



THE 13TH EDITION OF THE INTERNATIONAL CONFERENCE
EUROPEAN INTEGRATION
REALITIES AND PERSPECTIVES

**The Usefulness and Proportionality of the Measures in Relation to the
Restriction of Human Rights and Fundamental Freedoms**

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Abstract: Once with taking into effect of the General Data Protection Regulation (GDPR), the notion of personal data is defined by art. 4 point 1 of this Act, as follows: “personal data” means any information relating to an identified or identifiable natural person (“the data subject”); An identifiable natural person is a person who can be identified, directly or indirectly, through an identification element, such as a name, an ID number, address, or more specific elements of his physical, physiological, genetically, psychical, economic, cultural or social identity.” Romanian Constitution is a guarantor of personal values, liberty and safety of their citizens. The fundamental law and our Criminal Code are the protectors of human dignity and personal integrity. Personal data protection is an important subject to discuss nowadays because the evolution of society and technology had influenced private life of persons. Our Crime Code is penalizing the persons who violate the fundamental rights of another person.

Keywords: personal data; interceptions; surveillance technique; private life

1. Introduction

We proposed to approach this subject because of its great timeliness and the importance of the criminal process. The development of technology and human society, and have put its stamp in a way which is particularly on the private life of natural persons who are often topics of control and surveillance.

I've been watching the evolution of the Romanian system was adduced in the right, the manner in which the provisions of the Code of penal procedure were aligned to the European and I found that little by little is achieved improvement of the system of law and the rules that govern it.

In the course of penal process must ensure first find out the truth, in rem, with regard to the facts and circumstances of the case, as well as in Personam, in respect of the person fapuitorului. The truth in the criminal process represents an exact mirroring of objective reality in the depictions and the conclusions drawn by the judiciary separated them from the administration of the samples.

Technical supervision, ordered by the Court of rights and freedoms at the request of the prosecutor and under the careful to monitoring is a rather delicate procedure in the light of the diversity of human figures and the flow of personal information with which the components of criminal cerectare come into contact. Every person has the right to respect for his private life, cannot be subject to any interference in the intimate life, personal or family, nor in the domicile, habitual residence or

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correspondence, without his consent. The legislature has taken into account that the person subject to this proceeding, should be informed about this (art 144¹ C.P.P., art 141² of the C.P.P.).

Aslo, it shall be prohibited to use in any way to the correspondence any writings or other personal documents, as well as information on the private life of a person without his consent.

2. The Protection of Individuals with Regard to the Processing of Personal Data

In relation to the Constitution: that the fundamental law of the Romanian state, this has the role to protect its citizens and their rights¹ (Article 1(3), to ensure the functioning in the harmony of the 3 powers governing the entire system³ and the legal order. Individual freedom⁴, intimate life and family values are also guaranteed by the Constitution⁵, paradoxically they are often violated or civil servants or by other persons who become active subjects of crimes against the freedom of the person, regulated and punished under the Penal Code.

The definition of personal data is currently established by the law 677/2001 and shall include the following information - the personal data are information relating to a natural person, so data that can identify an individual, not about the data that can identify companies; - personal data may be any information leading to an identified or identifiable natural person.

If in the case of information referring to a person identified, they are more easily visible (for example, identified by the name and surname), as regards the information about individuals identifiable spectrum is much wider. This means that an identifiable person is that person who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his identity, physical, physiological, mental, economic, cultural or social. In other words, in

¹ The judge of the rights and liberties shall be pronounced in the Council, without summoning the parties, through the conclusion which is not subject to appeal. The original preparation is mandatory. (3) The total duration of the technical surveillance measures, with regard to the same person and the same deed, may not exceed, in the same question, 6 months, with the exception of the measure of video surveillance, audio, or by shooting in private spaces, which may not exceed 120 days.

² The authorization of certain technical measures for the surveillance by the public prosecutor (1) The prosecutor may authorize, for a duration of up to 48 hours, technical measures of surveillance when: (a) there is an emergency, and the mandate of survey under the conditions laid down in Article 140 would lead to a substantial delay of research, to the loss, alteration or destruction of samples or would endanger the security of a person aggrieved, the warning or members of their families; and (b) are fulfilled the conditions laid down in Article 139(1) and (2). (2) The Order of the prosecutor authorizing the surveillance technique must include the particulars referred to in Article 140(5). 3) The Prosecutor has the obligation to notify, within a period of not more than 24 hours after the expiry of the measure, the judge of the rights and freedoms of the Court which he would return the competence to judge concerned in the first instance or from the appropriate authority in its degree in whose constituency is the headquarters of the prosecutor's office of which the prosecutor who issued the decree, for confirmation of the measure, bouncing at the same time a minutes of play summary description of the technical surveillance activities carried out and the case-file.

³ (4) The State shall be organized in accordance with the principle of separation and balance of powers - legislative, executive and judicial process - within the constitutional democracy. (5) In Romania, the observance of the Constitution, of its supremacy and of the laws is binding.

⁴ Individual freedom: (1) individual freedom and security of person are inviolable. (2), detainment or arrest of a person shall be permitted only in the cases and under the procedure provided by law. (3) Detention may not exceed 24 hours. (4) placing into custody by the judge, and only in the course of penal process. (5) During the penal prosecution preventive arrest may be disposed of for not more than 30 days and may be extended by no more than 30 days without the total duration may not exceed a reasonable period of time, and no more than 180 days.

⁵ Romanian constitution:

The Romanian State: (3) Romania is a democratic state governed by the rule of law, and social, in which human dignity, the citizens' rights and freedoms, the free development of the human personality, justice and political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution in December 1989 and shall be guaranteed.

a direct way we don't know who is a person, but it can be identified by means of user-friendliness of information from other sources (e.g.: various data bases).

Can be considered personal data: the number of series and ID, e-mail address, date of birth (in conjunction with other information may lead to the identification of the person, whereas there are a large number of people born in the same day, and that same year), the number of immatriculare of a machine (for that can give information about the owner who has led the machine or drive the vehicle at a certain moment), the IP address.

The protection of individuals with regard to the processing of personal data by the competent authorities for the purpose of preventing, instigarii, detection and prosecution of criminal offenses or of protecting against threats to public safety and prevention, as well as the free movement of such data, subject to a specific legal act of the Union. Therefore, this Regulation, when they are used for these purposes should be governed by a legal act more specifically, namely the European Union (EU) Directive 2016/680/EC of the European Parliament and of the Council.

The Member States may entrust the competent authorities within the meaning of Directive 2016/680 (EU), tasks which are not necessarily met for the purpose of preventing, instigarii, detection and prosecution of criminal offenses or of the enforcement of penalties, including protecting against threats to public safety and prevention, such that the processing of personal data for other purposes, in so far as it falls within the scope of Community law, to fall within the scope of this Regulation.

3. Special Measure of Technical Supervision in Relation to the Restriction of Human Rights and Fundamental Freedoms

Special methods of supervision or research may be applicable only in the case of those persons on which bears the reasonable suspicion that are partase to committing crimes. These methods are covered in Article 138. C.P.P .and 139 CPP.

Obtaining the data generated or processed by providers of public electronic communications networks or service providers of publicly available electronic communications services, other than the content of the communication, adopted by them under the law relating specifically to the retention of data generated or processed by the suppliers of networks electronic communications service and the providers of publicly available electronic communications services.

The devices of interception (Dobrinouiu, 2016) may also be the subject of a crime regarding the invasion of privacy in the case in which are not legally installed.

By the interception of communications or any type of interception of communication means, access, monitoring, collection or recording of communications made by phone, computer system or by any other means of communication. By video surveillance, audio, or by means of persons shooting shooting, observation or record conversations, movements or other activities.

To obtain data on financial transactions of a person involves the pursuit of any of the operations carried out by this, aimed at increasing the awareness of financial transactions, fectuate content by means of a credit institution or other financial entities, as well as getting to a credit institution or other financial entity of documents or information in its possession relating to the transactions carried out by that person.

In Article 1391 of the Code of penal procedure, adopted by Law No 135 of 1 July 2010, published in the Official Gazette of Romania, Part I, No 486 of 15 July 2010, as amended by EGO no. 3 of 5 February 2014, published in the Official Gazette of Romania, Part I, no. 98/07.02.2014, is regulated, as a special method, technical supervision .

This is prepared by the judge of the rights and liberties:

- that the magistrate independently;
- when both of the following conditions are fulfilled:

There is a reasonable suspicion with regard to the preparation or committing an offense against national security provided for in the Penal Code and special laws, as well as in the case of drug traffic , traffic in arms traffic, acts of terrorism, money laundering, the falsification of the currencies or other values, the falsification of electronic payment instruments, against the heritage of blackmail, rape, deprivation of freedom, tax evasion, corruption offenses and infringements treated in the same way as infringements of corruption, criminal offenses against the financial interests of the European Union, of the person committing criminal offenses for which the information systems or by means of electronic communications networks, or in the case of other criminal offenses for which the law provides for the imprisonment penalty of five years or more;

The supervision of the technique can be ordered during the penal prosecution, for a period of not more than 30 days, at the request of the prosecutor, judge of the rights and freedoms of the Court which he would return the competence to judge concerned in the first instance or from the appropriate authority in its degree in whose constituency is the headquarters of the prosecutor's office of which the prosecutor who made the request. The request for the approval of the technical supervision shall be settled on the same day, the Council, without summoning the parties, but with the compulsory participation of the prosecutor. The conclusion whereby the judge of the rights and liberties shall decide on the measures of technical monitoring is not subject to appeal.

At the reasoned request of the person aggrieved judge, prosecutor may request the authorization of interception of communications or their registration, as well as any of the types of communication made by this by any means of communication, irrespective of the nature of the offense forming the subject of the research (Article (140)). The prosecutor may authorize, for a duration of up to 48 hours, technical measures of surveillance when: a) there is an emergency, and the mandate of survey under the conditions laid down in Article 140 would lead to a substantial delay of research, to the loss, alteration or destruction of samples or would endanger the security of a person aggrieved, the warning or members of their families; (b) the conditions are met shown above (Article 141).

The prosecutor enforce the supervision of the technical times may provide that this should be carried out by the criminal investigation or specialised workers of the police or other specialized bodies of the state. Any authorised person who carries out the technical monitoring activities, on the basis of this Law has the potential to provide electronic signature of data resulting from the activities of survey, using a signature electronia extended based on a qualified certificate issued by a service provider certification accredited

Any person who is authorised to transmit data resulting from the activities of the technical supervision, on the basis of this law, has the possibility to sign the data transmitted using electronic signature and an extended based on a qualified certificate issued by a service provider accredited certification and identifying the unambiguous description of the person authorised, this being the iss such responsibility as regards the integrity of transmitted data. Any authorised person who receives data resulting from

the activities of the technical supervision, on the basis of this law, has the possibility to verify the integrity of data received and certify this by signing the integrity of data, using an extended electronic signature to be based on a qualified certificate issued by a service provider accredited certification and identifying the unambiguous description of the person authorised to do so.

4. Conclusion

We believe that the laws of Romania in the nature of the criminal procesual aligns with international regulations, respectively (EU) Directive 2016/680/EC of the European Parliament and of the Council of 27 April 2016 on the protection of individuals in relation to the processing of personal data by the competent authorities for the purpose of preventing, detecting, investigating and prosecuting criminal offenses or of the enforcement of penalties and on the free movement of such data.

Rapid technological development and globalisation have generated new challenges for the protection of personal data. The extent of the collection and exchange of data with personal character have increased significantly. This technology allows the processing of categories of data to an unprecedented level within the framework of the activities as well as the prevention, investigation, detection and prosecution of criminal offenses or the execution of penalties.

5. Bibliography

Dobrinou, Vasile (2016). *Noul Cod penal comentat. Partea generala/ The new Criminal Code commented. The general part.* 3rd Ed. Bucharest: Universul Juridic.

(EU) Directive 2016/680/EC of the European Parliament and of the Council of 27 April 2016 on the protection of individuals in relation to the processing of personal data.

The current Criminal Code.