiple guarantees in the national legislation, the subject of ensuring the rights of the person in the special investigative activity remains a very sensitive one for the Moldovan society. Many aspects remain debatable, especially since the legislator did not show interest in distinguishing between general and special guarantees depending on the degree of intervention of the SIM, as the ECtHR does in the case of Uzun v. Germany[5, §66]. They require constant analysis and adaptation of norms and practices according to technological and societal developments.

Although the provisions of art. 4 of Law no. 59/2012 are specifically dedicated to ensuring respect for the rights of the person, they should be treated as an integral part of a wider legislative mechanism, intended to ensure the protection of human rights in the context of SIA. Within this mechanism, there are also numerous other norms provided by the same law, which regulate special investigations, the grounds, conditions and procedure for their conduct, the way of judicial examination of materials related to the restriction of the constitutional rights of citizens during the conduct of the SIM.

The detailed analysis of the mechanism for ensuring the rights of the person within the SIA reveals the existence of two distinct types of guarantees. The first type consists of safeguards which, although they may seem excessive or disproportionate to the level of intrusion of SIM, are essential to protect the rights and freedoms of the individual. These include strict authorization and judicial review procedures, as well as limitations on the duration and scope of investigations. They are indispensable for maintaining a balance between the need to fight crime and respect for the fundamental rights of citizens. On the other hand, the second type of guarantees, although formally present in the legislation, may require careful review and perhaps re-evaluation to ensure their real effectiveness in protecting human rights. These safeguards may be considered more formal in nature or, in some cases, may appear insufficient in relation to the level of intrusion generated by special investigations.

Chapter three „The special activity of investigations and other related activities: common aspects and conceptual delimitations" [26] is devoted to the analysis of the concept of SIA in relation to other activities of preventing and combating crimes (paragraph I), with the activity of criminal investigation (paragraph II) and with the crime detection activity (paragraph III). Through this analysis, it was aimed to provide a better clarity of demarcation of the boundaries and content of SIA, having implications both in the theoretical development of this field and in the improvement of the relevant legislation.

Although special investigative work is often associated with police work, our research highlighted a significant distinction between the two. We found that the police activity has a wider scope than the special investigation activity. In addition, the competence to carry out

SIA does not extend to all police employees, but only to a limited group of officers within specialized subdivisions or subordinate to institutions such as the Ministry of Internal Affairs, the National Anti-Corruption Center, etc.

By analyzing the relationship between the special investigative activity and the particular detective activity [73], we observe that these are two closely related types of activity, both being part of the field of investigations, with common aspects, but also significant differences. Among them are the different domains to which the two types of activity are attributed: public and private; the more extensive powers of special investigative services compared to those of private detectives; the permission within the SIA of some measures that temporarily restrict the exercise of certain constitutional rights of the person, respectively the prohibition of such a restriction in the activity of private detectives; the objective of SIA to protect certain supreme values such as the fundamental rights and freedoms of the person guaranteed by the supreme law, ensuring individual, collective and penitentiary security, while the activity of private detectives seeks to obtain profit by carrying out actions and providing services aimed at defending the rights and the legitimate interests of its customers.

The analysis of the relationship between the special investigative activity and the counter-informative and external informative activity [71] shows that these types of activity have been treated for a long time according to the principle of the relationship between the general and the particular. However, the current trend is towards a distinct regulation of them, which allows the identification of significant differences: Different purposes: 1) special investigative activity aims to protect individuals, society and the state against crimes and other threats, while counter informative activity aims to ensure the security of the state by counteracting the subversive information activities of foreign special services and organizations, and the external information activity is aimed at obtaining information in the interest of the state; 2) Different subjects: The circle of subjects carrying out SIA is much more extensive compared to that of subjects carrying out counter informative and external informational activity; 3) Different legal regulation: the special investigation activity is currently regulated by Law no. 59/2012 and the Code of Criminal Procedure, as well as other

national laws, while the informative and counter-informative activity is regulated by Law no. 136/2023; 4) Different territorial principle of action: The external information activity is carried out outside the territory of the country, unlike the special investigative activity; 5) Valorization of the results is different: SIA results can be used as evidence in the criminal process if they were obtained during the criminal investigation (art. 93 par. (4) of the CCP), while the results of the informative and counter-informative activity cannot be used as evidence in criminal proceedings (art. 18 para. (4) of Law no. 136/2023).

Based on the analysis of the relationship between preventing and combating organized crime, regulated by Law no. 50/2012 [75], and the special investigative activity, it can be concluded that this can be understood through the lens of a relationship between a part and a whole. In this analogy, preventing and combating organized crime is an essential component of the general activity carried out by SIA. Thus, preventing and combating organized crime acts as an integral and indispensable part of SIA's wider efforts to protect society and the state against organized crime.

Analysis of the relationship between the special investigation activity and the activity of „gathering information regarding the verification of holders and candidates for public positions", regulated by Law no. 271/2008, highlights the sectoral character of the latter in relation to the special investigative activity. We note that, similar to the previous situation, the existence of a special law devoted to a narrow sector of special investigations (in this case, the verification of holders and candidates for public positions) creates the impression that this activity would be distinct from the special investigation activity. In our opinion, it would be correct for the verification of holders and candidates for public positions to be assigned to one of the types of SIA, namely to the informative-administrative verification activity, this in turn presupposing the provision of different legal-administrative regimes with the help of forces, special means and methods of investigations by collecting the necessary information about certain people for making certain decisions (art. 7 para. (3) of Law no. 59/2012).

Analysis of the relationship between the assessment of institutional integrity and the testing of professional integrity, regulated by Law no. 325/2013, and the special investigation activity reveals a formal

distinction between them, while, in reality, they are reported as part of a whole, the whole being the special investigation activity. Although formally they are treated as separate activities, their effective functioning and their obvious interconnection suggest that they are an integral part of the wider framework of SIA.

Analyzing the relationship between the special investigation activity and the activity of preventing and combating money laundering and terrorist financing, regulated by Law no. 308/2017, several elements similar to those previously discussed [70] are highlighted.

The general conclusion that is formed based on the analysis of the relationship between the special investigation activity and other crime prevention and combating activities is that the adoption of distinct laws dedicated to the regulation of activities to prevent and combat different types of crimes denotes a new trend in the legal regulation of SIA . This is done by creating new bodies with specific competences in the field of preventing and combating limited types of crimes, but which can carry out special investigations similar to those within the SIA, although they are considered distinct from a formal point of view. This trend in legal regulation raises questions regarding the coherence and clarity of the laws regarding the special investigative activity in the context of crime prevention and combating.

In **the second paragraph**, the focus was on the analysis of the relationship between the special investigative activity and the criminal prosecution [46; 47], highlighting the complexity and difficulty of understanding the multiple aspects it generates. Historically speaking, the evolution of the state's activities in the fight against crime has permanently developed from the direction of special investigations to the procedural form of research. The current development trend of criminal investigations is oriented towards combining the elements of SIA and the criminal process (criminal prosecution), this vector of development being accepted by many Western countries to which our country aspires to integrate. The lack of a very clear model of transition from the former paradigm to a new one and the failure to consider some fundamental concepts specific to the two subjects makes this integration process create legal ambiguities, difficulties in understanding and unwanted effects. The legal reforms of 2012 and 2023 had, in general, the objective of promoting the concept of unifying the activ-

ity of criminal investigation with the special activity of investigations by eliminating the previously mentioned discrepancies in the national legal doctrine. However, the complexity of the relationship between these areas and the continuous legislative changes mean that this issue remains an important topic of debate and research in the legal field.

The 2023 legal reform is proof that the first reform in 2012, which took the first step to integrate SIA with the criminal process, including prosecution, produced a lot of ambiguity and unintended effects. At the same time, it is difficult to say from now what the effects of the second reform will be, because time and practical testing of the new legal regulations are required. However, the analysis of the current regulations allows us to find that the legislator, on the one hand, wants the integration of SIA and criminal prosecution, and, on the other hand, keeps differences between them, namely to be carried out by different subjects, according to procedures different and capitalization of the results different. The very phrase „special investigative activity within criminal prosecution" already speaks of the fact that they are not identical and that special investigative activity is also carried out outside of criminal prosecution.

The scope of SIA compared to that of criminal prosecution is much more comprehensive and even goes beyond the limits of the criminal process, including tasks not specific to it. The special investigative activity should not be treated strictly through the lens of Law no. 59/2012, but through the lens of all normative acts intended to regulate this matter, including through the lens of the CCP regulations intended to regulate only one of the SIA directions, called in doctrinal language - special (operative) criminal investigations. The need to regulate in the Code a segment of the SIA derives from the issue that arises in connection with the respect of the procedural rights of the investigated person and the evaluation of the results obtained by conducting the SIM [9]. In this way, the regulations in the Code with reference to conducting SIM are to be treated as an interdisciplinary institution.

Among the common aspects of the relationship between the special investigative activity and criminal prosecution are: their common goal - protecting the supreme values of society against crimes; common tasks - discovering and investigating crimes, searching for people who

are hiding from criminal prosecution; both are legal types of state activity.

In terms of differences, the two types of activity are distinguished by: forces, methods and unofficial means specific only to SIA; the special investigation activity is carried out by special subjects, and the criminal investigation is carried out exclusively by the criminal investigation body; through criminal investigation actions, evidence is obtained, and through special investigative measures, information is obtained that can become evidence only after its verification; the special investigative activity is regulated by laws and departmental acts, while the criminal prosecution is only regulated by the Code of Criminal Procedure.

The provisions of national law denote that facts and evidence are not identical concepts and should not be treated as synonyms. Through the special investigative measures, according to the current regulations, regardless of whether they are carried out within the framework of the criminal investigation or until its initiation, information is obtained, and as evidence only those obtained strictly within the framework of the criminal investigation can be used (art. 93 para. (4) CCP) [10; 23].

The relationship between the special investigative activity and the criminal prosecution, according to the current legal regulations, is to be treated as one of subsidiarity, in the sense that the special investigative measures are applied only if the criminal prosecution actions become unnecessary. The mere difficulty of the prosecution may not be sufficient to justify the use of SIM as a more convenient alternative for obtaining evidence.

Criminal prosecution in the current regulation (art. 274 CCP) continues to be a reactive activity. We believe that the legislator could have intervened to allow the initiation of criminal prosecution in preventive situations or for crimes still in the preparation phase. This approach could have fundamentally changed the paradigm of criminal prosecution, making it more proactive and giving it a crime prevention character, in line with the modern evolution of criminal justice.

The third paragraph was dedicated to the analysis of the relationship between the special investigative activity and the findings [11; 12; 79; 80], highlighting the complexity and importance of its elucidation. The doctrinal position towards this report was presented. The

relevant legal norms were debated and, last but not least, from a historical perspective, the evolution of the relationship between the two competences was followed. Between the special investigation activity and the ascertainment documents, we can note the following common aspects: In both situations, the establishment of certain facts is considered; Both in one case and in the other, the activities carried out until the notification of the criminal investigation body are concerned; They have a common origin and historical evolution, fulfilling along the way common functions and objectives; both activities aim to protect certain values against crime.

At the same time, certain differences can be noted between the special investigation activity and the findings: The findings are recorded in accordance with the provisions of art. 260-261 CCP, and the results of special investigations obtained outside the criminal process are recorded in accordance with the provisions of Law no. 59/2012 (art. 22); Finding documents, according to art. 273 para. (2) CPC, constitute means of evidence, and the results of the SIM carried out until the notification of the criminal investigation body do not enjoy such appreciation; Findings are regulated by the Code of Criminal Procedure, and the special investigative activity, including the special investigative measures carried out before the referral to the criminal investigation body, are regulated by Law no. 59/2012; The findings are aimed at finding a crime, and the special investigative activity and special investigative measures are aimed at achieving the tasks indicated in art. 2 of Law no. 59/2012; special investigative measures are carried out only with the authorization, as the case may be, of the head of the specialized subdivision, the prosecutor or the investigating judge, and the findings do not require prior authorization; Findings are made publicly by the subjects indicated in art. 273 para. (1) CCP, with the preparation of minutes, under the conditions provided by art. 260–261 CCP, in which the actions performed and the circumstances found are recorded. The special investigative measures are carried out by the investigative officers of the specialized subdivisions within the authorities indicated in art. 6 of Law no. 59/2012, with the preparation of minutes in accordance with the provisions of art. 22 of Law no. 59/2012 and respectively art. 136 CCP.

Chapter four „Special investigative measures - fundamental

element of SIA" is devoted to the theoretical approach to the notion and essence of SIM (section I), the legal regime and categories (or typologies) of SIM (section II), the content of SIM (section III), the procedure of SIM (section IV), SIM tactics and methodology (section V), exploitation of SIM results.

In the **first section** it was shown that the definition of the concept of special investigative measures is a central concern in the field of SIA [63; 65], and the absence of a clear definition in national legislation poses a challenge to the doctrine. Some doctrinal definitions regarding the concept of SIM are logically inappropriate and do not respect the principle of proportionality. There are definitions that are too concise, which expand the scope of the concept too much, and others that contain excessive features, limiting the scope of the analyzed concept. It is important that a definition contains an optimal number of essential features for the concept being analyzed.

Special investigative measures occupy a central role within the SIA, being vital to the achievement of the aims and tasks of this activity. However, they are not the only constituent elements of SIA. In addition to measures, special investigative activity includes a variety of other actions, such as attracting confidential collaborators, creating organizations, conducting specific financial activities, providing informational and documentary support. The success of the measures depends on the professionalism of the investigating officer, the level of technical equipment, the planning and the tactics applied, which involve other actions aimed at supporting the effectiveness of the SIA as a whole.

The notion of **„special investigative measures"** *means one of the components of the SIA consisting of a totality of actions strictly regulated by law, carried out authorized and primarily confidentially by the investigative officers of the specialized subdivisions of the competent authorities to achieve the goals and fulfill the tasks of the SIA.*

In the **second section**, the legal regime and categories (typology) of SIM are analyzed [48]. The SIA matter includes various SIM, with different legal regimes depending on the context in which they are applied. Thus, the legal regime of measures within the criminal process differs from that applied outside of it. The concept of „SIM within and outside the criminal process" emphasizes the existence of a wide

range of measures, each with its own specific legal regime.

The current trend in the development of the national legislation regarding the special investigative activity aims at the separation in distinct legal acts of the different legal regimes of the SIM, depending on the types of SIA: judicial criminal investigations and extrajudicial investigations. Although special investigative activity and special investigative measures are addressed as a single matter, there are distinct legal regimes depending on the area concerned: within and outside the criminal process.

The differentiation between the various typologies of SIM is based on legal criteria, such as the normative act in which they are provided for, the competence of the authorizing body, the competence of the authorities to carry them out and others. These criteria highlight aspects of the legislation that reflect the will of the legislator regarding the legal regime of SIM.

The type of SIM is based on criteria such as the interference with the fundamental rights of the person, the degree and intensity of the interference, the need for authorization, the form of execution, the legal structure, the duration, the degree of penetration into the criminal environment and others. These criteria raise theoretical-practical issues and provide a reason for analysis for the improvement of the legal framework in the field of SIA.

In the **third section**, the content of the SIM was analyzed, highlighting some aspects that could create impediments to understanding when applying them. By applying the comparative method, the content limits of SIM provided in Law no. 59/2012 and in the Criminal Procedure Code. Through the analysis of ECtHR practice and specialized literature, certain notions were concretized, normative defects were identified and proposals for improving the legislation were submitted. Among the most relevant observations are:

With reference to the „Research of the home, the use and/or installation in it of devices that provide photography or surveillance and audio and video recording", a new definition was proposed, which includes the missing mentions regarding the installation of technical means in the home. At the same time, in order to increase the guarantees against possible abuses when implementing this measure, a new wording was proposed for art. 137 para. (2) CCP which requires the

argumentation of the number of home intrusions, detailing, as the case may be, the method of intrusion into the home, the number of people involved and the exact location where the devices will be installed.

Regarding the measure „Location or tracking by technical means" (art. 28 of Law no. 59/2012; art. 138 of the CCP) it was shown that the current text of the law only provides for the location of objects, without explicitly mentioning the location of persons. Considering the essence of this measure, it was proposed that the localization target both objects and people, or it is inadmissible for people to be referred to the category of objects.

Regarding the measure „Detention, investigation, surrender, search or collection of postal items" (art. 138^2 para. (1) of the CCP; art. 30 para. (1) of Law no. 59/2012) it was shown that some postal items targeted by this measure, such as „telegram", „banderola", „postal container", no longer correspond to reality. According to Government Decision no. 1457/2016 current postal items are divided into: letters; aerograms; postcards; printed; cecograms; „M bags"; small packages and parcel post. At the same time, considering the fact that this measure in the current regulation only covers postal items sent through postal institutions and does not cover correspondence sent through other methods, it was proposed to extend this measure to correspondence sent by any other means both through postal institutions and and through any natural or legal person that carries out transport or information transfer activities. It was also proposed that the provisions of this measure (art. 138^2 para. (6) of the CCP; art. 30 para. (6) of Law no. 59/2012), which require the secrecy of the measure, to general character is given to all SIM.

With reference to the measure „Collection of samples for comparative research" (art. 361 of Law no. 59/2012) there was a proposal to exclude the term „compared" from its title and content, giving it greater flexibility of application measures. Thus, the measure will not only be limited to comparison purposes, but also to diagnostic and analysis purposes, to be called „Research Sample Collection".

In the **fourth section**, the SIM procedure was analyzed. The latest legislative changes in 2023 reflect a new criminal policy that restricts the use of SIM strictly according to the provisions of the Code of Criminal Procedure, removing the tasks of prosecution, discovery and

investigation of crimes and identification of perpetrators. The absence of clarification on the initiation of criminal prosecution and the removal of grounds for carrying out SIM indicate a significant change in the approach to these measures.

National legislation does not define the concept of grounds for carrying out SIM, creating confusion in the use of the terms „ground" and „reason". The proposal to align the legal provisions with a clear and predictable syntax would help to eliminate this problem.

The research conducted shows that there are no significant differences between „grounds" and „motives" for carrying out SIM and that these two notions can be considered synonymous. The clear definition of the term „theme" and its reflection in official documents are important to ensure the legality and substantiation of SIM [88, p. 60].

Legislative changes in 2023 restricted the possibility of ordering SIM strictly within the limits of criminal prosecution, raising questions about the practical operation of the new regulations. Alignment of legal provisions and clarification of terms would help to avoid misinterpretations and ensure correct application of the law.

The national legislation establishes the conditions for the authorization of SIM, underlining the importance of a proper procedure and respecting the specific powers of the authorities involved. The comparative analysis of the legislation reveals the need to align the legal provisions to avoid ambiguities and ambiguities in the application of the law.

The procedure for recording SIM results requires clarification regarding the terms and responsibilities of the judge or prosecutor in verifying the legality of the respective measure. Technical omissions should be corrected to ensure consistency and predictability of the procedure.

Notification of individuals investigated by SIM is important to protect individual rights and prevent abuse, and lack of further notification may be justified in certain circumstances for the effectiveness of investigations. However, transparency and proper communication are essential to ensure legality and accountability in the application of the SIM.

In the **fifth section**, SIM tactics and methodology [31] were analyzed, these being fundamental elements of SIA and representing ra-

tional and efficient ways to achieve specific goals and tasks. They are essential aspects of the crime detection process and are considered key tools in the fight against crime [78]. Although special investigative activity as a scientific-didactic discipline has a not so distant history, its development began within forensics almost a century ago [67], and its compartments, including the tactics and methodology of special investigations, are constantly developing and strengthening .

The absence of a consensus regarding the definition of the tactics and methodology of special investigations can be considered a normal aspect of the scientific development process, especially in the context in which the principle of confidentiality is respected. However, SIM tactics are an essential component of the planning and implementation of these measures, involving aspects such as goal setting, assessment of available resources, risk management and operational decision making. Tactics are essential to the effectiveness of special investigations, requiring practitioners to exhibit qualities such as strategic thinking and foresight.

The methodology of special investigations refers to the detailed approach to the implementation of these measures, including the use of specific procedures and techniques for collecting relevant information. This involves the application of scientific and technical procedures in order to achieve the objectives of the investigation, the efficient management of resources and personnel, as well as advanced training for the use of the necessary techniques and equipment.

In the **sixth section**, the issue of capitalizing on SIM results was discussed. The utilization of SIM results was and still remains a very sensitive problem for the theory of SIA [81] and the criminal process, its solution being one of the determining causes of the merger of the normative regulations of these two matters. However, the SIM results should not be viewed strictly from the perspective of their use as evidence in the criminal process, this is also a very important aspect, but the purpose of the SIM is to contribute to the achievement of the goals and tasks of the SIA, and the results of the SIM require first of all all to be harnessed in exactly the same direction.

The concept of SIM results can be perceived in different ways. In a broader sense, it implies the achievement of the goals and tasks for which the respective measures were ordered. In a narrower approach,

SIM results mean information, documents and information-bearing objects, samples for research, audio, video, photo recordings, etc. There is another approach to SIM results: the absence of searched objects in certain places or the non-confirmation of verified information is also a result, as it allows reducing the range of advanced versions and identifying new directions of work. The result of SIM can also be the success of breaking up a criminal group following some combination of misinformation. Removing the factors and conditions that favor the commission of crimes is also an outcome of SIM. Every result of the SIM will also be considered the creation of favorable conditions for the performance of other SIM.

National legislation, in different periods, has differently valued the results of the SIA, including the SIM, especially on the dimension of their recognition as evidence. Initially, they could be used for the preparation and execution of criminal prosecution actions and for the execution of SIM for the purpose of preventing, solving and discovering crimes, as well as as evidence for criminal files (art. 10 of Law no. 45/1994). Later, starting in 2012, regarding the utilization of these results as evidence, the legislation became somewhat confused, because the Procedural Law admitted them as evidence (art. 93 para. (4) CCP), and Law no. 59/2012 did not give them the same value if they were obtained outside of a criminal case (art. 24). Starting from 2024, SIM results can no longer be admitted as evidence if they are obtained outside of criminal proceedings (art. 93 para. (4) CCP).

The current trend of improving the normative framework on the dimension of the exploitation of SIM results is aimed at expanding the spectrum of destinations for which they could be used (art. 24 of Law no. 59/2012 and art. 136 para. (7) CCP). At the same time, the tendency to not admit SIM results in the evidentiary process is also attested, unless they were obtained during the criminal investigation and were verified by means of evidence provided for in art. 93 para. (2) CP.

In Chapter five „Improving the national legal framework regarding the special investigative activity" the emphasis was placed more on the improvement of the legal framework in the field of SIA. In section I, the structure of the normative regulations regarding the special investigative activity was analyzed, this being made up of several levels: 1) The international legal level (Declarations, conventions, agree-

ments tangential to the SIA issue to which the Republic of Moldova is a party); 2) The constitutional legal level (Constitution; Decisions of the Constitutional Court); 3) The legislative legal level (all national laws that directly or indirectly regulate the special investigative activity); 4) The legal level subordinated to the law (departmental and interdepartmental orders, provisions, instructions in the matter of SIA) [61].

The current development direction of the level of legislative regulation of SIA is oriented towards decentralization, the special investigation activity remaining unitary through the prism of the scientific, didactic and tactical-applicative aspect. This direction was not permanently the same. Initially, the focus was on the unification, systematization and consolidation of all rules in a single legislative act (Law no. 45/1994), later, through the reform of 2012, this course was modified, moving towards the decentralization of regulations in different acts legislation, taking into account the type of tasks assigned to this field. Thus, the regulations regarding the special activity of investigations in criminal matters were separated and integrated into the Code of Criminal Procedure, the others that did not involve the investigation of crimes were kept in Law no. 59/2012. Later, other laws aimed at regulating specific segments of SIA were adopted.

Adoption of Law no. 179/2023 regarding counter-informative and external information activity, marked the separation in a separate normative act of the SIA regulations related to ensuring the security of the state. This direction of development of SIA regulations suggests the possibility that in the future other sectors of this matter will be regulated in separate laws. The evolution in question should be understood not as a narrowing of the SIA limits, but as a horizontal development of the system of legal regulation of this matter. The special investigative activity is not identified with the regulatory limits of Law no. 59/2012. This, although it is dedicated to the SIA, does not include all the rules regulating this matter. Therefore, we find that the further development direction of the SIA regulations is oriented towards a decentralization, remaining unitary through the prism of the scientific, didactic and tactical-applicative aspect.

It is assumed that the decentralization of SIA regulation could provide greater flexibility in the distribution of powers to bodies empowered to carry out special investigations, including the SIM. At the

same time, it allows the diversification of the guarantees of respect for the rights of the person depending on the purpose pursued. The same guarantees in criminal matters and in matters of security (individual, public, penitentiary) are neither necessary nor possible. In the criminal matter, the most solid and reliable guarantees are required, the lack of them could attract the illegal conviction of the person. In terms of security, such consequences are excluded due to the fact that the obtained results are not used in the evidentiary process.

In the **second section**, some current problems and solutions regarding the legal regulation of special investigations were pointed out. The concept of respecting the rights and freedoms of the person was debated, showing the extremely important role it has within the SIA. The essence of respecting the rights and freedoms of the person consists in respecting the constitutional provisions and international acts regarding these rights and freedoms [35; 36; 49; 58]. At the same time, we emphasize that the violation of those rights should not be identified with their restriction. These are two different and diametrically opposed concepts: the first involves an illegal action, not respecting the rights of the person, while the second, legal restraint, and represents a form of respect for these rights.

The relationship between respecting and restriction of the rights and freedoms of the person within the SIA must be approached through the lens of the relative nature of some constitutional rights. Respect for rights can be manifested in two forms: full and limited. The full form implies the intangible maintenance of rights, while the limited form involves their restriction in accordance with the law. Thus, the restriction of the person's rights through the special investigation activity, including through the SIM, does not equate to their non-compliance, but represents one of the forms of compliance. This interpretation clarifies the approach chosen by the legislator to distinguish between the notions of „respecting the rights and freedoms of the person" and „restricting the rights of the person" in the context of conditioning the admissibility of factual data obtained through the special activity of investigations as evidence (art. 93 para. (4) CCP).

Respecting the rights and freedoms of the person in the matter of SIA includes not only passively refraining from actions that could lead to the violation of these rights and freedoms, but also the adoption of

active measures aimed at their reasonable restriction, under the law, to fulfill the tasks of SIA. Therefore, not prohibiting the carrying out of the SIM would be the solution that would lead to the respect of the rights and freedoms of the person, because this leads to the impossibility of achieving the goals and tasks of the SIA, but the fixing in the law of some guarantees that would reduce the arbitrariness, such as fixing the grounds and clear conditions that would satisfies the necessity and proportionality of the restriction of these rights and freedoms, establishing the reasonable duration of time for carrying out the SIM, establishing the conditions for keeping confidential information, establishing the procedure for destroying information containing personal data, regulating the procedures for restoring violated rights, etc. .

Human dignity is a supreme human value that cannot be restricted nor can it be attributed exclusively to the criminal process, it being a universal requirement valid for all spheres of social relations. Therefore, this requirement is directly related to SIA, a context in which we consider it appropriate that in the list of SIA principles provided for in art. 3 Law no. 59/2012, along with the principle of respecting the rights and freedoms of the person, the principle of respecting human dignity should be introduced.

In the context of what has been reported, we find the wording of the provisions of art. 93 para. (4) CCP which established the admissibility as evidence of the factual data obtained through the special investigative activity with the restriction of the rights of the person authorized only by the court. This legal construction calls into question the valorization of SIA results, including SIM authorized by the prosecutor. At the same time, the phrase „within the criminal prosecution" recently introduced in the content of this paragraph essentially changes the meaning of this rule, from a „legal filter" of SIA data obtained outside the criminal process, to a „filter" of SIA data obtained during the prosecution criminal cases, leaving at the same time without evidentiary value the results obtained through the special investigative measures carried out until the start of the criminal prosecution (art. 134 para. (2) CCP). We propose by law to replace the phrase „within the criminal investigation" with the phrase „within the criminal process" and, at the same time, to exclude the expression „with respect for the rights and freedoms of the person or with the restriction of certain rights and freedoms authorized by the

court" from the provisions of art. 93 para. (4) CCP.

The **third section** was dedicated to the analysis of the concept of legal protection of investigative officers and other participants in the conduct of special investigations, being addressed the issue of guarantees of non-criminal liability in relation to their authorized participation in some activities prohibited by the criminal law in in order to increase the effectiveness of crime fighting. This subject has a complex character, involving the approach of legal norms specific to different subjects, such as special investigative activity, criminal process and material criminal law. Only the coherence between the norms of these matters can ensure the necessary legal protection for investigative officers and other participants in conducting special investigations in order to fight crime under the rule of law.

The analysis of the current legal regulations aimed at guaranteeing legal-criminal protection to investigative officers and other participants in the conduct of special investigations reveals certain uncertainties, legal constructions that are difficult to understand, lack harmony and contrary to the principle of separation of norms according to the branches of law, which undermines the value these provisions as a guarantee for the achievement of SIM related to the performance of activities that attack the values protected by the criminal law. In this context, the legal constructions regarding „Controlled crime" (art. 14 of Law no. 50/2012) and „simulated crime/contravention" (art. 138^{10} para. (8) CCP) are obvious examples of non-compliance with the theory of criminal law.

Therefore, an unacceptable situation has been created, on the one hand, the law gives legal character to the activities of the investigating officer, which by their nature affect the values protected by the criminal law, and, on the other hand, the same facts are prohibited by the criminal law, being considered crimes. Under these conditions, it is necessary to include in the criminal law a cause that removes the criminal character of the act in connection with the exercise of the law, because the criminal law in the Republic of Moldova is the only criminal law that establishes the facts that constitute crimes, as well as the causes (circumstances) in that the criminal nature of the act is excluded (art. 1 Criminal Code).

The analysis of the enforcement of the law in comparison with

other causes that remove the criminal character of the act provided for in the Criminal Code of the Republic of Moldova highlights essential differences between them, which allows us to affirm with certainty that the enforcement of the law represents a distinct cause that removes the criminal character of the act and requires to be included in the Criminal Code. In this context, we propose by law ferenda the inclusion of a new article in the Criminal Code of the Republic of Moldova with the following content: „Article 402 Exercise of the law: The act provided by the criminal law, committed in order to execute a right or fulfill an obligation imposed by law, in compliance with the conditions and limits provided by it".

In the **fourth section**, the issue of strengthening the regime for the protection of individual rights and control within the SIA was discussed. Control is essential to prevent abuse, being the process by which certain authorized subjects check and supervise the activity of specialized subdivisions and their employees. The aim is to ensure compliance with laws, principles and improve the efficiency of SIM.

There are several forms of SIA control: parliamentary control, judicial control, prosecutor control, criminal investigation officer control and departmental control. These forms of control focus on different aspects of the activity, forming a hierarchical system of supervision. In general, the prosecutor has the most powers in this regard.

Parliamentary control, as defined in art. 38 of Law no. 59/2012, represents a fundamental guarantee of democracy, ensuring that the special investigative activity is carried out in accordance with constitutional values and principles. But, like any legislative instrument, it is essential that it be reviewed and adapted periodically, according to contemporary realities and challenges. Although the indicated article contains essential provisions, there are areas that could benefit from revision and strengthening. A possible elaboration of the evaluation criteria of the reports or the introduction of feedback mechanisms from the civil society could increase the quality and effectiveness of the control. Also, it would be beneficial to explain the mechanisms of responsibility in the event that irregularities or abuses are identified.

The essence of the control exercised by the prosecutor over compliance with the laws by the bodies that carry out SIA consists in the implementation by authorized prosecutors, within the limits of their

competence, of verification actions, aimed at promptly preventing, identifying and remedying violations of the law, restoring rights violated and hold the guilty accountable.

The control exercised by the investigating judge over the SIM is, in essence, a form of control over the SIA. However, this type of control does not apply to the entire special investigative activity, but is rather a limited control, focused on ensuring the legality and protection of the individual's rights with regard to the special investigative measures that fall under the jurisdiction of the investigating judge for authorisation. According to the current legal provisions, the limits of the judicial control over the SIA exercised by the investigating judge are summarized in: 1) authorization, extension and termination of the SIM assigned in his jurisdiction; 2) legal evaluation and transfer of information from one criminal case to another; 3) preservation and destruction of information obtained through special investigative measures authorized by the judge.

The departmental control of the SIA consists of the activity carried out by the heads of the specialized subdivisions within or subordinate to the Ministry of Internal Affairs, the Ministry of Defense, the National Anti-Corruption Center, the Intelligence and Security Service, the State Protection and Guard Service, the Customs Service and the National Penitentiary Administration, in order to monitor the legality of the actions carried out by subordinate investigative officers, who carry out special investigations for the performance of the tasks assigned to this type of activity, the efficient use of the forces and means intended for SIA and guaranteeing the rights and freedoms of citizens. According to the current legal regulations, this type of control only covers the segment of SIA carried out outside the criminal process.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

In conclusion to the monographic research, we highlight the **results obtained** from achieving the formulated purpose and the objectives set forth in the thesis, which have contributed to **solving the important scientific problem** under investigation. This problem resides in the comprehensive analysis of conceptual issues regarding SIA in the conditions of the rule of law, with an emphasis on understanding and improving national legal regulations by aligning them with international standards. This complex study has contributed to the theoretical foundation of the legal regulation system in the field of special investigations and to the formulation of proposals de lege ferenda, thereby strengthening the legal framework in accordance with the principles and requirements of the rule of law.

Among the main scientific results proposed for support: Determination of the stages of SIA development through the evolution of specific methods and means; substantiation of the origin and transformations of SIA legal regulations; analysis of SIA normativity in various historical contexts; analysis of the essential characteristics of SIA; argumentation of the secret and public nature of SIA; demonstration of the legality and competence of SIA subjects; emphasis on the proactive and reactive nature of SIA; analysis of the tactical and methodical components of SIA, highlighting other action procedures within SIA; appreciation of the social utility and role of SIA in national security; analysis of the correlation between SIA and human rights, respecting rights as a fundamental principle and differentiating between restriction and violation of rights within SIA; appreciation of SIA subjects' competencies; determination of the distinction between different types of SIA subjects; demonstration of the investigation officer's competence as the sole subject conducting MSI; redefinition of the concept of SIA; argumentation of the complexity and inseparable links between purpose, tasks, forces, and means of SIA; identification of legislative development directions for SIA; analysis of the legal regimes for conducting MSI; highlighting the interdisciplinary nature of MSI regulated in the CPP; determination of the relationship between SIA and other related activities; delimitation of SIA from police activities, highlighting the subsidiary nature of SIA to the criminal process; analysis of the legal protection of participants in special investiga-

tions; identification of legislative deficiencies; argumentation for the inclusion of „Execution of the law" in the Penal Code as a new cause removing the criminal nature of the act; revelation of the tendency to prohibit the investigation of crimes through special investigations outside of the criminal process; promotion of respecting human dignity, operability, and subsidiarity as basic principles of SIA; argumentation of de lege ferenda proposals for improving the normative framework and enhancing SIA efficiency.

Summarizing the discussions in this present work, we highlight the following **general conclusions**:

1. The concept of SIA involves different perspectives. As a science, SIA does not have a very distant past (Chapter I). Having its origin within criminalistics, it initially underwent a common ascent, later being divided and developed separately, from which point it continued to evolve as a didactic discipline (Section 4.5). As a practical activity, SIA distinguishes itself through the efforts of specialized state bodies to operationally fulfill certain specific tasks. The elements and techniques of this activity can be traced back to the most distant historical periods (Section 2.1). The official recognition of this activity occurred relatively recently, with the proclamation of our country as a state of law. The promulgation of the first law (Law no. 45/1994), dedicated to regulating special investigations, marked the beginning of approaching SIA as a legal field that encompasses all the norms intended to regulate various types of social relations related to special investigations aimed at accomplishing certain tasks (Section 5.1).

2. The content of SIA, in addition to MSI, includes other organizational, informational, analytical, executive, and other actions performed to accomplish the purposes and tasks established by law. Criminal prosecution actions are not part of the content of SIA (Section 2.2).

3. The purpose of SIA is to protect certain social values, and information gathering is just one of the means used for this purpose. Protecting certain values and gathering information to protect them are not identical concepts; they should be viewed in terms of the relationship between purpose and means. Although information gathering is important, it cannot be considered as the purpose of SIA. Thus, highlighting information gathering in Article 1 of Law no. 59/2012 as

the purpose of SIA is considered inadequate.

4. SIA represents a legal and complex genre of activity of specially empowered state bodies to carry out physical and intellectual actions primarily in secret, for the purpose of maintaining public order, preventing crimes, protecting the rights, freedoms, and dignity of individuals, and preventing the disclosure of confidential information (Section 2.2).

5. The complex nature of SIA involves its various types of activities: Special criminal investigations; Special search and identification investigations; Administrative verification investigations; Security assurance investigations. In the future, at the legislator's will, the number of SIA types may expand in the direction of addressing new tasks unrelated to combating crime (Section 2.2).

6. The multitude and complexity of theoretical and applied issues in the field of SIA stem from the uneven and sometimes superficial legal treatment of the concept of SIA (Chapter II).

7. The structure of the legal regulation system of SIA encompasses several levels: 1) International legal level (Declarations, conventions, agreements relevant to SIA to which the Republic of Moldova is a party); 2) Constitutional legal level (Constitution, decisions of the Constitutional Court); 3) Legislative legal level (the totality of national laws that directly or indirectly regulate SIA); 4) Subordinate legal level to the law (departmental and interdepartmental orders, provisions, instructions regarding SIA) (Section 5.1).

8. The current direction of development of the legislative regulation level of SIA is oriented towards decentralization, while still maintaining unity in terms of scientific, didactic, and tactical-application aspects. This direction implies that regulations for different types of special investigations should be found in separate legislative acts, taking into account the typology of tasks assigned to this field. This trend should not be understood as a restriction of the boundaries of SIA, but rather as a horizontal extension of the legal regulation system of this matter. SIA does not equate to the regulatory limits of Law no. 59/2012. Although dedicated to SIA, it does not encompass all the regulatory norms of this complex type of activity (Section 5.1).

9. The advantages of decentralizing the regulation of SIA in different normative acts can be presumed by granting a wider flexibility

in terms of distributing competencies to the competent authorities to carry out special investigations, including MSI (Section 2.3). At the same time, this allows for the diversification of guarantees for respecting individual rights depending on the pursued purpose (Section 2.4). The same guarantees in criminal matters and in security matters (individual, public, penitentiary) do not seem necessary or possible. In criminal matters, the most solid and reliable guarantees are required, their absence could lead to the illegal conviction of individuals. In security matters, such consequences are excluded considering that the results obtained are not admissible in the probative process (Article 94 para. (4) CPP) (Section 4.6).

10. The development of SIA regulations is closely linked to the evolution and development of the concept of human rights and the procedural rights of participants in criminal proceedings. The legislator constantly faces the difficulty of balancing the scale between the positive obligation of the state to protect common social values (where SIA represents an efficient means) and the negative obligation not to unjustifiably restrict individual rights (SIA, by its nature, implies the restriction of certain rights), which necessitates the regulation of sufficient guarantees against potential abuses by the competent authorities to conduct SIA (Section 2.4).

11. The current spectrum of guarantees for respecting human rights in SIA included in the national legal system corresponds to international standards of the rule of law (Section 2.4).

12. The scope of SIA compared to that of criminal prosecution is much broader and even exceeds the limits of criminal proceedings, encompassing tasks that are not specific to it. The need for regulation in the CCP of a segment of SIA (criminal investigations) stemmed from issues related to respecting the procedural rights of the investigated person and evaluating the results obtained through the conduct of MSI (Section 4.6). In this way, the regulations in the CCP regarding the conduct of MSI need to be treated as an interdisciplinary institution.

13. The relationship between SIA and criminal prosecution, according to current legal regulations, is intended to be one of subsidiarity, in the sense that MSI is applied only when criminal prosecution actions become futile. The mere difficulty of criminal prosecution cannot suffice to justify the use of MSI as a more convenient alterna-

tive for obtaining evidence (Section 3.2).

14. The legal regime for conducting MSI is determined by the typology of tasks to be performed. The legislator chose to separate different legal regimes for ordering MSI into distinct laws. Thus, the legal regime of MSI regulated in the CCP differs from that regulated by Law no. 59/2012, each of them pursuing different tasks (Section 4.2). In this context, the content of MSI may involve a different number of actions depending on the legal regime of application (Section 4.3).

15. The current conditions for ordering MSI do not fully correspond to the principle of subsidiarity and rationality, hindering the opportunity to prioritize measures with a lower degree of interference over those with a higher degree of interference.

16. The SIA policy promoted through the legal changes in 2023 reveals that the investigation of crimes, including in the preparatory and attempted stages, is strictly carried out in accordance with the provisions of the CCP, with both the tasks related to crimes and the grounds for ordering MSI for their investigation being eliminated from Law no. 59/2012. Furthermore, the investigating officer is obliged to notify the criminal prosecution authority when there is a reasonable suspicion that a crime is being prepared, committed, or has been committed (art. 19 para. (2) and art. 20 para. (11) of Law no. 59/2012).

17. The results of SIA, including those obtained through the conduct of MSI, are not identified as „evidence" in criminal proceedings. Through verification and exploitation, the results of special investigations may acquire the quality of evidence in criminal proceedings (art. 93 para. (4) CCP).

18. Current legal regulations in the field of SIA reveal the distinction between the concepts of „subject of SIA," „subject conducting SIA," and „subject conducting MSI," which are related to each other in a derivative manner. It is thus clear that not every subject of SIA automatically has the competence of a subject conducting SIA, and vice versa, not every subject conducting SIA is implicitly a subject conducting MSI. It can also be affirmed that any subject conducting MSI is at the same time a subject of SIA, but not every subject of SIA is also a subject conducting MSI. From the perspective of the current legal framework, only the investigating officer is authorized to directly conduct MSI, being invested with the necessary competences to ful-

fill the purposes and tasks of SIA. It is important to highlight that this does not exclude the valuable contribution of other subjects of SIA, including participants, including natural and legal persons involved in providing material resources for conducting SIA and MSI.

19. The concept of respecting the rights and freedoms of individuals in SIA presupposes that these rights and freedoms are considered inviolable, either in their entirety or within certain limits, according to constitutional and international provisions. It is important to emphasize that the violation of these rights should not be confused with their legal restriction. These two concepts are different, and the distinction between them is essential: violation represents an illegal action, while legal restriction is a form of respect for these rights.

20. The relationship between respecting and restricting the rights and freedoms of individuals in SIA must be approached in light of the relative nature of some constitutional rights. Respecting rights can be expressed in two distinct forms: full respect and limited respect. Full respect involves maintaining them inviolable, while limited respect involves restricting them in accordance with legal provisions. It is important to note that restricting rights through SIA, including through the conduct of MSI, does not equate to disrespecting them but represents one of the forms of respect. This interpretation clarifies the meaning of „respecting the rights and freedoms of individuals" as a fundamental principle of SIA and as a distinct notion from the concept of „restriction of individual rights" in the context of conditioning the admissibility of factual data obtained through SIA as evidence (art. 93 para. (4) CCP).

Based on the conclusions and findings formulated above, we intervene with the following Ferenda Law **Recommendations**:

1. Inclusion of a new article in the Criminal Code of the Republic of Moldova with the following content:

„Article 402 Exercise of the law

The act provided by criminal law committed in order to enforce a right or fulfill an obligation imposed by law, while respecting the conditions and limits provided by it, does not constitute a crime."

2. Substitution of the phrase in Article 93 paragraph (4) of the Code of Criminal Procedure (CPP) - „in the criminal prosecution" with the

phrase „in the criminal proceedings" and exclusion of the expression „while respecting the rights and freedoms of the individual or with the restriction of certain rights and freedoms authorized by the court".

3. Substitution of the phrase in Article 135 paragraph (6) of the CPP - „If there are sufficient grounds" with the phrase „If there are conditions and sufficient grounds (reasons)", and the phrase „In case of finding the lack of sufficient grounds" with the phrase „In case of finding the lack of conditions and sufficient grounds (reasons)".

4. Addition to Article 135 of the CPP with paragraph (13) „All participants and those present during the special investigative measure are warned about the obligation to maintain its secrecy, not to disclose information regarding the criminal prosecution, as well as about the criminal liability provided for in Article 178 and Article 315 of the Criminal Code No. 985/2002. This is recorded in the minutes."

5. Amendment of Article 137 paragraph (1) of the CPP to the following wording: „The examination of the domicile, the use and/or installation therein of devices ensuring photography or surveillance and audio and video recording presupposes secret or legend access to the interior of the domicile, without informing the owner/possessor, studying it to discover traces of criminal activity, obtaining other information necessary for proving the circumstances of the criminal offense, as well as the use and/or installation of specialized equipment, such as cameras or audio and video recording devices, for monitoring activities within the domicile to obtain additional information".

6. Amendment of Article 137 paragraph (2) of the CPP to the following wording: „In the process of authorizing this measure, the number of entries into the domicile for the activation, servicing, and deactivation of the technical means to be used shall be argued, and it shall be concretely detailed, as appropriate, how the entry into the domicile will be carried out, how many persons will be involved, and the exact location where the devices will be installed. Authorization shall be granted only in situations where it is justified and proportionate to the intended purpose, taking into account the gravity of the offense and other relevant circumstances."

7. Substitution of the phrase in Article 138 paragraph (1) of the CPP - „locating means of transport and other objects" with the phrase „locating persons and objects".

8. Amendment of Article 138^2 paragraph (1) of the CPP to the following wording: „Postal items or objects transmitted by any other means may be retained, examined, delivered, or seized by physical or technical means."

9. Substitution of the text in Article 138^2 paragraph (2) of the CPP - „the name of the postal institution responsible for retaining postal items" with the text „the name of the postal institution or transport and any other natural or legal person carrying out transportation or information transfer activities".

10. Addition to Article 138^2 paragraph (3) of the CPP, so that after the text „The investigating officer informs the representative of the postal institution," the text „or transport or any other natural or legal person carrying out transportation or information transfer activities" is added, and after the words „lifting postal items", the words „or transmitted objects" are added.

11. Addition to Article 138^2 paragraph (4) of the CPP, so that after the words „Representative of the postal institution," the words „or, as the case may be, the natural or legal person carrying out transportation or information transfer activities" are added.

12. Substitution of the text in Article 138^2 paragraph (5) of the CPP - „By presenting themselves at the postal institution, the investigating officer opens and examines the respective postal items. Upon discovering objects and/or documents that are probative for the criminal case" with the text „Upon examination of the postal items and discovering objects and/or documents that are probative for the criminal case".

13. Exclusion of paragraph (6) from Article 138^2 of the CPP.

14. Substitution of the text in Article 138^3 paragraph (1) of the CPP - „in real-time or after their realization" with the text „in real-time and/or after their realization".

15. Renaming the principle provided for in Article 3 lit. b) of Law no. 59/2012 to „Respect for human rights, freedoms, and dignity".

16. Replacement of the principle of „harmlessness" provided for in Article 3 lit. c) of Law no. 59/2012 with the principle of „effectiveness".

17. Addition to Article 3 of Law no. 59/2012 with the letter „c1) subsidiarity".

18. Substitution of the words in Article 13 of Law no. 59/2012

„special investigative measure" with the words „special investigative activity".

19. Substitution of the text in Article 20 paragraph (11) of Law no. 59/2012 „the grounds and/or motives that justified its authorization have disappeared" with the text „the grounds and/or conditions that justified its authorization have disappeared".

20. Addition to Article 22 of Law no. 59/2012 with paragraph (11) „All participants and those present in this special investigative measure shall be informed of the obligation to maintain its confidentiality, not to disclose information regarding special investigations, as well as about the criminal liability provided for in Article 178 of Law no. 985/2002. This shall be recorded in the minutes."

21. Addition to Article 22 paragraph (4) of Law no. 59/2012, after the period, with the following text: „The investigating judge or prosecutor shall express their opinion on the legality of the special investigative measure within a maximum of 5 days from receiving the minutes."

22. Substitution of the words in Article 28 paragraph (1) of Law no. 59/2012 „determine the location of the object" with the words „determine the location of the person and the object".

23. Addition to Article 29 paragraph (1) of Law no. 59/2012 after the words „audio or video" with the following words „written or graphic".

24. Amendment of Article 30 paragraph (1) of Law no. 59/2012 to the following wording: „Postal items or objects transmitted by any other means may be retained, examined, delivered, or seized by physical or technical means."

25. Substitution of the text in Article 30 paragraph (2) of Law no. 59/2012 - „the name of the postal institution responsible for retaining postal items" with the text „the name of the postal institution or transport and any other natural or legal person carrying out transportation or information transfer activities".

26. Amendment of Article 30 paragraph (3) of Law no. 59/2012, so that after the text „The investigating officer informs the representative of the postal institution", the text „or transport or any other natural or legal person carrying out transportation or information transfer activities" is introduced, and after the words „ the lifting of postal items"

the words „or transmitted objects" are added.

27. Addition to Article 30 paragraph (4) of Law no. 59/2012, so that after the words „Representative of the postal institution" the words „or, where applicable, the natural or legal person carrying out transportation or information transfer activities" are added.

28. Substitution of the text in Article 30 paragraph (5) of Law no. 59/2012 - „By presenting themselves at the postal institution, the investigating officer opens and examines the respective postal items. Upon discovering objects and/or documents that are of probative importance to the criminal case" with the text „Upon examining the postal items and discovering objects and/or documents that are of probative importance to the criminal case".

29. Exclusion of paragraph (6) from Article 30 of Law no. 59/2012.

30. Removal from the title and content of Article 361 of Law no. 59/2012 of the term „comparative".

Future Research Topics:

1) The competencies of the investigating officer in the digital age.

2) Revision of the concept of the prosecuting authority with the possibility of including not only prosecuting officers but also investigating officers.

3) Principles of special investigative measures conducted within the criminal process.

4) Conditions for conducting special investigative measures. It is presumed that it would be more rational for the conduct of special investigative measures to be conditioned not according to the formal harmfulness degree of the offense (Article 133 paragraph (1) point 1) of the Code of Criminal Procedure), but according to the object of the offense, the real harmful nature of the offense, which is evaluative in nature and is determined individually in each case.

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ADNOTARE

GLAVAN Boris. „Abordări conceptuale privind activitatea specială de investigații în condițiile statului de drept" la specialitatea: 554.03 – Drept procesual penal; 554.04 – Criminalistică, expertiză judiciară, investigaţii operative. Teză de doctor habilitat în drept. Școala Doctorală Științe penale și Drept public a Academiei „Ștefan cel Mare" a MAI al Republicii Moldova. Chișinău, 2024.

Structura tezei: text de bază 359 pagini, adnotare în limbile română, engleză și rusă, lista abrevierilor, introducere, 5 capitole, concluzii generale și recomandări, bibliografie din 616 surse, 2 anexe, 7 tabele.

Cuvinte-cheie: activitate specială de investigații, măsuri speciale de investigații, ofițer de investigații, proces penal, investigații speciale, drepturile persoanei, probe, informații.

Domeniul de studiu: procesual penal, criminalistica, activitatea specială de investigații.

Scopul și obiectivele lucrării. Scopul tezei constă în efectuarea sub aspect conceptual a unei analize complexe a problematicii ASI în raport cu cerințele statului de drept, urmărind elaborarea unui suport metodologic actualizat ce ar clarifica problemele teoretice, normative și aplicative apărute în contextul reformelor juridice recente în domeniul vizat, precum și intervenind cu propuneri argumentate de îmbunătățire a legislației naționale. **Obiectivele cercetării**: investigarea originii **și** evoluţiei conceptului de activitate specială de investigații; clarificarea noțiunii, conţinutului și tipurilor de activitate specială de investigații; aprecierea noțiunii, conținutului și regimului juridic al MSI; examinarea procedurii și metodologiei aplicate în cadrul MSI; examinarea relației ASI cu alte activități conexe; revizuirea conceptului de protecție juridică a participanților la investigații speciale; investigarea problemei privind valorificarea rezultatelor MSI; analizarea conceptului de respectare a drepturilor și libertăților persoanei în contextul ASI; identificarea și abordarea garanțiilor drepturilor persoanei în cadrul ASI; analiza configurației și perspectivelor de dezvoltare a normativității ASI; aprecierea poziției juridice și a competențelor subiecților ASI; formularea propunerilor de perfecționare a cadrului juridic național în domeniul ASI.

Noutatea și **originalitatea** științifică a studiului constă în realizarea unui studiu complex privind activitatea specială de investigații în condițiile statului de drept prin abordarea multilaterală a problematicii relevante acestui gen de activitate precum elucidarea raportului dintre activitatea specială de investigații și alte activități conexe, examinarea conceptului de măsuri speciale de investigații ca element al ASI; înaintarea propunerilor de îmbunătățire a cadrului juridic național privind activitatea specială de investigații.

Rezultatele noi obținute constau în fundamentarea metodologică teoretico-aplicativă a ASI în condițiile statului de drept, conceptualizarea și caracterizarea acesteia, definirea și uniformizarea noțiunilor și termenilor aferenți domeniului, precum și înaintarea propunerilor de îmbunătățire a cadrului juridic național privind activitatea specială de investigații.

Semnificația teoretică. Teza oferă o viziune detaliată asupra ASI, îmbogățind cunoștințele în această materie. S-a formulat o teorie clară despre această activitate, care ajută la înțelegerea acestui domeniu. Cercetarea contribuie la fundamentul teoretic al ASI și al procedurii penale. Aceasta îmbunătățește abordările practice în domeniu, sprijinind astfel statul de drept și protejând drepturile cetățenilor în justiția penală.

Valoarea aplicativă a tezei se evidențiază prin potențialul de a integra cunoștințele teoretice și concluziile cercetării în activitatea instituțiilor juridice și procesual penale. Contribuțiile principale includ consolidarea fundului teoretic al ASI, suportul în activitatea practică, controlul legalității procesului investigativ, influențarea procesului de reglementare juridică și integrarea în programele educative relevante.

Implementarea rezultatelor. Diseminarea cercetării, prin publicații și conferințe, a consolidat cunoașterea în domeniul investigațiilor speciale, promovând evoluții legislative și academice. Rezultatele au fost integrate în curriculumul Academiei „Ștefan cel Mare".

АННОТАЦИЯ

к диссертации Бориса Главана на тему „Концептуальный подход к специально-розыскной деятельности в условиях правового государства" представленную на соискание ученой степени доктора наук по специальности 554.03 «Уголовно-процесуальное право» и 554.04 – Криминалистика, судебная экспертиза, оперативно-розыскная деятельность. Докторская школа уголовных наук и публичного права Академии «Штефан чел Маре» МВД Республики Молдова. Кишинэу. 2024 год

Структура диссертации: основной текст 359 страниц, аннотации на румынском, английском и русском языках, список сокращений, введение, 5 глав, общие выводы и рекомендации, библиография из 616 источников, 2 приложения, 7 таблиц.

Ключевые слова: особая следственная деятельность, особые следственные мероприятия, следователь, уголовный процесс, специальные расследования, права личности, доказательства, информация.

Область исследования: уголовно-процессуальное право, криминалистика, оперативно-розыскная деятельность.

Цель исследования: Целью диссертации является проведение концептуального анализа проблематики специально-розыскной деятельности в условиях правового государства, направленного на разработку актуального методологического обеспечения, которое разъяснило бы теоретические, нормативные и прикладные вопросы, возникшие в контексте недавних юридических реформ в рассматриваемой области, а также предоставление обоснованных предложений по усовершенствованию национального законодательства.

Задачи исследования: исследовать историю и развитие специально-розыскной деятельности; конкретизировать понятие, содержание и виды специально-розыскной деятельности; уточнить понятие, содержание и правовой режим специально-розыскнных мероприятий; иследовать методологию и процедуру проведения специально-розыскнных мероприятий; изучить взаимосвязь специально-розыскной деятельности с прикладными видами деятельности; анализировать концепцию правовой защиты участников специально-розыскной деятельности; иследовать проблемы использования результатов специально-розыскной деятельности; анализировать концепцию соблюдения прав и свобод личности в специально-розыскной деятельности; иследовать гарантии прав личности в специально-розыскной деятельности; анализировать структуру, перспективы развития правовой базы специально-розыскной деятельности; оценить юридическии статус и компетенцию субъектов специально-розыскной деятельности; сформулировать предложения по внесению изменений и дополнений в законодательство.

Научная новизна и оригинальность исследования заключаются в проведении комплексного анализа специальной розыскной деятельности в условиях правового государства и разработке актуального методологического обеспечения для разъяснения теоретических, нормативных и прикладных вопросов, возникших в контексте недавних юридических реформ в рассматриваемой области, а также предоставлении обоснованных предложений по усовершенствованию национального законодательства.

Теоретическое значение: Диссертация предлагает подробное представление об особой следственной деятельности, обогащая знания в этой ключевой области. Была сформулирована четкая теория об этой деятельности, которая помогает понять эту область. Исследование способствует теоретическому обоснованию специально-розыскной работы и уголовного процесса. Оно улучшает практические подходы в области, тем самым поддерживая правовое государство и защищая права граждан в уголовной юстиции.

Прикладное значение диссертации: подчеркивается ее потенциал в интеграции теоретических знаний и результатов исследования в деятельность юридических и уголовно-процессуальных институтов. Ключевые вклады включают укрепление теоретического основания особой следственной деятельности, поддержку в практической деятельности, юридический контроль следственного процесса, влияние на процесс правового регулирования и интеграцию в соответствующие образовательные программы. Реализация результатов. Распространение исследований посредством публикаций и конференций укрепило знания в области специальных расследований, способствуя законодательным и академическим разработкам. Результаты были интегрированы в учебную программу Академии «Штефан чел Маре».

ANNOTATION

GLAVAN Boris. „Conceptual Approaches to Special Investigative Activity in the Context of the Rule of Law" of the Specialty: 554.03 – Criminal procedural law; 554.04 – Criminalistics, judicial expertise, operative investigations. Doctoral thesis in Law. Doctoral School of Criminal Sciences and Public Law of the „Ștefan cel Mare" Police Academy of the Ministry of Internal Affairs of the Republic of Moldova. Chișinău, 2024.

Thesis structure: main text 359 pages, abstract in Romanian, English, and Russian, list of abbreviations, introduction, 5 chapters, general conclusions and recommendations, bibliography of 616 sources, 2 annexes, 7 tables.

Keywords: special investigative activity, special investigative measures, investigator, criminal procedure, special investigations, human rights, evidence, information.

Field of study: criminal procedural law, forensic science, special investigative activity.

Purpose and objectives of the thesis. The purpose of the thesis is to conduct a conceptual analysis of the issues surrounding special investigative activity in relation to the requirements of the rule of law, aiming to develop updated methodological support that would clarify theoretical, normative, and practical issues arising in the context of recent legal reforms in the field, as well as to provide reasoned proposals for improving national legislation. **Research objectives:** investigating the origin and evolution of the concept of special investigative activity; clarifying the concept, content, and types of special investigative activity; assessing the concept, content, and legal regime of special investigative measures; examining the procedures and methodology applied in special investigative measures; examining the correlation of special investigative activity with other related activities; reviewing the concept of legal protection of participants in special investigations; investigating the issue of utilizing the results of special investigative measures; analyzing the concept of respecting the rights and freedoms of individuals in the context of special investigative activity; identifying and addressing guarantees of individual rights in special investigative activity; analyzing the configuration and prospects for the development of the regulatory framework of special investigative activity; evaluating the legal status and competencies of subjects of special investigative activity; formulating proposals for improving the national legal framework in the field of special investigative activity.

The scientific novelty and originality of the study lie in conducting a comprehensive analysis of special investigative activity in the context of the rule of law through a multi-aspect approach to the relevant issues of this type of activity, such as elucidating the relationship between special investigative activity and other related activities, examining the concept of special investigative measures as an element of special investigative activity, and proposing improvements to the national legal framework regarding special investigative activity.

The new results obtained consist of the methodological theoretical and practical basis of special investigative activity in the context of the rule of law, its conceptualization and characterization, the definition and standardization of concepts and terms related to the field, as well as proposals for improving the national legal framework regarding special investigative activity.

The theoretical significance. The thesis provides a detailed view of special investigative activity, enriching knowledge in this field. A clear theory of this activity has been formulated, which helps to understand this area. The research contributes to the theoretical foundation of special investigative activity and criminal procedure. It improves practical approaches in the field, thus supporting the rule of law and protecting citizens' rights in criminal justice.

The practical value of the thesis is highlighted by its potential to integrate theoretical knowledge and research findings into the work of legal and procedural institutions. The main contributions include strengthening the theoretical foundation of special investigative activity, support in practical work, legal control of the investigative process, influencing the process of legal regulation, and integration into relevant educational programs. **Implementation of results.** The dissemination of research through publications and conferences has strengthened knowledge in the field of special investigations, promoting legislative and academic developments. The results have been integrated into the curriculum of the „Ștefan cel Mare" Police Academy.

GLAVAN BORIS

CONCEPTUAL APPROACHES TO SPECIAL INVESTIGATIVE ACTIVITY UNDER RULE OF LAW

**Specialty 554.03 – CRIMINAL PROCEDURAL LAW;
554.04 – FORENSICS, FORENSIC EXPERTISE,
OPERATIVE INVESTIGATIONS**

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