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THE ROLE OF A LEGAL SECRETARY IN PREPARING CANDIDATE LEGAL PRACTITIONERS AND LAW GRADUATES FOR LEGAL PRACTICE

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Abstract: *Legal secretaries are not legal practitioners; yet, they are in a position to provide valuable practical and professional training to candidate legal practitioners, during their term of practical vocational training, as well as to law students performing paralegal services at university law clinics. In a country like South Africa, legal secretaries mostly perform administrative work in law firms and at university law clinics. Despite their administrative knowledge, they also accumulate experience in the drafting of various legal documents, legal ethics, professionalism and, sometimes, even legal knowledge. This experience puts legal secretaries in the position to assist legal practitioners with training candidate legal practitioners and law students for entry into legal practice. Such additional training becomes important in light of the fact that legal practitioners, and even legal academics, have complained about the competence of law graduates who enter legal practice – they simply do not have sufficient practical knowledge and the relevant skills that practice requires. Conventionally, legal practitioners act as principals for candidate legal practitioners, which task is statutorily ascribed to them when candidate legal practitioners enrol for practical vocational training. Legal secretaries are not conventional trainers. In this article, it is argued that there is a firm theoretical foundation to recognise the important role that legal secretaries can play in the professional and practical upbringing of candidate legal practitioners and university law clinic students. The doctrines of constructivism and kinesthetics learning are relevant in this regard. It is argued that legal secretaries should be seen as "para-lawyers" or legal assistants in the sense that they should work with legal practitioners in providing practical*

and professional training to candidate legal practitioners and students. It is trite that university law schools use the lecture method to teach law, resulting in law graduates mainly receiving theoretical training with little to none practical experience. Work-integrated learning is important for law graduates wanting to be admitted as legal practitioners and legal secretaries can make a contribution, especially legal secretaries who have years of experience behind them.

Keywords: *legal secretary; law graduates; law students; candidate legal practitioners; candidate attorneys; legal practice; work-integrated learning; para-lawyers; legal education; practical legal training; professional legal training; constructivism; South Africa.*

Introduction

Legal secretaries are well-known human resources in legal practice. Almost all law firms, irrespective of how big or small they might be, benefit from the services of one or more legal secretaries. Apparently, and especially in a country like South Africa, these services are predominantly administrative in nature, including maintaining the reception desk, organising diary entries, typing, sorting mail, attending to setting agenda and constructing minutes of meetings, attending to ordering and maintaining office supplies, to name but a few. It may therefore seem unorthodox to link a legal secretary with the practical training of law graduates in preparing them more adequately for legal practice. Law graduates, in this context, refer to graduates who have been registered for practical vocational training (hereafter referred to as "PVT") at law firms, university law clinics (hereafter referred to as "ULCs"), Legal Aid South Africa (hereafter referred to as "LASA"), the State Attorney's offices, as well as at other institutions that are authorised to offer PVT to law graduates. As will be indicated elsewhere in this paper, the task, of training candidate legal practitioners (hereafter referred to as "CLPs") during their PVT, is mainly that of the CLPs' principals.

It however cannot be ignored that legal secretaries also play a somewhat important role in training CLPs for legal practice. As will be made clear in this paper, the training, provided by legal secretaries, may not have been formally agreed on in a document or even expected by a

CLP or principal attorney – it is submitted that this happens automatically and, somewhat, unconsciously. On a daily basis, CLPs are in contact with legal secretaries for various reasons and, during such contact sessions, training takes place, mostly with neither the secretaries nor the CLPs even realising that training is being provided and experienced respectively.

The focus of this article is therefore to provide some insight into the important role that legal secretaries play in contributing to the training of CLPs for legal practice in a South African context. It will also be indicated that this training may also be provided to law students who are involved in vacation and shadow work at law firms or any of the abovementioned institutions. Training to students will facilitate legal education, provided by universities, which will contribute to the practical knowledge base and experience of law students. It also indicates the important role that legal secretaries can play in the career of even law students.

In a South African context, "candidate legal practitioner" can refer to either a candidate attorney, who engages in PVT at an attorney's office, or to a pupil, who engages in PVT an advocate's chambers (Section 1 of the Legal Practice Act 28 of 2014). For purposes of this article, CLP shall refer to a candidate attorney. This, however, does not mean that the content of this article is not applicable to pupils also. Similarly, "legal practitioner" and "principal" will refer to an attorney and not to an advocate.

It must be indicated that, although this article is written from a South African perspective, the value of a legal secretary in relation to the practical and professional upbringing of CLPs and law students, applies worldwide.

1 The legal secretary: an overwiew

Traditionally speaking, legal secretaries are not educators. They are also not academics. Their primary function is to provide administrative support to legal practitioners and, in such a way,

contribute towards the flow of legal processes.[1] These broad tasks include, but are not limited to, typing of legal documents, managing correspondence, interacting with clients, as well as organising important documents.[2] Their duties are specifically directed at what is required in the legal administrative field, although they also perform some general secretarial and administrative duties.[3] Legal-specific tasks include typing and preparing legal documents for legal practitioners. These include both legal letters, pleadings and agreements. More general secretarial tasks include liaising with the clientele and other stakeholders of the particular law firm, managing files, records and the appointment calendars of legal practitioners, attending to travel arrangements of legal practitioners and/or other staff members of a law firm, as well as attending to the resources and inventory of a law firm, including stationery, office furniture, payment of overhead bills, etc.

In light of the title of this article, it is essential to explore the relationship between legal secretaries and law graduates, as well as between legal secretaries and law students still awaiting graduation. These two categories of persons are important for the mere fact that they are aspiring to be admitted as legal practitioners. Law graduates are usually appointed by legal practitioners at law firms for the purpose of the graduates being enrolled as candidate legal practitioners (hereafter referred to as "CLPs") to engage in practical vocational training

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[1] The Lawyer Portal. (2025). "What is a legal secretary?" What is A Legal Secretary? | The Lawyer Portal (accoessed 2025-08-28); CareerExplorer (2025) "What does a legal secretary do?" What does a legal secretary do? - CareerExplorer (accessed 2025-08-28).

[2] The Lawyer Portal. (2025). "What is a legal secretary?" What is A Legal Secretary? | The Lawyer Portal (accoessed 2025-08-28); CareerExplorer (2025) "What does a legal secretary do?" What does a legal secretary do? - CareerExplorer (accessed 2025-08-28).

[3] Indeed (2025) "Learn about being a legal secretary" Learn About Being a Legal Secretary | Indeed.com (accessed 2025-08-28); Indeed (2025) "Legal secretary job description: top duties and qualifications" Legal Secretary Job Description [Updated for 2025] (accessed 2025-08-28).

(hereafter referred to as "PVT"). In South Africa, CLPs must perform PVT for a period of two years, after which they can apply for admission as legal practitioners. Law students usually apply to law firms for purposes of shadowing legal practitioners, CLPs or other staff of the law firm. The purpose of shadowing is to learn more about the legal profession and to obtain some practical knowledge about legal procedure, ethics, professionalism and the overall daily experience of what it is like to be a legal practitioner in a law firm. Irrespective of whether they are CLPs or law students, they will engage with legal secretaries at a law firm. This engagement lays the foundation for the question: what can CLPs and law students learn from legal secretaries?

At this point, it must be stated that the answer to the aforementioned question will not be provided immediately. Instead, the answer will unfold as the discussion in this paper progresses.

2 Conventional training of graduates in legal practice

In the previous section, it was stated law graduates, who aspire to be admitted as legal practitioners, are required to undergo PVT before they can be admitted (see the definition of "practical vocational training" in the Legal Practice Act 28 of 2014). What happens in practice, is that graduates will start to apply for PVT opportunities during their time at university, most commonly in their final academic year. They can apply at law firms, ULCs, LASA, the State Attorney and a few other instances. Should their applications be successful, they need to be formally enrolled as CLPs by the Legal Practice Council (hereafter referred to as the "LPC"). The LPC is a statutory body that oversees the functions of legal practitioners and CLPs (Section 4 of the LPA) as well as the operation of legal practice in South Africa (Section 5 of the LPA sets out all the objectives of the LPC).

The enrolment of CLPs, as well as their eventual admission as legal practitioners, are governed by the Legal Practice Act (hereafter referred to as the "LPA" - 28 of 2014). Section 24(1) provides that a person may only be practising as a legal practitioner if he/she is admitted

as a legal practitioner and, as such, enrolled in terms of the LPA. Section 26 sets out the requirements for a person to commence with PVT and to eventually be admitted as a legal practitioner. The requirements are the following:

- the person must have an LLB degree obtained from a South African university (Section 26(1)(a));
- the person may have a law degree, obtained in another country, equivalent to a LLB degree and recognised by the South African Qualifications Authority (Section 26(1)(b));
- the person must have completed certain PVT requirements as a CLP that the Minister of Justice and Constitutional Development have prescribed (Section 26(1)(c). This subsection provides for community service - which, at the time of writing of this article, has not come into operation yet), as well as completing a legal practice management course.); and
- the person must have passed a competency-based examination or assessment for CLPs, which examination or assessment is specified in the rules of the LPC (Section 26(1)(d)).

CLPs, who have been properly enrolled, will practice under a principal attorney at a particular law firm or other institution. The principal is the person who is mainly responsible for the professional training of the CLP. The principal must oversee all the work that the CLP does, supervise and approve all letters and documents drafted by the CLP, as well as provide the CLP with sufficient training with regard to legal ethics and professionalism. Usually, CLPs undergo PVT for a period of two years. After this period of PVT, the principal must draft an affidavit in which he or she confirms which training a CLP has completed and that such a CLP is a fit and proper person to be admitted to practice as a legal practitioner. Such an affidavit, together with an affidavit from the CLP him or herself, about the training that he or she has received, is used by the CLP when he or she applies for admission as a legal practitioner.

In reality, as well as generally, principals train CLPs, enrolled under them, in a competent manner. However, principals, as well as other stakeholders in legal practice and academics, have also expressed

their concerns that law graduates, who enters PVT immediately after graduating from university, lacks the necessary practical knowledge and skills required for legal practice (Welgemoed, 2021, pp.4-5; Vukowich, 1971, p. 140; Deventer & Swanepoel, 2012, p.33, Manyathi, 2010, 8; Chamorro-Premuzic & Frankiewicz, 2019)[1]. In South Africa, the university system, as well as the school system, has been blamed for this apparent lack of practical knowledge and skills (McQuoid-Mason, 2006, pp. 166-167; Zitske, 2014, pp. 53-54; Vukowich, 1971, p. 140; Welgemoed, 2021, pp. 5,7). It therefore appears that there is a significant gap between what is taught at university level and what is required by legal practice, as legal practitioners have expressed their desires that universities should train law students how to draft last wills and testaments, how to administer deceased estates, as well as how to apply court procedures in courts of law (Vukowich, 1971, p. 140; Welgemoed, 2021, p. 8).

The aforementioned discussion leads to the conclusion that the primary practical training of law graduates falls upon their principals when they (law graduates) enter legal practice to complete their PVT. The reality is that principals are also busy with their own work during the working day, week, month and year, leading to conclusion that they cannot always be available on all instances when their assistance are required with regard to the training of CLPs. It is therefore suggested that other staff members, employed by law firms, should become involved in the active practical training of CLPs (Welgemoed, 2021, p.

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[1] https://hbr.org/2019/01/does-higher-education-still-prepare-people-for-jobs (accessed 2025-08-29); SASSETA Research Department "SASSETA Research Report: assessment of learning conditions of candidate attorneys during a transformation attempt" (March 2019) file:///C:/Users/mwelgemoed/Downloads/Candidate-Attorneys-study-Research- report-final-revised-25-03-2019-1.1.pdf (accessed 2025 - 08-29) 30-31. Sasseta specifically commented on the "very sloppy" work and initiative of some candidate attorneys. In this regard, it must be kept in mind that most candidate attorneys just came from university law school training and therefore, this may reflect on the training received while at university.

156). It is suggested that, on its own, this approach is not satisfactory, as it should be combined with skills and ethics training at university level (Welgemoed, 2021, p. 157). Whatever the case may be, it will be argued, for purposes of the topic of this article, that this approach cannot – and should not – be overlooked in legal practice, as there are some valuable segments of knowledge, practical approaches and skills that can be taught to CLPs by other members of law firms. The same can be said about the training of law students at ULCs by staff members employed there. These arguments become all the more important if it is kept in mind that there is no dedicated heuristic training in the LLB curriculum in South Africa (Welgemoed, 2021, p. 31). This stands in contrast with medical, pharmacy, teaching and psychology students who all undergo heuristic training while at university (Parmanand, 2003, p. 193). This type of heuristic training is a valuable type of work-integrated learning (hereafter referred to as "WIL") (Evans, Cody, Copeland, Giddings, Joy, Noone and Rice, 2017, p. 25). Students require WIL to become more familiar with their professions and to gain most desired workplace experience (Lukins, 2022).

This now brings the focus to the role that a legal secretary can play in the professional training and upbringing of CLPs and law students. It will be argued that they should be viewed as "para-lawyers" or, differently termed, legal assistants, to principals as far as the training of CLPs and laws students is concerned (Dean, 1983, p. 188; De Rebus, pp. 387-390; Welgemoed, 2021, p. 370). This aspect will be elaborated on in the next section of this article.

3 The impact of the legal secretary on the training of candidate legal practitioners and graduates

3.1 General

As stated in the Introduction to this article, it might appear to be unorthodoxed to link the office of a legal secretary with the practical training and professional upbringing of CLPs and law students. One would be inclined not to consider legal secretaries, who are administrative staff members at law firms, to be involved in the training

of law graduates who are undergoing PVT with the view of being admitted as legal practitioners. It is submitted that such an inclination would be very far removed from the truth, as wlll be argued in this section of this article.

The point of departure in this section is a simple statement: legal secretaries play an active role in the practical, professional and ethical training of law graduates and CLPs. This has been going on for quite a few years and will continue to happen in future.
But why?

3.2 Legal secretaries, CLPs and law students – a valuable professional relationship

Law students, at ULCs, and CLPs, at law firms, must come to terms with a somewhat harsh reality: they are the least qualified professional persons in ULCs or law firms (Hansjee & Kader, 2010, 2). For this very reason, it is submitted that they should open themselves up to be trained for purposes of the legal profession by anyone at a ULC or law firm who can contribute as far as training for legal practice is concerned. Legal secretaries are no exceptions. In fact, legal secretaries, more specifically the principals' secretaries, have been described as a CLP's "best friend" during a term of PVT (Hansjee & Kader, 2010, 2). Legal secretaries, especially experienced ones, can provide a lot of ease and pleasant professional experiences to the daily life of CLPs. (Hansjee & Kader, 2010, 2). The reason for this is that legal secretaries may have years of practical experience and knowledge with regard to drafting of legal documents, where to go to find information, as well as how a principal prefers work to be done (Hansjee & Kader, 2010, 2). With regard to the last mentioned aspect, a principal's legal secretary can be a valuable go-between person between a CLP and his/her principal, almost acting as a buffer, especially if the principal is a difficult person to work with (Hansjee & Kader, 2010, 2, p. 17). It is therefore not advisable that CLPs, or even law students, should act rude or in an arrogant manner against legal secretaries, as they (the secretaries) may have a profound influence on the way in which the principal views the CLPs registered

under him/her; thus, a CLP's professional journey may be in serious trouble due to arrogance or bad attitudes against other staff members in a law firm, including legal secretaries (Hansjee & Kader, 2010, 2). The same applies to law students should they have adverse attitudes toward legal secretaries at ULCs – universities might not be willing to provide them with certificates of good standing should it be found that they have misbehaved in any way.

It is therefore clear that legal secretaries cannot only provide CLPs with practical and professional support, but also with moral support as far as their (CLPs') principals are concerned (Hansjee & Kader, 2010, 2, p. 17).

3.3 Important professional and practical experience

The author wishes to include some personal experience as point of departure in this section of the article. As stated before, experienced legal secretaries carry a wealth of knowledge and experience with them, which knowledge ranges from legal professional ethics to the everyday work requirements of an experienced legal practitioner. As an inexperienced law graduate, writer depended to a significant extent on the assistance of legal secretaries when enrolled for PVT. The secretaries provided valuable guidance with regard to the drafting of legal documents, diarising client files, maintaining client files, arranging appointments, communicating with clients and other stakeholders via telephonic calls, as well as how to approach staff members at the various courts and even managing the day-to-day operations of a law firm, to mention but a few items of assistance. It must be kept in mind that universities do not, conventionally, teach these practical aspects to law students. Law students may get into contact with it while undergoing Clinical Legal Education (hereafter referred to as "CLE") at ULCs or while performing vacation work at law firms and/or other institutions, but, otherwise, it is left to legal practice to train students how to perform the mentioned items satisfactorily.

Some of the aforementioned items require additional discussion to indicate the true impact that a legal secretary can have on the training of CLPs and law students.

It is extremely important that CLPs and law students know how to maintain client files. Hansjee and Kader articulate it quite well when they state that the manner, in which a CLP maintains a client file, "…could mean the difference between impressing your principal and a nervous breakdown." (Hansjee & Kader, 2010, 6). Legal secretaries can assist CLPs with filing of documents and how to file each document in a dedicated section in a client file (Hansjee & Kader, 2010, 6). File notes are equally important, as it assist with having an accurate record of what is happening in a particular matter (Hansjee & Kader, 2010, 6-7). As legal secretaries frequently answer telephones and speak to clients, they are skilled in taking notes and conveying messages to various staff members in a law firm. They can therefore guide CLPs with regard to the best way to take notes, how to ensure that notes are clear and unambiguous to understand, as well as how to best take notes based on telephonic calls. Writer recalls how a legal secretary has taught him to make notes on client files immediately after communicating with a client or other stakeholders via telephone. This will ensure that notes are written down or typed out while the information is still fresh in the mind. The secretary has also made it clear that notes should not be written on the so-called sticky notes or small pieces of paper that can be lost easily. This may result in crucial information being lost or, worse, fall into the wrong hands, thus resulting in a serious breach of confidentiality and compromising attorney-client privilege.

It is important that every CLP and law student, undergoing CLE at a ULC, knows how to properly diarise client files and make notes about dates on which certain tasks must be performed. It is undeniable that, should important dates be overlooked, such conduct will be stamped as being unethical and unprofessional. This may lead to clients becoming dissatisfied with the quality of legal services that are being rendered to them, possibly resulting in them seeking legal assistance elsewhere. Legal secretaries know the importance of diarising issues and maintaining legal representatives' diaries as far as appointments, court appearances and travel arrangements are concerned. They can therefore guide CLPs and law students in this regard.

When it comes to the drafting of documents, it is not surprising that legal secretaries can be one of the best sources of information and assistance to CLPs and law students. Especially experienced legal secretaries have been involved in the typing and, sometimes, even the drafting of letters and some legal documents. This means that they have a record of various types of letters, pleadings, contracts and other legal documents at their disposal in their data bases. They can therefore provide CLPs and law students with examples of relevant documents. Many CLPs have not encountered real legal letters or even legal documents during their years at university studying law; therefore, should they be assisted with legal documents in this manner, it is a good way for them to compare their theoretical knowledge, about what must be in a particular letter, pleading or document, with what actually does appear in such documents in practice, as well as why it is written in such a manner.

On the topic of legal documents, legal secretaries can also provide CLPs and law students with word processing and information systems. The writer can mention several instances where a legal secretary has assisted with the setting of document margins, alignment of paragraphs and compiling document compilations in PDF bundles – apparently simple tasks for frequent word processors, but not so usual for occasional advanced word processors. In this context, CLPs, law students and even experienced legal practitioners are inclined to spend more time on legal research, drafting legal opinions and preparing for court appearances than spending time on advanced word processing.

Legal secretaries, specifically performing the task of bookkeepers, can also assist CLPs and even experienced legal practitioners to understand electronic accounting systems better.[1] CLPs and legal practitioners are more interested in observing the end-of-the-

[1] Many legal practitioners appoint bookkeepers specifically for the task of handling the accounts and bookkeeping of their law firms. It may, however, happen that one of the legal secretaries doubles as the bookkeeper of a law firm and, in that way, can transfer valuable information in this regard to CLPs and law students.

month status of client accounts than learning more about how a particular accounting system works. Should they therefore have questions about how certain calculations had been done or how client funds had been allocated, legal secretaries can provide clarity on how the particular accounting system is processing relevant figures.

When it comes to managing the daily operations in a law firm, the most plausible assumption would be that directors and/or senior attorneys of law firms should explain the intricacies, associated with such management, with CLPs. It is however nothing unusual to expect such a task from a legal secretary, especially one that also doubles as the office manager of a particular law firm. For students undergoing CLE at ULCs, there is generally no business management or office management training, as ULCs conventionally do not focus on such management (Bodenstein, 2018, p. 56). Clinicians at ULCs can set up workshops and programmes to teach office and business management to law students (Bodenstein, 2018, p. 56-57). It is submitted that legal secretaries, with adequate experience in handling the daily management of a law firm, should be approached to assist with such training, especially as far as the office management is concerned. Such legal secretaries may have extensive experience in ordering office supplies, paying office bills and perform other management related tasks and can enlighten students and CLPs as such.

The most unexpected role, that a legal secretary can possibly play, is that of a legal practitioner. It is however submitted that the skills of legal secretaries, especially experienced ones, should under no circumstances be underestimated in this regard. Although no degree qualification is required for a person to become a legal secretary, some legal secretaries do have legal background due to them having obtained a law degree. Alternatively, especially experienced legal secretaries have typed countless legal documents for legal practitioners, including court summons, court applications, demands, warrants of execution, as well as legal opinions and heads of argument. For that reason, they have come into contact with legal doctrine, practical application thereof, as well as where to find the law to base legal opinions and arguments on.

Experienced legal secretaries will also be skilled in knowing legal procedure, for example, civil procedure, as legal procedure inherently forms part of legal documents relating to litigation. They are therefore in the ideal position to advise CLPs and law students in this regard, providing CLPs and law students with opportunities to familiarise themsevles with sometimes intricate procedural rules without approaching their principals. CLPs and law students are also now in the position to learn more about the law in a more relaxed manner without fear of appearing to be ignorent in front of their principals and other professional staff members at law firms or at ULCs.

Legal secretaries can also assist CLPs and law students to develop a better comprehension of legal ethics and professional conduct in legal practice. It is expected of legal secretaries to have the following skills with regard to legal ethics and professionalism (Tsvety, 2025)[1]:

- they should have a proper understanding of attorney-client privilege;
- they should know how to properly handle secure legal and other documents;
- they should exercise discretion in their conversation with other people, especially as far as confidential information is concerned. They should guard against divulging client information and making themselves guilty of other unethical and unprofessional conduct; and
- they should comply with legal and ethical guidelines. These guidelines may be statutorily prescribed or might form part of practice guidelines set by the courts or regulatory bodies, for example, the LPA or LPC.

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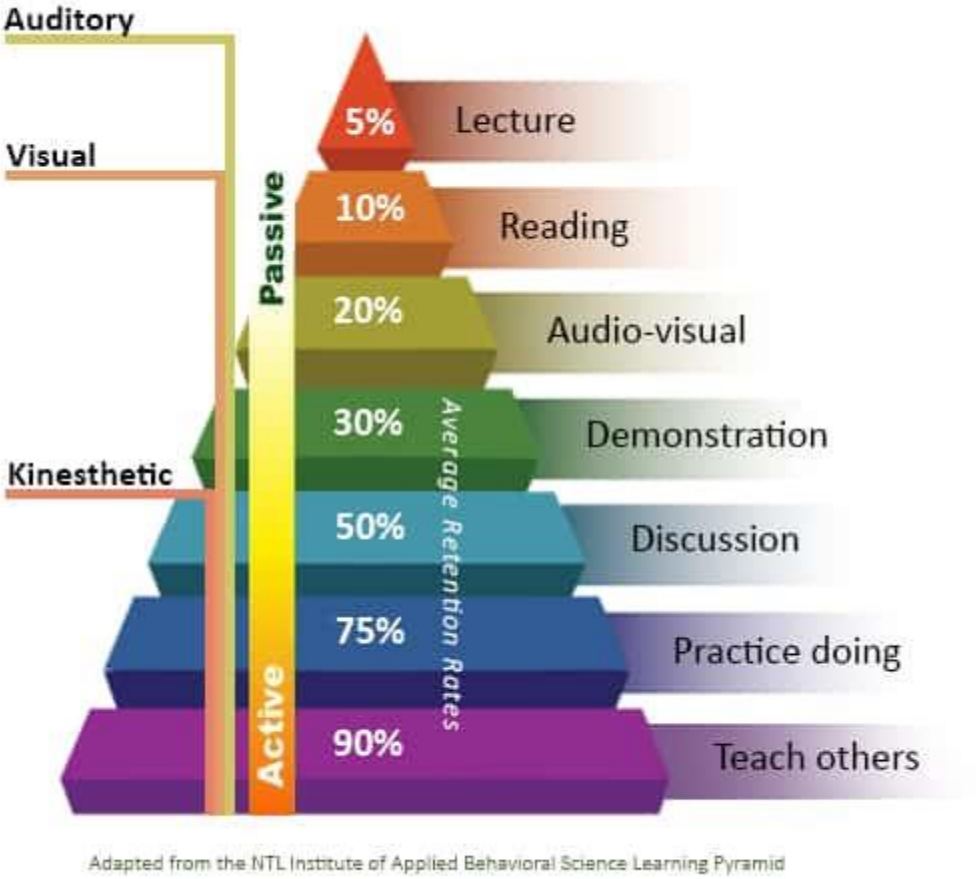
[1] The Role And Significance Of A Legal Secretary - The Law To Know (accessed 18 September 2025).

3.4 A firm theoretical basis

Practical experience requires firm theoretical underscoring (Welgemoed, 2021, p. 475). In layman's terms, it can be said that, in order to bake a good cake, one needs a good recipe. For that reason, it is necessary to build and argument for a firm theoretical basis supporting the value that a legal secretary can bring to the professional and practical training of both law students and CLPs.

Students may learn about the practical aspects of legal practice in law school, but may not always be provided with any opportunities to practise their knowledge. The Learning Pyramid (Loveless, 2025)[1] may assist to clarify the arguments in favour of the mentioned theoretical basis.

[1] The graphic of the Learning Pyramid has been obtained from the same source.



Adapted from the NTL Institute of Applied Behavioral Science Learning Pyramid

The Learning Pyramid is a model that suggests that some modes of teaching and study are more effective than others (Loveless, 2025). To be more specific, some study methods may lead to deeper learning, as well as to a more long-term retention of knowledge (Loveless, 2025). According to Welgemoed, the Learning Pyramid may help to bring value to procedural law modules (Welgemoed, 2021, p. 285). Legal procedure is, for obvious reasons, important to the practice of law and mention has

already been made elsewhere as to what impact a legal secretary can have in this regard in relation to the training of CLPs and law students (see 3.3 in this regard). It is argued that , for purposes of this article, it can also bring value to various other practical aspects that CLPs and law students need to be skilled in. If the top of the pyramid is studied, it appears that people only retain 5% of knowledge by listening to lectures (Loveless, 2025; McQuoid-Mason, 2016, p. 2; Welgemoed, 2021, p. 284). The lecture method, or the Socratic teaching method, is the methodology conventionally used by law schools to impart theoretical knowledge onto students (Barnhizer, 1979, 67.96; Wizner, 2002, 70(5); Welgemoed, 2021, p. 22). The Socratic teaching method refers to a dialogue between a teacher and students. Involving the asking of questions by the teacher in order to discover the basis for students' opinions and beliefs (Conor, 2025). Despite this dialogue, very little to no practical experience is gained by the students (Regassa, 2009, pp. 53-56; Wizner, 2002, 1931; Welgemoed, 2021, p. 180). The reason for this is that the all the activities in the top part of the Learning Pyramid are mainly passive, not enabling people to put their theoretical knowledge into motion by actually practising what they know (Welgemoed, 2021, p. 285). Towards the bottom of the pyramid, activities get more active and can help to instil better knowledge in people, due to the kinesthetic (Smith, 2025) nature of the activities. A kinesthetic learning style prefers physical activities and tactile experiences as part of the learning process (Smith, 2025). For example, should CLPs or law students have discussions with legal secretaries about certain practical aspects, as already mentioned, the CLPs or students may retain up to 50% of what had been discussed. Should CLPs or students practise what they have discussed, they may retain up to 75% of what had been discussed. The conclusion is therefore that, due to the manner in which law is generally taught at university level, CLPs and law students require every opportunity possible to gain more skills and practical experience. This observation is especially relevant if it is kept in mind that it had been anonymously stated that, in South Africa, the 4 year LLB programme is producing "legal barbarians" who might have received training in law,

but who are not equipped to have an appreciation for the true functioning of a legal practitioner as far as the general public and existing power dynamics are concerned (Du Plessis, 2016, 1 2; Welgemoed, 2021, p. 187). This is, reputationally speaking, not good for the legal profession.

It is therefore suggested that legal education should be sufficiently practical to ensure that CLPs and law graduates gain the necessary skills, as well as a continuous experience (Welgemoed, 2021, p. 188). Legal education commences even before entry into law school (Welgemoed, 2021, p. 188-192), has its most critical and formative stages during the law school years and, thereafter, continues throughout the career of every legal practitioner (Stuckey, Barry, Dinerstein, Dubin, Engler, Elson, Hammer, Hertz, Joy, Kaas, Merton, Munro, Ogilvy, Scarnecchia & Schwartz, 2007). The notion is therefore that university training should be of such a nature that law graduates are moulded into skilled, competent and professionally thinking individuals who can render legal services of good quality to members of the public (Lamparello, 2015, 1 4). In this way, law graduates can continue to learn during their PVT, eventually being admitted as legal practitioners and, thereafter, continuing to become more experienced as their careers progress. However, it appears that university training is not currently assisting to lay a satisfactory foundation as far as practical training is concerned (Welgemoed, 2021, p. 189). There could be various reasons in support of this statement. One of the reasons might be that law school staff do not have staff members who have the necessary practical experience to train law students (Welgemoed, 2021, p. 189-201). A further reason could be that law schools do not have the necessary practice-orientated programmes in their curricula, including skills training, ethics and professionalism (Kruse, 2013, p. 45). It might be remarked that, if law schools do present any practice-orientated programmes in their curricula, such programmes are presented either too late in the students' academic careers at university, as well as that such programmes are only presented for a short duration of time (Welgemoed, 2021, p. 189). To conclude: if this is indeed the case, it can be said that law schools break the chain of continuous learning, leaving it to legal practice to proverbially "pick up the pieces" when law graduates

commence with PVT as CLPs. CLPs can then do with every bit of assistance that they get, including enriching professional training that can be offered by legal secretaries.

It is suggested that the doctrine of constructivism also plays a significant role with regard to the practical and continuous training of CLPs and law students. In essence the doctrine entails that students learn by way of new experiences, which experiences add to the existing knowledge framework of such students (Quinot & Greenbaum, 2015, pp. 29-35). Another trait of constructivism is that knowledge cannot be taught in an a-contextual manner (Quinot & Greenbaum, 2015, p. 36) – theoretical and practical components should therefore be taught collectively in context of the situation to which they apply (Welgemoed, 2021, p.64). Constructivism can be said to imply that students cannot simply and only learn by listening to and receiving information from teachers (Quinot & Greenbaum, 2015, p. 35). Students should thus personally experience practical situations to personally learn from it (Welgemoed, 2021, p.85). This can be connected to continuous learning, in that constructivists view this form of active learning to be an inescapable part of life (Alexander, 1985, pp. 249-254). Thus, students gain additional knowledge by connecting new experiences with knowledge derived from earlier stages of their lives, for example, knowledge gained during their years at university (Quinot & Greenbaum, 2015, p. 35). A legal secretary can therefore enhance a CLP's ability to draft legal documents more properly. The quest is however for the CLP to attempt the document him or herself and to ask the legal secretary for guidance. A legal secretary can also provide more clarity on certain practices followed by the relevant law firm with regard to clients, case management, file management and general office rules. The CLP will have to experience all these aspects for him or herself to fully appreciate the practical implications thereof; however, the mentioned concepts should not be totally new to the CLP, as he or she has already, as a law student, studied the theoretical aspects thereof at law school to only now, in practice, put such knowledge into motion by engaging in such practices. As a result of constructivism, the CLP engages in continuous

learning by constantly seeking for information, actively enriches his or her knowledge-base by finding such information and practising it, as well as by receiving guidance with regard to where to find such information and how to properly use it, from the legal secretary. Such learning takes place in a contextual manner, as the CLP learns to acquire information for a specific purpose, as well as how to practically employ such information for a specific task at hand.

It has been mentioned before that legal secretaries are usually skilled in word processing and that they can assist CLPs, law students and even experienced attorneys to overcome the occasional complexities that word processing software can present (see 4.3). Such assistance gain new force, importance and urgency in light of the demands that the Fourth Industrial Revolution (hereafter referred to as the "4IR") holds for legal practice. The 4IR has been defined as the advent of cyber-physical systems, with new capabilities for both machines and people in store (Ptolemy Project, 2016).[1] This includes the way in which computers, software systems and even artificial intelligence may influence everyday life, including that in legal practice (Welgemoed, 2021, p. 389). In more technical terms, this means that sophisticated algorithms can, to a significant extent, perform tasks that are conventionally performed by legal practitioners and paralegals (Hutchinson, 2017, pp. 567-569; Frey & Osborne, 2013, 1 2-3). Tasks, usually performed by legal secretaries, should not be left out of sight in this regard. The legal profession is however generally slow to adapt to technological progression, especially as far as the courts are concerned (Welgemoed, 2021, p. 393; Katz, 2014, 1-3). It seems that law firms have fairly rapidly adapted to the demands of the 4IR with regard to using general operations in a law office, case management and communication systems (Katz, 2014, 3). Legal secretaries are generally the incumbents processing legal and other documents and using computers the most for administering the firm's

[1] Cyber-Physical systems. Cyber-Physical Systems - a Concept Map (accessed 2025-09-11).

everyday business. They may therefore teach CLPs and law students more about document-generating software that they may be using, as well as present them with templates of legal documents (Welgemoed, 2021, p. 411). Nowadays, cloud-based databases are commonly used in all law firms and, in this context, legal secretaries can empower CLPs and law students about how to safely store confidential information and legal documents in such databases (Welgemoed, 2021, p. 411). This type of training will contribute to the already existing knowledge that students may have regarding the storage and safeguarding of confidential information and important documents. In this context, continuous and lifelong learning once again takes place, ensuring CLPs and law students keep on being educated and acquiring new skills that will enrich their professional careers as future legal practitioners (Welgemoed, 2021, p. 411). Especially, as far as law students are concerned, such training will assist them to more familiar with what awaits them in legal practice after graduation (Welgemoed, 2021, p. 411). The significance of this aspect particularly is in the fact that law schools conventionally do not teach these types of skills, as was already mentioned elsewhere (see 4.3).

It can thus be stated with confidence that legal practitioners and legal secretaries work together as a team, with the secretaries sometimes being delegated the repetitive section of the practitioners' work (Dean, 1983, p. 390). In many cases however, this working relationship goes much further and entails that legal practitioners only retain the part of the work that involves a high degree of complexity and responsibility (Dean, 1983, p. 390). What this in effect means, is that legal secretaries – as "para-lawyers" – can assist legal practitioners with some of their duties to allow them (legal practitioners) with more time for other important duties, as already stated. According to Dean, courses have been introduced to meet the needs of such "para-lawyers" and to train them accordingly for the work that they must do. It is submitted that this refers to none other than paralegals. However, it is not suggested, in this article, that legal secretaries should be paralegals. Being a paralegal would require them to also do legal research, consult with clients of the law firm and run more errands as far as the courts are concerned (Dean,

1983, p. 390). Dean states that "[t]he work of para-lawyers falls between that of the competent secretary and that of the qualified attorney." (Dean, 1983, p. 390) This statement is supported in context of this article. It is submitted that legal secretaries do not even have to undergo specific courses to be recognised as "para-lawyers" – they earn that "title" by virtue of the work that they are doing, as they have experience in drafting documents, writing basic letters, communicating with clients and other stakeholders of law firms, as well as liaise with various staff members of law firms, including CLPs and, sometimes, law students. Legal secretaries can therefore provide assistance with regard to the professional and practical training of CLPs and law students without them getting involved in consulting and research. CLPs and students need to discover the complexities thereof for themselves by either shadowing principals or by doing it themselves, which would form part of continuous education, fully underscored by the doctrine of constructivism. The legal profession should realise the inherent value that legal secretaries can bring to the table with regard to the professional and practical upbringing of CLPs and law students so that such a practice can gain more momentum and acceptance. If it is accepted that legal secretaries can add value to the said training of CLPs and law students, as explained in this article, they are indeed performing duties that fall between that of a secretary and that of a legal practitioner. It is submitted that, in this regard, they are indeed "para-lawyers", as they work with legal practitioners as far as the training of CLPs and law students are concerned and not usurping the duties of legal practitioners in any way. There is thus a clear division between what a legal practitioner must do with regard to training registered CLPs, statutorily speaking, and what a secretary can do on a daily basis to assist with such training. As far as the professional and practical training of especially CLPs for purposes of entry into the legal profession is concerned, this does not mean that legal practitioners delegate their training responsibility to legal secretaries. The responsibility will always remain with the principal (Dean, 1983, p. 392). The continuous and lifelong learning aspect should be the focus point and legal secretaries form part of this learning experience.

The LPA has been enacted with the purpose of providing a

legislative framework for the transformation and restructuring of the legal profession (Marumoagae, 2023). Marumoagae states that progressive legal education is at the heart of this transformation and restructuring, as it should equip CLPs with the necessary skills to enter legal practice and to have successful careers as legal practitioners (Marumoagae, 2023). The learned author further states that this will not be achieved by way of students merely attending classes at university (Marumoagae, 2023). In this regard, he convincingly states that all legal practitioners should, in their spaces, offer progressive legal education to enable CLPs to prepare adequately for entering modern legal practice (Marumoagae, 2023). For reasons already advanced in this article, it is submitted that legal secretaries play important roles in providing such progressive legal education in the sense that they contribute to the professional and practical upbringing of CLPs and law students.

Conclusions

It is submitted that, when the value of a legal secretary in the life of especially a CLP is considered, one cannot do anything else but to have the utmost respect for the impact that such a secretary can have on the practical training and knowledge of such a CLP. It has been illustrated in this article that legal secretaries fulfil an integral role in the successful running of law firms (Womack, 2025). Inasmuch as the relationship between legal practitioners and legal secretaries are important for the successful management of a law firm (Womack, 2025), it is submitted that the relationship between legal secretaries and especially CLPs can also contribute immensely to the successful running and management of a law firm. The reason for this submission is simple: the more a CLP learns from a legal secretary, especially an experienced one, the more efficient and professional the CLP will become in executing daily legal tasks, ranging from consulting to successfully assisting clients in a court room. In this regard, it is not by any means suggested that a legal secretary is the only source of information in a law firm as far as CLPs are concerned. It has been pointed out that CLPs

primarily receive professional training from the principals under whom they have been enrolled to undergo PVT (see 3). However, in the author's experience, in certain instances, some CLPs just feel more comfortable to liaise with legal secretaries, instead of with their principals, regarding some routine matters as far as the operations inside the law firm are concerned, as well as with regard to some legal matters, for example, how to obtain examples of certain legal documents like contracts, pleadings or templates of letters. The reasons for such liaison can vary from case to case. It might be that the CLP is feeling intimidated by the principal and is therefore somewhat scared to approach the principal. Another reason might be that the principal is too busy to assist at a specific point in time and that the CLP cannot wait, as the work, that requires to be completed, is of an urgent nature. A further reason might be that a CLP wants to impress a principal and therefore approached a legal secretary for assistance with certain tasks. Whatever the case may be, if the CLP received assistance from the legal secretary, it is submitted that such a legal secretary has fulfilled the task of being a trainer, thus actively contributing to WIL. The principal will be satisfied due to tasks being professionally executed, thus noting positive progress on the side of the CLP. The CLP will be satisfied, as he/she has completed required tasks with a sense of independance from the principal, which, it is submitted, may contribute to the morale of a CLP and may instil a sense of vigour in him/her to continue to learn more. The same may apply to law students performing parallegal services at ULCs.

It is unfortunate that literature on the important value of legal secretaries, as trainers to CLPs and law students, are so scarce to the level that it is almost non-existent. It is submitted that the legal profession must pay more attention to the significance that legal secretaries can have on promoting WIL. As the LPA entrusts CLPs to legal practitioners for purposes of PVT – a logical provision, as such training must be provided by qualified professionals - it does not seem likely that legal secretaries or even other administrative officials will ever be statutorily recognised as PVT trainers. This does however not mean that they cannot be recognised as training assistants by legal practitioners. Legal secretaries

can present workshops to students on several practice related matters, like effective communication, file management, note-taking and office management, to name but a few, while principals oversee such training to ensure that it remains consistent and covers all relevant bases. This may save some principals time that can rather be dedicated to consultations, case preparation and litigation in court. It is submitted that such recognition may also improve the morale among legal secretaries, which may boost motivation and productivity – by no means suggesting that the productivity of legal secretaries require attention in any way. In the words of Tom Peters: "The art of paying positive attention to people has a great deal to do with productivity."[1] Legal secretaries are no exceptions to this rule.

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THE DOCTOR–PATIENT RELATIONSHIP IN OUTPATIENT NEUROLOGY: SOCIOCULTURAL AND LEGAL DIMENSIONS

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***Abstract**: In outpatient neurology, the relationships between the physician and the neurological patient are complex, as they involve not only medical dimensions but also sociocultural and legal aspects that can influence the perceptions and behavior of all parties involved in the dialogue. In line with these considerations, this paper explores the socioeconomic, cultural, and legal dimensions that regulate the doctor–patient relationship in outpatient neurology, with particular emphasis on informed consent, patient data confidentiality, and patterns of medical communication.*

***Keywords**: mental health; doctor–neurological patient relationship; legislation; sociocultural factors; medical communication.*

Introduction

Outpatient neurology involves assessing the patient's health status, establishing a diagnosis, providing medical treatment, and monitoring the patient's condition without continuous hospitalization. All these objectives can only be achieved by the physician through high-quality professional communication, grounded in constructive and empathetic dialogue.

In line with this reasoning, the objective of our research is to explore the socioeconomic, cultural, and legal dimensions that influence doctor–patient relationships and medical communication. Particular attention is given to legal aspects such as obtaining informed consent, protecting the confidentiality of patient data, and adapting communication strategies to the specific features of outpatient neurology.

1. Socio-Economic and Cultural Dimensions in the Doctor–Neurological Patient Relationship

The interpersonal relationship between doctor and patient is of major importance in outpatient neurological practice and is closely correlated with a series of socio-economic and cultural factors, such as: (1) the patient's socio-economic status, (2) the level of general education and health literacy, (3) gender equity, (4) cultural affiliation, (5) religious beliefs about illness and health, and so forth.

(1) *Socio-economic status*. „The social determinants of mental health refer to the living conditions in which individuals exist, and which have a major impact on the distribution of mental health problems within the population. Although these determinants are present across all studied cultures, their prevalence varies from one country to another, meaning that populations in certain regions or nations may experience a higher level of exposure to social risks associated with multiple mental health issues" (Bartuczi). The neurological patient's socio-economic position is highly significant because it affects not only access to health-care services but also their quality. In wealthy countries that devote the highest expenditures to health-care, such as the United States (US $12,742 per person), Switzerland (US $9,044), Germany (US $8,541), the Netherlands (US $7,277), etc., patients benefit from numerous free or subsidised services, and their attitude toward the medical sector is generally favourable and optimistic. Consequently, public trust in health professionals is high, and people feel protected should health problems arise (5). Conversely, in countries with limited resources, patients face a range of socio-economic difficulties, including late diagnosis, incomplete

treatment, and social marginalisation. Referring to the Republic of Moldova, „we observe a negative trend in the native population's access to medical care. The proportion of men who report not having visited a doctor in over five years has increased significantly, from 6% in 2015 to 18% in 2024, while among women the situation remains practically stable (5% in 2015 and 6% in 2024)" (Bărbații și egalitatea de gen în Republica Moldova/ Men and gender equality in the Republic of Moldova, p. 110).

(2) *Level of education*. Educational attainment likewise influences both patient longevity and the quality of the doctor–patient relationship during treatment. Highly educated patients understand diagnoses more readily, communicate constructively with physicians, and participate actively in decision-making. By contrast, patients with modest schooling are often passive and marked by the "doormat" syndrome: they rely heavily on the doctor's authority, avoid responsibility, have low confidence in the system, and may easily abandon prescribed therapy. A study by Viju and Wullianallur Raghupathi confirms these observations: adults with higher education enjoy better health and longer life expectancy than peers with lower education. Tertiary education in particular strongly influences infant mortality, life expectancy, childhood vaccination, and school-enrolment rates (Raghupathi).

(3) *Gender roles*. „The population of the Republic of Moldova generally shows a negligent attitude toward health, as indicated by the low frequency of medical visits, especially among men. This situation is directly linked to men's perceptions of gender equality. Research shows that men who do not support gender equality are less likely to use healthcare services. This is explained by the belief that a strong man does not need to seek medical help" (Bărbații și egalitatea de gen în Republica Moldova/ Men and gender equality in the Republic of Moldova, p. 104). În general, în Moldova, men make exceptional decisions and head the family, while women are obedient and caring; medical contexts rarely escape this inequity. When a family faces a health dilemma, final

decisions are usually taken by the husband. Likewise, a female patient might refuse to discuss sensitive issues with a male doctor because of prevailing stereotypes and stigma. A study by R. Satkunasivam, "Comparison of postoperative outcomes among patients treated by male and female surgeons", shows only minor differences in how male and female physicians treat patients and achieve clinical goals (Satkunasivam). Hence, the notion that male doctors are inherently better than female doctors is a stereotype unsupported by scientific evidence and should not influence patient choice.

(4) *Cultural affiliation*. Cultural background can also shape the doctor–patient relationship. Health-care professionals therefore benefit from familiarity with Edward T. Hall's theory of high-context (HC) and low-context (LC) cultures. Low-context cultures (e.g., the USA, UK, Canada, German-speaking and Scandinavian countries) favour direct, denotative communication: intentions are stated explicitly, questions are asked whenever clarification is needed, and the message is assumed to be understood unless further queries arise. High-context cultures (e.g., Latin, South-American, Asian, Arab, and post-Soviet societies) favour indirect, connotative communication: answers are often ambiguous to preserve harmony or politeness; non-verbal cues are crucial; confrontation is avoided in public; problems are preferably solved in private. Accordingly, when treating LC neurological patients, physicians should adopt an informal style, treat the patient as an equal, use first names, express opinions openly and confidently, tolerate direct confrontation when it serves the common good, avoid sarcasm and irony, and uphold the patient's autonomy. In HC settings, doctors should employ indirect, subtle language, respect the patient's social status and roles, and accept the presence of relatives or spiritual leaders in difficult moments. Knowledge of broader cultural features - national character, worldview, time management, spatial perception, cognitive style, language, and value systems - helps clinicians communicate effectively with international patients (Spînu, 2025, p.125).

(5) *Religious beliefs*. Religion in the Republic of Moldova is a factor that

promotes gender stereotypes. It is claimed that „the man is superior to the woman, who is God's servant. Accordingly, only the man is allowed to enter the altar, while the woman is not. And during communion, the man must be the first to go. The woman, even if she is with a child, must wait her turn" (Bărbații și egalitatea de gen în Republica Moldova/ Men and gender equality in the Republic of Moldova, p. 49). Therefore, male doctors will be favored by patients. Cultural factors frequently mould religious beliefs about illness and health. In certain Christian and Asian traditions, neurological disorders are associated with fatalism, social shame, or divine punishment; sufferers may be stigmatised, isolated, or neglected. Awareness of the patient's cultural and religious status therefore enables the physician to apply communication strategies that meet existing professional and ethical standards.

In conclusion, mental-health professionals must remain aware of the socio-economic and cultural dimensions in dialog with patients. Only by understanding the essence of these factors can they achieve their goals and earn the trust of society.

2. Legal Aspects of the Doctor–Patient Relationship in Outpatient Neurology

The aim of „Law No. 114 of 16 May 2024 on Mental Health and Well-Being is to establish and organise a system of safeguards for the protection of mental health that will ensure a better quality of life". The law defines "the responsibilities of public authorities in the field of mental health and well-being, the general rules for providing medical care, and the protection of the rights of persons with mental and behavioural disorders during the provision of mental-health services."

„In the Republic of Moldova, the State guarantees the protection of mental health and well-being through: a) promoting health protection and maintaining mental well-being among the population, regardless of a person's whereabouts; b) preventing psychological harassment, bullying, discrimination, burnout, and the risk of mental and behavioural disorders, and reducing stress; c) screening, diagnosis, prescription of treatment,

referral for treatment, and clinical monitoring; d) assessing temporary incapacity for work and determining disability; e) medical and psychosocial recovery and rehabilitation, etc." (Law No. 114/2024).

The legal framework governing outpatient neurology is set out in Law No. 411 of 28 March 1995 on Health Protection (Arts. 6, 17-21), Law No. 263 of 27 October 2005 on Patients' Rights and Responsibilities, and various orders of the National Health-Insurance Company. Normally, a patient consults a neurologist on the basis of a referral from the family doctor or seeks a straightforward consultation directly. An Outpatient Medical Record is opened, and the physician is responsible for early diagnosis, proper referral, ongoing monitoring, and respect for the patient's fundamental rights. Where necessary, a medical certificate is issued and informed consent is signed for each procedure to be performed.

Informed consent is the patient's agreement to medical interventions or treatment phases, given in full awareness of potential benefits, critical situations that may arise, and alternative options that might be advantageous. The concept is relatively recent, first used in the United States „in court decisions from the first half of the 20th century (Mohr v. Williams and Pratt v. Davis, beginning in 1905), which laid the foundations of patient autonomy. Two further cases (Rolater v. Strain and Schloendorff v. Society of New York Hospital) consolidated the principle of patient autonomy and the requirement to obtain informed consent" (Bazzano).

In the Republic of Moldova, the drafting of informed-consent forms is based on Law No. 263/2005 on Patients' Rights and Responsibilities („The patient has the right freely to express consent or refusal to medical intervention and to participate in biomedical research"), the „European Convention of 4 April 1997 for the Protection of Human Rights and Dignity with Regard to the Application of Biology and Medicine" (Chapter II, Art. 5: „An intervention in the health field may only be carried out after the person concerned has given free and informed consent … The person concerned may freely withdraw consent at any time"), and the Code of Ethics for Medical Workers and Pharmacists (Chapter VI, Section 3, pt. 48: „Patient consent may be

verbal or written and is documented in the medical record, signed by the patient or legal representative and the attending physician or medical staff, explicitly indicating the name and conditions of the intended medical act and possible risks").

Outpatient neurology places special emphasis on empathetic communication, which supports patients in uncertain situations and facilitates the informed-consent process. In dialogue, the physician must be clear and logical, take account of the patient's socio-economic and cultural background, and comply with current legal regulations.

Neurological disorders that impair consciousness, memory, or decision-making capacity raise questions about protecting patients' personal and medical information. Patient confidentiality is therefore both an ethical and a legal duty of health-care professionals and forms the basis of an honest relationship between patients and medical staff. Patients share sensitive personal information and need assurance that it will not be used against them. Only when convinced of the physician's discretion will patients speak frankly and avoid omitting relevant details.

In Moldova, public policy secures the protection of personal data and the maintenance of confidentiality in health care through Law No. 411-XIII of 28 March 1995 on Health Protection (Art. 14 (1): „Physicians, other medical personnel, and pharmacists must keep secret information about a patient's illness and private life that they learn in the exercise of their profession, except in cases of danger of spreading communicable diseases, at the reasoned request of criminal-investigation bodies or the courts"), the „Criminal Code of the Republic of Moldova" (Art. 261), „Law No. 133 of 8 July 2011 on Personal-Data Protection", and „The Code of Ethics for Medical Workers and Pharmacists" (24 March 2017) (Spinu, 2024, p. 72).

In conclusion, the legal framework applied in outpatient neurology is modern and aligned with international standards, preventing existing psychosocial risks, making a significant contribution to protecting the mental health of the population of the Republic of Moldova.

Conclusions

Therefore, the relationships between doctor and neurological patient in the outpatient setting are complex, as they involve not only medical dimensions but also sociocultural and legal aspects, which can influence the perceptions and behavior of all those involved in the interaction. The views of E. Hall, relevant in the field of intercultural communication, provide valuable guidance for medical professionals in building an authentic and effective dialogue with international patients, provided that the sociocultural context is properly understood. The legal framework protects patients and helps to increase their trust in the medical system. Compliance with current legislation facilitates the development of an honest and empathetic relationship between doctor and patient, thus contributing to the conscious and voluntary obtaining of informed consent, while fully respecting patient data confidentiality.

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INDEPENDENCE OF THE MAGISTRATE – AN OBJECTIVE COMPONENT OF PROFESSIONAL STATUS

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Abstract: *The interest in the existence of an independent judicial system has made it necessary to provide guarantees that allow magistrates to fulfill the role conferred by the legal provisions. In the following, the significance of the principle of independence – a fundamental ethical value of the judiciary, the international and national legal instruments guaranteeing the independence of the judiciary, the judge and the prosecutor, as well as doctrinal and jurisprudential aspects of relevance in this area will be presented.*

Key words: *principle of independence; magistrate; judicial system; judge, prosecutor.*

The significance of the principle of independence of the judiciary

Independence is one of the fundamental ethical principles of the magistrate, together with impartiality, integrity, responsibility, competence, but there is no hierarchy between these concepts, on the contrary, they coexist from the deontological point of view.

The independence of the judiciary implies:

- the ability to decide on measures, as required by law, without any internal or external intervention;
- the ability to recognize factors likely to influence or create the appearance of influence and to reject such factors.

According to the Declaration on Judicial Ethics – London, 2010, adopted by the General Assembly of the European Network of Councils for the Judiciary, independence is not a privilege for the judge or prosecutor, it is an obligation to meet the citizen's need for independent justice.

International and national legal instruments guaranteeing the independence of the judiciary

Enshrined in the Universal Declaration of Human Rights (1948), the United Nations Convention on Civil and Political Rights (1966), the European Convention for the Protection of Human Rights and Fundamental Freedoms, independence is the subject of international normative acts, which give the idea that independence must be guaranteed by the state and enshrined in the Constitution or other national laws, and that state institutions must respect it.

The independence of the judiciary is guaranteed in various international and national normative acts, in addition to the case law of the European Court of Human Rights, the Court of Justice of the European Union, as well as the Romanian Constitutional Court and the High Court of Cassation and Justice.

At the international level, the most important guarantee of the right to an impartial and independent court is Art 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Other documents of relevance to judicial independence at international level are: the European Charter on the Statute for Judges (1998); Recommendation No (94)12 of the Committee of Ministers on the independence, efficiency and role of judges; Recommendation No (2010)12 on the independence, efficiency and responsibilities of judges; Opinion No 1 of the Consultative Council of European Judges on standards of independence of the judiciary and irremovability of judges (2001); Opinion No 12 of the Consultative Council of European Judges on the relations between judges and lawyers (2013); Opinion No 17 of

the Consultative Council of European Judges on the evaluation of the work of judges, the quality of justice and respect for the independence of the judiciary (2014); Opinion No 18 of the Consultative Council of European Judges on the position of the judiciary and its relationship with the other branches of government (2015); Opinion No 19 of the Consultative Council of European Judges on the role of the presiding judges (2016); Opinion No 4 of the Consultative Council of European Prosecutors on relations between judges and prosecutors (2009); Opinion No 13 of the Consultative Council of European Prosecutors on the independence, accountability and ethics of the prosecutorial profession (2018).

At national level, Art 124 Para 3 of the Constitution of Romania enshrines the independence of judges, and provisions of principle regarding the independence of judges are also found in Law no 303/2022 on the status of judges and prosecutors (Art 2 Para 3-4); Law no 304/2022 on judicial organization; Law no 305/2023 on the organization and functioning of the Superior Council of Magistracy; the Code of Ethics of Judges and Prosecutors; the Practical Ethical Guide for Judges and Prosecutors.

The normative acts were adopted with the aim of establishing and defending a democratic system, characterized by the rule of law and implicitly guaranteeing fundamental human rights and freedoms.

Moreover, the aim of establishing and maintaining an independent judiciary is necessary to strengthen it and to ensure that the responsibilities of magistrates are carried out in good faith.

Doctrinary and jurisprudential aspects of the independence of the judiciary

The analysis of the principle of the independence of the judiciary, as a principle governing the dispensation of justice, must be interpreted in correlation with the provisions relating to the role and competences of the other powers, with respect for the principle of the rule of law.

One of the constitutional principles of justice is the independence of the judge and his submission only to the law, because without

guaranteeing the independence of the judiciary, one cannot speak of constitutional democracy.

This principle means that, in his work, the judge is subject only to the law, without receiving any orders, suggestions or instructions as to the solution he is to pronounce.

In the aforementioned sense, the provisions of Art. 3 of the Law no 303/2022, stipulate that "judges shall resolve cases on the basis of the law, respecting the procedural rights of the parties, without coercion, influence, pressure, threats or direct or indirect intervention by any person or authority" and Para 4 of the same article provides the imperative obligation for any person, organization, authority or institution to respect the independence of judges.

In the case law of the Constitutional Court it has been held that, "the constituent legislator enshrined the independence of the judge in order to protect him from the influence of political authorities and, in particular, of the executive power; this guarantee cannot, however, be interpreted as being such as to determine the lack of responsibility of the judge. The fundamental law not only confers prerogatives – which, in the aforementioned text, are circumscribed by the concept of "independence" – but also sets limits to their exercise – which, in this case, are circumscribed by the phrase "subject only to the law". The institutionalization of some forms of accountability of judges gives expression to these limits, in line with the requirements of the principle of separation and balance of powers in the state, enshrined in Art 1 Para 4 of the Constitution. One of the forms of the judge's personal and direct legal liability is disciplinary liability, which derives from the judge's duty of fidelity to his role and office and from the exigency he must demonstrate in the fulfillment of his duties towards the subjects of the law and the State… the constitutional principle of judicial independence necessarily implies another principle, that of accountability. The independence of the judge does not constitute and cannot be interpreted as a discretionary power of the judge or a hindrance to his or her liability under the law, whether it be criminal, civil or disciplinary liability. It is the legislator's task to strike the necessary balance between the

independence and responsibility of judges, in compliance with the relevant constitutional provisions and the commitments that Romania has undertaken through the treaties to which it is a party" (Constantinescu, Muraru, Deleanu, Vasilescu, Iorgovan, & Vida, 1992, p. 278-279).

The independence of the magistrate cannot be seen in a dissociated way from the independence of the judiciary, but as a unitary whole, seen as a part-whole relationship.

The constitutional provisions regulate guarantees of the independence of judges, a particular interest being the conditions of recruitment, irremovability, promotion, delegation, secondment, transfer of magistrates.

Independence does not preclude the higher courts from reviewing the judgments handed down, but such review may be exercised only by means of appeal, under the conditions and in accordance with the procedure laid down by law.

The guarantee of the independence of judges both in relation to public authorities and in relation to other influences or pressures is strongly constitutionally grounded in the incompatibility of these functions with any other public or private function, the only exceptions being teaching in higher education[1].

In the case law of the Constitutional Court it has been ruled that "the phrase restrictions, influences, pressures, threats or interventions, referred to in the text under criticism, does not call into question the decisions handed down in the appeals or the decisions which are binding (decisions handed down by the High Court of Cassation and Justice following the resolution of an appeal in the interest of the law or a question of law) or generally binding (decisions of the Constitutional Court). The phrase "or even judicial authorities" refers to the inappropriate conduct, contrary to the legal regulations, of persons occupying various positions (management/executive) in the judicial

[1] Constitutional Court of Romania Decision no 45/30 January 2018, published in the Official Gazette of Romania, Part 1, no 199/5 March 2012

system or of institutions that are part of the judicial authority and who, by their administrative decisions, their positions or their activity, create a fear for the magistrate in the exercise of his/her functions that may influence his/her decisions. The rule expresses the principle that the independence of the judge in the resolution of the case before him cannot be limited by any person or state authority. Of course, the independence enjoyed by the judge does not mean arbitrariness, as the judge must obey the law[1].

Immovability is a strong guarantee of a judge's independence, as it is a measure of protection.

Under this principle, judges may not be transferred, promoted, delegated or seconded without their consent and may not be suspended or dismissed other than in accordance with the law.

In the case law of the Constitutional Court, it has been ruled that "the limits of irremovability must always be related to the conduct of the judge, this principle being fully applicable when he exercises his office within the limits and according to the law. The principle of irremovability is that rule of law which, in guaranteeing the independence of judges, protects them from the risk of being dismissed, removed or demoted from office without legitimate reason or transferred to other courts, by delegation, secondment or even promotion, without their consent (Decision no 375/6 July 2005). Therefore, the principle of irremovability protects the judge from being transferred, moved, replaced, demoted or dismissed from office at random/chance/at the pleasure of the representatives of the executive, legislative or judicial authorities, but it cannot be argued that this constitutional principle protects the magistrate from the standardization of disciplinary sanctions, applicable only in the event of finding disciplinary offences. The magistrate has the guarantee that these sanctions can be ordered and applied only in the framework of a disciplinary procedure, settled by the Superior Council of Magistracy,

[1] Constitutional Court of Romania Decision no 520/9 November 2022, published in the Official Gazette of Romania, Part 1, no 1100/15 November 2022

and not randomly, which is even an expression of this principle, being applied on a legitimate ground [disciplinary misconduct] – [Constitutional Court Decision No 45/30 January 2018, Para 235]. If the judge has committed an act that gives rise to disciplinary liability, the principle of irremovability cannot prevent the application of a proportionate and dissuasive sanction in relation to his act. The fact that demotion in office is not a temporary sanction is a matter of choice of the legislator, who has given the SCM, the disciplinary court, the possibility to apply such a sanction in cases of serious disciplinary offenses [Constitutional Court Decision no 45/30 January 2018, Para 236][1].

As regards the assignment of judges from one section to another, by Decision no 522/2022, the Constitutional Court established that Art 21 Para 6 of the Law on Judicial Organization, "is not such as to affect the independence and impartiality of judges, as no external pressure/influence of any kind is exerted on them, which would prejudice these constitutional values. The transfer from one chamber to another is justified by the need to ensure that cases are dealt with expeditiously, notwithstanding the existence of a high volume of work in one of the chambers, the duration for which it is made is strictly determined, for a maximum of one year, and is also made only with the consent of the judge"[2].

Another guarantee of the independence of magistrates is established by Art 40 Para 3 of the Constitution but also by Art 232 of the Law no 303/2022, which prohibits magistrates from being part of political parties.

These rules as a matter of principle are detailed in the Code of Ethics (Art 4 Para 2-3).

Regarding the independence of prosecutors, Art 1 of Law no 303/2022, provides that: "Prosecutors appointed by the President of

[1] Constitutional Court of Romania Decision no 520/9 November 2022, published in the Official Gazette of Romania, Part 1, no 1100/15 November 2022

[2] Constitutional Court of Romania Decision no 522/9 November 2022, published in the Official Gazette of Romania, Part 1, no 1101/15 November 2022

Romania shall enjoy stability and shall be independent, under the conditions of the law". They carry out their work according to the principles of legality, impartiality and superior hierarchical control, under the authority of the Minister of Justice.

Public prosecutors are not part of the judiciary, they do not carry out and do not execute justice, as they have other tasks in the judicial activity they undertake, namely the defense of the rule of law and of the rights and freedoms of citizens and represent the general interests of society.

This difference in constitutional status is also due to the different nature of the independence of justice, which is exercised by judges and realized by courts.

Art 1 Para (2) of the Law no 303/2022, it can be concluded that the careers of judges and prosecutors are separated, the management of the career of magistrates being carried out within each section of the Superior Council of Magistracy, as follows: the career of judges is managed by the Section for Judges of the Superior Council of Magistracy, and the career of prosecutors by the Section for Prosecutors of the Superior Council of Magistracy.

Another element differentiating the legal status of prosecutors from that of judges is hierarchical control. In this regard, according to Art 68 Para 3 of Law no. 304/2022, the measures and solutions adopted by the prosecutor may be overturned, under the conditions of the law, both by the hierarchically superior prosecutor and by the General Prosecutor of the Prosecutor's Office of the High Court of Cassation and Justice. In the case of solutions adopted by the prosecutors of the National Anticorruption Directorate and the Directorate for the Investigation of Organized Crime and Terrorism, they may be overturned, according to Art 68 Para 4 of the Law no 304/2022, under the conditions of the law, by the hierarchically superior prosecutor or by the chief prosecutor of the directorate.

The provisions of Art 68 of the Law no 304/2022 on judicial organization regulate the concrete content of the prosecutor's independence which, on the one hand, give effect to the principle of

hierarchical control when they provide that "the provisions of the hierarchically superior prosecutor given in writing and in accordance with the law are binding for the prosecutors subordinate to him", and, on the other hand, enshrine the principle of prosecutor's independence in the decisions taken.

Also, another dimension of the independence of the prosecutor is given by the provision enshrined in Art 71 Para 2 of the Law no 304/2022 on Judicial Organization, which provides that "the prosecutor is free to present to the court the conclusions that he/she considers to be well-founded, according to the law, taking into account the evidence in the case".

Thus, the guarantees provided by the legislator in order to respect the independence of the prosecutor consist in the regulation of some limitative situations (Art 68 Para 5 of the Law no. 304/2022), in which the works assigned to a prosecutor may be passed to another prosecutor, as well as the possibility to refer to the Prosecutors' Section of the Superior Council of Magistracy for the intervention of the hierarchically superior prosecutor in any form in the conduct of criminal proceedings, the adoption of the solution and the presentation of the conclusions in court or the verification of the measures ordered in relation to the assignment of works, within the procedure of defense of the independence and impartiality of prosecutors.

The issue of the prosecutor's status has been analyzed in the case law of the Constitutional Court.

Thus, the Court found that the prosecutor's status is determined by the provisions of Art 132 of the Constitution, which establish that prosecutors carry out their work according to the principle of legality, impartiality and hierarchical control, under the authority of the Minister of Justice. It is clear from this constitutional text that the Public Prosecutor's Office is linked to the executive. The Court noted that the Public Prosecutor's Office is, according to the Constitution, part of the

judicial authority". It is, however, a special magistracy, which does not carry out jurisdictional functions[1].

The European Court of Human Rights also emphasized that, in Romania, prosecutors, acting as representatives of the Public Prosecutor's Office, subordinated first to the Prosecutor General, then to the Minister of Justice, do not meet the condition of independence from the executive power; or, independence from the executive is included among the guarantees that the notion of "magistrate" implies, within the meaning of Art 5, Para 3 of the Convention. Accordingly, the Court found that prosecutors cannot invoke a position of independence, like judges, since their work is carried out under the hierarchical control and authority of the Minister of Justice[2].

Conclusions

The independence of the judiciary, as part of the independence of the judiciary, is related to the separation or balance of powers in the state, which means that courts and judges cannot be influenced by the executive or legislative power.

Moreover, the independence of the judiciary contributes to strengthening citizens' trust in justice and in the values that characterize the rule of law.

[1] Decision no 73/4 June 1996, published in the Official Gazette of Romania, Part 1, no 255/22 October 1996 or Decision no 259/24 September 2002, published in the Official Gazette of Romania, Part 1, no 770/23 October 2002.

[2] Constitutional Court of Romania Decision no 522/9 November 2022, published in the Official Gazette of Romania, Part 1, no 1101/15 November 2022

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THE RIGHT TO FREE EDUCATION BETWEEN ARTIFICIAL INTELLIGENCE AND LIBRARY

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Abstract: *A topic that has been widely discussed over the past two centuries is education, because ordinary people have insisted on it, contrary to the ideas of politicians, who were not always pleased by a rise in the population's level of instruction. The establishment of compulsory education was – without doubt – the greatest progress humanity has ever made in its entire history, and the positive effects of this measure will be felt as long as we exist on Earth. But education has never been valued at its true worth because of the costs it entails, both in terms of the time dedicated to it and especially from the financial aspect of acquiring valuable study materials. However, the Internet and Artificial Intelligence have brought some changes in this perspective, and traditional bookstores are starting to see their role sharply decrease – or is it actually the opposite?*

This text will attempt to provide some answers to an acute issue: what is the cost of education today, relative to its ultimate goal, namely preparing children and young people for a life that brings many challenges.

Keywords: *Free education; Artificial Intelligence; library; costs; legislation.*

Introduction

From the moment of birth, every living being learns things based on the circumstances of its species, its own genetics, and the living environment. This process can only be stopped when something appears

that can block our entire way of living, but from that moment, biological regression sets in and eventually, death. It is not only the situation of a murder (for example, the axe that cuts down a tree causes its death), but especially the case of people who, upon reaching a certain age or being affected by certain illnesses, stop learning or understanding things, and in the most severe form, will completely regress.

The fact that every being learns from the events of its life is logical, but it has a problem: the amount of information that the human/animal/plant mind or brain absorbs (Cowan, 2010). It is not easy to accept that sometimes days of work or social tension can produce just a few lessons, which can sometimes be used only many years after the moment those lessons are realized. So, quantity is what separates living beings, and those that are strong in themselves do not necessarily possess extraordinary physical capacity (either their own or of certain tools used), but rather an intellectual one, which is able to ensure them a longer life with substantial physical and mental benefits.

The very problem of the amount of data that a life has to absorb is the essence of the idea of education, and not so much how this data will be used later. To illustrate, I would mention the situation of a pet that lives for several years on the street, and is then adopted by a person who provides it with almost "royal" comfort, at least by the standards of that species. In the first months, a good part of the lessons from the old life will persist, but as the years pass and neither threats nor other intrinsically difficult situations arise, the habits from the street fade away until they disappear. So, the real discussion in this text is about education, but always keeping in mind the idea of an amount of data suitable for the realities of the 21st century (Bartley, 2025).

The right to free education between Artificial Intelligence and library

Living beings continuously learn from their own experiences, but not all in the same way, as we know from the Latins, who said "non idem est si duo dicum idem" (it is not the same thing, even when two people say the same words). One's own experiences, however, are a matter that

we cannot quantify in a unified way, except in the case of very important aspects – for example, we all learn that fire is dangerous – otherwise, general psychological conditions and objective characteristics make learning different and sometimes even opposite. Thus, for a professional in a field, what is new must truly be something that happens rarely, while for a novice or someone outside the specific context of the event, almost everything is new.

However, continuing education solely through life lessons might have been a solution thousands of years ago, and at those times memorization was more important than effective education because there were no clear means to record various data, but rather methods to note precise, objective data on very important matters (different forms of agreements/contracts, the phases of the sun and moon within different calendars, etc.). For these reasons, most information was presented verbally, remembered verbally, and anything longer (poems, songs, magical incantations, etc.) tended to be part of a certain specialization, either priestly (let's remember the Celtic druids) or administrative, as the forms of organizing human communities were constituted back then) (Schmandt-Besserat, 2014).

The need for tools to record data has been evident since the dawn of humanity, and just as important was the ability to preserve them in a world where weather conditions and various insects in ancient dwellings were much harder to control. However, until these recording tools appeared, memorization was the key to knowledge, and this was not for everyone, with errors in understanding what was memorized or forgetting, as well as the idea of learning as an initiation into a world of data and even power, making everything highly personalized. Combining these facts with a low life expectancy, it follows that learning was something that depended more on luck and less on "knowledge" per se.

The appearance of data recording media changed the world; one could say this was the first global technological revolution. From that moment, two courses of action began to emerge: on one hand, recording information of any kind, and on the other, the ability to understand what was written there. Obviously, the second matter required education, in its

early form, and the intellectual development process of young people took a different path.

Clearly, it was not useful to teach adults what it meant to record and use data, but young people had to be directed toward this knowledge from the start, as this was how they could carve out a better path in life. However, this knowledge – being limited to the small quantity of data recording media – could only be accessible to those capable of having such documents/tools. Implicitly, the limited amount of paper (the fundamental medium for written recording) made access to education merely a reflection of social pyramids within a country (Pierrepont Graves, 1923), with an important clarification: for a long time – indeed, until the late Middle Ages – paper production was far from widespread, and most countries in the world could not produce it (Roughen, 2023).

In fact, as certain studies reveal, three elements underpinned major accumulations of power in history: the ability to produce paper (first), the ability to reduce the costs of writing and printing (second, in logical order of importance), and the establishment of a body of teachers and professors, for they would be the ones educating the youth of their countries in quantities demanded by the labor market and governmental and public services.

Practically, from this perspective, we will see education as a matter of an individual's own resources, and less of the state's.

Basically, if parents were not able to send their children to school – and let's not forget that until the 20th century, the number of children per family was large – they would more likely remain illiterate. Hence, the two problems that humanity has not been able to fully solve even now: first and foremost, the financial considerations that did not allow all children in a family to reach a level of education adequate for their intelligence and will; and the second depended on living and housing conditions, which did not always allow for the development of intellectual capacities already proven in primary schooling, because the best books were too expensive, so families had only a few at home, from which you could learn to read, but from a certain point, you could no longer progress. Millions of children could not go to school because only one of the siblings could be supported by the family; also, for many, the

Bible was the only book in the house – the costs still being high for the financially unharmonized societies that were the rule of history.

In fact, the costs of setting up a library in an ordinary person's home were not small, at least until the 20th century, when massive print runs finally managed to bring culture and education to a truly acceptable level. It was not enough just to love reading and have the desire to learn; more important was the aspect of recovering the investment in education, because this form of human life's manifestation has this particularity: the true effects of learning are manifested throughout life, but not the same for everyone, and especially with superior effects that can appear not just once, but decades after the first book was read.

The need to educate young people was never misunderstood or rejected, as various naïve people believe. However, the technological realities of the times initially meant that certain countries had a better capacity for innovation in paper production (the cases of Egypt and China are the most well-known), and the printing press was invented only in the 15th century. Until then, all books were written exclusively by hand, which slowed both the speed of knowledge dissemination and the number of people who could actually read a book, the purchase costs being high. Thus, we note that only from the second half of the 18th century, after the invention of the steam engine, did printing speed increase and book costs decrease, which raised both the number of printed books and newspapers, which in the 19th century reached circulations of hundreds of thousands of copies per day, and in some cases over a million (Slauter, 2015).

By lowering the costs of access to reading, it became easier for ordinary people to understand the whole world, but from that moment on, public pressure grew for the establishment of compulsory education systems and, as far as possible, free for everyone. There is also a particularity here, which depended on two inescapable elements: demographic density and the cost of teachers and books themselves. Where demographic density was lower, the cost of setting up schools was higher, and it was therefore more difficult for governments to provide free education beyond the elementary level; for anything else, it was

necessary to go to larger cities where residents, housing, and educational buildings, including libraries, could be concentrated. However, this move to the city was not cheap for residents of small towns or villages, which made their access to universities much lower than that of young people born in larger cities. Practically, the financial barrier remained very strong throughout the 19th century worldwide, and only the technological developments at the end of the century would bring education to a new perspective and, above all, to a different legal framework.

The 19th century is known for two fundamental issues regarding education – in fact, this century create the framework of our contemporary society, changing in a fundamental manner the medieval approach main parts.

First, we note the development of a system of public libraries, opened to the general public for the first time. They existed before, either as private homes or in universities, but access was limited to those who had the right to live or study there. However, the increase in book print runs made them cheaper, thus easier to buy, and Western European and North American governments (predominantly) understood that the emergence of public library systems reduced their own costs of educating the population, also contributing to the long-term education of adults – not coincidentally, this concept appeared in the same 19th century (Jakeman and Brake, 2024) and allowing many poor children to have some access to education, where the costs of good books were still prohibitive. The example of Andrew Carnegie stands out, who from his own money built and equipped over 3000 public libraries in the USA (Carnegie Corporation, 2025), thus raising the education level of the population and implicitly helping people increase their incomes based on the information acquired – which they later used in family businesses.

The second fundamental aspect of education will be its incorporation into legislative and especially constitutional forms in most independent countries (in that century). While the legislative process was simpler, since normative acts are not necessarily difficult to adopt, integration into the norms of fundamental laws was more challenging (Richter, 2012). We will mention that the first reference to compulsory education appears in the Constitution of Belgium from 1831 (which

would serve as a model for the Romanian Constitution of 1866), as well as in the constitutions of France around 1848 (the impact of this year on the idea of compulsory education was immense) and Prussia – which provided in article 21 that it was free and compulsory. Finally, we will mention that in 1881 France adopted the law that established free, compulsory, and secular state education.

However, this aspect was not identical in the United States of America, because in the 19th century states were still being added to the union, and distances plus a specific societal typology – ranging from religion to racial issues – meant that education was not free. Still, it should be noted that the Northwest Ordinance of 1787 did emphasize education as important for statehood, in the process of admitting new states to the United States, which practically mandated compulsory education, but not its costs.

Free education is not an easy matter to implement at all levels, because there is a difficult issue to address throughout the 16 or 18 years of schooling, namely the standardization of subjects. While in the primary and middle school cycles things can be more easily set through budget planning, difficulties arise once young people's specialization begins in high school and especially at the university level. High school and university study profiles can be influenced by governments and the economic environment – for example, laboratories can be equipped and scholarships offered in certain fields of science at a level above average – but the competition among candidates fluctuates due to economic interests or demographic capacities of a country, and the number of those who drop out of these studies is much higher than that recorded in the lower cycles.

What does free education mean? First of all, it covers the actual schooling costs – that is, paying teachers and study materials in a school or university – but also other related costs, such as transportation to the educational institution, accommodation costs (very important and expensive in the case of universities), and food expenses. Without full coverage of these from the public budget, education is not completely free.

However, there is another dimension of education that we want to briefly discuss, namely the "at home" study materials, which are the property of the student. The education dimension implies a certain standardization, as we mentioned above, and this is expressed by the appearance of school textbooks approved by various public institutions in this field (ministries, most concretely). They are supplemented by the resources of school libraries, which must be adapted to the requirements specified in the study programs. Nevertheless, libraries do not always have enough copies of the books required in the mandatory bibliographies, and this is seen in smaller localities, farther from large urban centers, but especially in poorer countries. Thus, the cost of education begins to rise, because top education implies not only study in the classroom/course and library but also at home, reducing free time. Now, this individual study at home depends first and foremost on the availability of teaching materials, which is not identical for all students, and even less so in the university cycle, where quantitative differences (to learn) and financial differences (the cost of valuable books) suddenly separate young people, changing their chances of success in life.

At this moment, we need to introduce the Internet and Artificial Intelligence (AI). Both technologies – without going into their detailed differences – have the capacity to provide every computer owner with access to an enormous amount of information, something not even imagined at the beginning of the communication revolution (the invention of the telegraph in the first half of the 19th century played this role).

Education no longer necessarily becomes free simply through access to important data, but primarily shifts towards a biological, quantitative dimension, so that good students will not only be able to pass various exams with high grades but, more importantly, will be capable of reading as much of the available information as possible. Although it may seem – and to a large extent is – a threat to human cognitive abilities (Kosmyna et al., 2025), no one will be able to oppose recognizing the value of intellect and the quantitative dimension of the information read by the human mind, especially since there are times when access to information technologies is difficult or impossible. In any case, it is

necessary that, in searching for data from the Internet or AI, the most concrete requests for solving tasks be formulated correctly and precisely, and this will be difficult to achieve for those who have not read.

We are now facing a new dimension of free education. Today, the Internet is a huge library – for better or worse, with good content protected or not by copyright, etc. – and for not very large sums, there is access to an immense amount of data that can enable a diligent child/young person to become very well prepared in almost any profession. Obviously, professionals – adult education, more concretely – are able to use the library called the Internet even better, being able to progress spectacularly, working even from home. And now Artificial Intelligence can teach, can be a very good teacher (Cardona, Rodríguez and Ishmael, 2023) – although in some respects it does too much, affecting the learning processes of children and adults. Still, if we analyze, scanning many old books and access to new ones – at least those published in the last two decades – offers anyone the chance to know both great literature and quality scientific and practical information, which could be a huge opportunity and could constitute a big step forward.

From this perspective, the question arises: what else can free education cover? The issue arises especially in the university environment, where the maturity of students can allow even distance courses with teachers who are not necessarily human.

What remains of university education if Artificial Intelligence can today be both teacher and data provider, almost equivalent to an entire educational cycle? It is assumed that an adult is capable of learning more and more independently, and since many university studies are a continuation of high school ones, it shouldn't be a big problem when AI can be so advanced in pedagogical techniques. Obviously, this would imply reducing the number of university faculty positions, especially those who lack charisma and the ability to be more adaptable in delivering messages (more versatile, almost like actors playing a role in front of an audience that can intervene up to a certain point in the script).

Would there thus be a shift in funding solely towards the purchase of books and new scientific journals, as well as the acquisition of databases? What do we do in terms of funding students' accommodation if we can educate them at any point on the planet, with the help of AI and the Internet?

Then, there is a clear distinction between the humanities and the technical fields, where experiments and exercises play an important and significant role in the academic year. Within the humanities, internal study in the library takes up more time, and practical applications have a smaller share, which would allow for greater flexibility regarding having human or non-human professors.

All these issues should lead to a broad and deep discussion about what learning and the education system will be in the future, but this seems impossible to achieve by a large part of today's society.

The quality of such a debate will be evaluated fundamentally on two terms: how much education should still be paid for by students, and especially, what do we do with graduates of many types of studies, who in the new type of economy that is emerging will no longer be truly necessary for the labor market?

We should keep in mind that in some countries the costs of education are too high compared to what is actually offered didactically, with ideology and conformity to certain wills – political or religious – being considered supreme values, rather than learning and pushing knowledge beyond all previously reached limits. Also, the costs of higher education can require political interventions, which can be sensible but can also be politicized. It is worth noting that in the USA the Supreme Court canceled former President Biden's plan to cancel significant portions of university fees (Supreme Court of the United States, 2023), but the reasoning still does not answer the question: why should studies be paid for, especially in the richest country in the world, when poorer ones subsidize most of theirs?

I believe that free education should be the rule, but at the same time, we must consider first and foremost a support issue: yes, the easiest thing is to store information in computers and tablets, but the intellectual development of children and young people is affected if they use them

too often (Liu, 2022). And then, the correct proportion must be found between education carried out with printed books and electronic books, keeping in mind that there are not enough trees for how many possible printings and reprintings would be needed.

Conclusions

Education is not always a pleasure, because the volume of knowledge that must be absorbed is large, and this learning has to be done in childhood and youth, when the desire to play is greatest, and the sense of responsibility is at lower levels. However, it is necessary, and the schooling cycles must be completed with determination and precision, because decades depend on it – ours, but also those of the society we live in.

We cannot fail to notice, though, that recent years have allowed the creation of quality support devices and technologies, making the work much easier for those who study conscientiously. At the same time, the logic of the times says that institutions (including educational ones) never reduce their fees (in our case, tuition fees).

However, the Internet and Artificial Intelligence today offer real competition to the traditional style of education, at modest costs, which breaks the same logic of increasing tuition fees, and this must be understood by lawmakers, in order to adapt the legal framework of education to reality, even leading to an increase in free access for students.

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EUROPEAN UNION ARTIFICIAL INTELLIGENC LAW – A LEGAL FRAMEWORK FOR THE FUTURE

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Abstract: *In the context of the accelerated development of artificial intelligence (AI) technologies, the European Union has recognised the need for a clear legal framework that guarantees safety, transparency and respect for citizens' fundamental rights. This is how the Artificial Intelligence Act (AI Act) was born, the world's first comprehensive set of regulations in this area. Adopted in 2024, the law aims to position the EU as a global leader in the responsible governance of AI.*

The Artificial Intelligence Act (AI Act) is the world's first comprehensive legal framework for regulating artificial intelligence. Adopted by the European Union in 2024, the law aims to ensure that AI systems used in the EU are safe, respect citizens' fundamental rights and stimulate innovation.

Keywords: *technology; artificial intelligence; regulation; law.*

Introduction

Artificial Intelligence (AI) is one of the most disruptive technologies of the 21st century, with a transformative potential for all sectors of society – from health, justice and education, to defence, industry and governance. Against the backdrop of this accelerated expansion, the European Union has recognised the need to establish a

unified, predictable and focused regulatory framework that ensures both the stimulation of innovation and the protection of citizens' fundamental rights. Thus, in 2024, the Regulation on Artificial Intelligence (informally called the "AI Law") was adopted, the first legal instrument of a general and binding nature at international level that transversally regulates the use of AI.

The legal basis of this regulation is Article 114 of the Treaty on the Functioning of the European Union (TFEU), which allows the adoption of measures for the harmonisation of the internal market. This choice reflects both economic reasons (avoiding fragmentation of the European digital market) and legal considerations – creating a common standard of compliance for all actors developing, providing or using artificial intelligence systems in the Union. At the same time, the regulation invokes the Charter of Fundamental Rights of the European Union, in specific Articles 1 (human dignity), 7 (privacy), 8 (protection of personal data) and 21 (non-discrimination), as ethical and legal foundations for limiting dangerous uses of AI.

A defining feature of the regulation is its risk-based approach, inspired by regulatory legislative models (such as medical devices or toys). Thus, AI systems are classified according to the risk they pose to the rights and safety of individuals: from unacceptable risk (prohibited) to high risk (strictly regulated), limited risk (transparency obligations) and minimal risk (not affected). This legal structure is coherent with the principle of proportionality in EU law and provides a flexible but firm framework for legislative intervention.

The EU AI Law is therefore not limited to a simple technological regulation, but a category of political and legal declaration of principle: artificial intelligence must be safe, transparent, controllable and compatible with the rule of law. In a world where AI regulation is either lax (the American model) or authoritarian (the Chinese model), the European Union proposes a balanced normative vision, becoming a legal laboratory for the global future of technological governance.

1. Legal basis and guiding principles of the European Union Law on Artificial Intelligence

The adoption of the Artificial Intelligence Regulation (AI Act) by the European Union in 2024 marks a defining moment for the law of emerging technologies. This regulatory framework is based not only on economic and technological reasons, but also on fundamental legal principles of the European order: the protection of fundamental rights, proportionality, transparency, accountability and legal certainty. At the heart of this regulation are two major components: the primary legal basis, represented by the Treaty on the Functioning of the European Union (TFEU), and a series of guiding principles drawn from both positive law and the ethics of technology regulation.

1.1. Legal basis: Article 114 TFEU

The AI Regulation is adopted on the basis of Article 114 TFEU, which empowers the European Parliament and the Council to adopt "measures for the approximation of the laws, regulations and administrative provisions of the Member States which have as their object the establishment and functioning of the internal market" (Treaty on the Functioning of the European Union). The choice of this basis is significant, as it positions the law as an instrument of legislative harmonisation, intended to prevent regulatory fragmentation and to create a uniform framework for all economic actors providing AI systems on the EU market.

This legal option has been criticised by some authors for ignoring the deeply constitutional and fundamental dimension of AI, in particular in relation to human rights (Veale & Borgesius, 2021). However, the case law of the Court of Justice of the European Union (CJEU) has confirmed that Art. 114 can also be used for regulations that have non-commercial objectives, as long as they indirectly contribute to the proper functioning of the internal market (CJEU, Case C-376/98 - German Tobacco Advertising, para. 84-86). Thus, although the law explicitly aims to protect fundamental values, it is nevertheless formally coherent with the architecture of the Treaties.

1.2. Guiding principles of regulation

a) Risk-based approach

The central principle of the regulation is to assess and classify AI systems according to the risk they pose to the health, safety and fundamental rights of individuals. This regulatory model is inspired by other areas of EU law, such as product safety (Compare with Regulation (EU) 2017/745 on medical devices), but also includes an ethical and social dimension. The law distinguishes four levels of risk:

- Unacceptable risk – systems completely prohibited;
- High risk – systems strictly regulated, such as those used in education, employment, law enforcement;
- Limited risk – transparency obligations for users (e.g. chatbots);
- Minimal risk – systems excluded from regulation.

This approach reflects the principle of proportionality, enshrined in Art. 5(4) TEU, according to which Union action must not go beyond what is necessary to achieve the objectives of the Treaties.

b) Respect for fundamental rights

Another cardinal principle is the protection of fundamental rights, in particular against the automation of decisions that may affect the life, liberty or dignity of individuals. The Regulation makes explicit reference to the Charter of Fundamental Rights of the European Union - 2000/C 364/01, underlining the respect for Art. 1 (human dignity), Art. 7 (privacy), Art. 8 (data protection) and Art. 21 (non-discrimination).

Thus, AI systems that may lead to algorithmic discrimination, abusive surveillance or cognitive manipulation are either prohibited or subject to very strict control measures. These provisions are in line with the case law of the ECHR and the CJEU on limiting interference with private life and the need to guarantee transparency in decision-making (ECtHR, Case Big Brother Watch v. UK, 2021, and CJEU, Case Digital Rights Ireland, C-293/12).

c) Transparency and human oversight

The Regulation introduces obligations regarding the explainability, auditability and human oversight of decisions taken by AI systems. According to Art. 14 of the regulation, high-risk systems must be designed in such a way that decisions can be understood and challenged by users or affected persons. This contributes to legal certainty, but also to strengthening public trust in the use of automated technologies (Goodman & Flaxman, 2017).

d) Liability and compliance

The regulation requires a clear distribution of responsibilities between developers, suppliers, importers and users of AI systems. It also establishes obligations regarding technical documentation, testing, auditing and incident reporting, similar to regulations in the field of product conformity.

These requirements ensure the traceability of automated decisions and allow for the intervention of supervisory authorities. In addition, the sandbox mechanisms provided for by the law allow the testing of innovative technologies in a controlled framework, which reflects a flexible and innovation-friendly approach, without compromising legal standards.

2. Sanctioning regime and compliance mechanisms in the EU Artificial Intelligence Law

The adoption of a robust sanctioning and compliance regim

is an essential component of any regulatory instrument with a horizontal vocation and broad applicability, such as the Artificial Intelligence Regulation (AI Act). Inspired in part by the model of the General Data Protection Regulation (GDPR), the AI Act enshrines a complex institutional and sanctioning architecture, designed to ensure compliance with legal requirements, prevent abuses and guarantee the effective protection of fundamental rights.

2.1. Sanctioning regime: severity and proportionality

Articles 71–74 of the AI Regulation regulate a tiered sanctioning regime, which reflects both the seriousness of the infringement and the systemic nature of the irregularities. Three major categories of infringements are established, each with different levels of penalty:
Infringements of the most serious provisions, such as the use of prohibited systems of unacceptable risk (e.g. social scoring or cognitive manipulation), are sanctioned by administrative fines of up to EUR 35 million or 7% of global annual turnover (Art. 71(3) of Regulation (EU) 2024 on Artificial Intelligence).

Infringements of obligations concerning high-risk systems (technical compliance, transparency, documentation, human oversight, etc.) can attract fines of up to EUR 20 million or 4% of global turnover (Art. 71(2) AI Act).

Incorrect or incomplete declarations in compliance procedures attract penalties of up to EUR 10 million or 2% of turnover (Art. 71(1) AI Act).

This scaling of penalties reflects the principle of proportionality of penalties, enshrined in European criminal and administrative law. Penalties are not exclusively pecuniary: national authorities may order a ban on the marketing of the system, its withdrawal from the market or the suspension of its use.

It is important to note that, as with the GDPR, fines are not automatic, but must be justified by a contextual assessment, which takes into account the severity, duration of the breach, intent or negligence, corrective measures taken, as well as cooperation with competent authorities (See also Art. 83 GDPR, which requires the assessment of the seriousness of the infringement in the light of a number of contextual factors – a principle implicitly taken up in the AI Act).

2.2. Compliance mechanisms: prevention, audit and control

To prevent infringements, the AI Regulation establishes a series of legal, technical and procedural mechanisms that aim to ensure the

compliance of AI systems from design to implementation. Among the most important are:

a) Conformity assessment (ex ante)

AI systems classified as high-risk must undergo a conformity assessment procedure, similar to the existing CE marking mechanism for regulated products. This involves:

- functional testing of the system (accuracy, robustness, security);
- detailed technical documentation;
- risk governance plans;
- human oversight procedures and algorithmic transparency (Art. 19–23 AI Act; Annex IV details the technical requirements and documentation).

The rigor of respecting fundamental rights and freedoms goes beyond the framework of the Communities, becoming a strong point in the external relations existing at the Union level. The existence of the multitude of agreements concluded with numerous countries includes provisions that can go as far as providing for the suspension of relations or the denunciation of agreements in the event of a serious violation of human rights and fundamental freedoms by one of the parties (Corsei, Zisu & Țoncu, 2023, p. 55).

The assessment can be carried out either internally, by the developer, or by external assessment bodies (third-party notified bodies), depending on the complexity and sensitivity of the application. Each approved system must also be registered in a publicly accessible European database (Art. 60 AI Act).

b) Control mechanisms and competent national authorities

Each Member State must designate one or more national supervisory authorities, responsible for monitoring the application of the regulation, receiving notifications, carrying out inspections and imposing sanctions. These authorities cooperate through the European AI Board, a newly created body that plays a similar role to the European Data Protection Board (EDPB) in the case of the GDPR (Art. 64–66 AI Act. Compare with the role of the EDPB in the enforcement of the GDPR).

The Board has the following tasks:

- issuing interpretative guides and best practices;
- coordinating decisions in cross-border cases;
- promoting convergence between Member States;
- advising the European Commission on updating the list of high-risk systems.

c) The “sandbox” mechanism and legislative flexibility

To stimulate innovation, the AI Act introduces the possibility of establishing experimental legal regimes (“regulatory sandboxes”). They allow for the testing of innovative AI systems in a controlled environment, under the supervision of the authorities, without temporarily applying all the standard requirements. The aim is to strike a balance between technological development and ex ante protection of rights.

This mechanism joins other instruments of regulatory flexibility, such as the possibility of periodic review of the Regulation (Art. 85) or updating of the annexes by delegated acts (e.g. extension of the lists of prohibited or high-risk systems).

3. Impact on economic operators and public administrations

The entry into force of the Artificial Intelligence Regulation (AI Act) implies a profound transformation of the way in which economic actors and public institutions develop, implement and supervise systems based on artificial intelligence. The legal regime established by the law generates a multiple impact on responsibilities, compliance costs, decision-making processes and organizational culture, with direct implications for their competitiveness, legitimacy and efficiency.

3.1. Impact on economic operators

a) Compliance burden and regulatory costs

For companies that develop or market AI systems classified as high-risk, the law imposes a complex set of technical, legal and organizational obligations. These include:

- developing and maintaining complete technical documentation (art. 11–13);
- conducting an assessment of risks and the impact on fundamental rights;
- guaranteeing human supervision and auditability of automated decisions;
- establishing internal procedures for post-sale monitoring and incident notification (Art. 9–13 AI Act).

For small and medium-sized enterprises (SMEs), these requirements can constitute significant barriers to market entry. Impact studies carried out by the European Commission estimate that full implementation of the requirements could generate upfront costs of between €85,000 and €400,000 per high-risk AI system, depending on its complexity (European Commission, 2021, pp. 88–90).

However, the law also introduces support measures for SMEs, including the possibility of participating in sandbox regimes, temporary exemptions or tailored guidance for compliance. These provisions aim to maintain a balance between regulation and innovation, without disproportionately favouring large technology platforms.

b) Legal certainty and competitive advantage

In the medium and long term, some economic operators may benefit from the clarification of the regulatory framework. According to the principle of "compliance as a competitive advantage", companies that invest in ethical, secure and compliant systems could gain reputational and commercial advantages, especially in relation to the increasingly stringent requirements of consumers and business partners (Hildebrandt, 2019).

Furthermore, by establishing a common legal standard, the AI Act reduces the risk of legislative fragmentation between Member States and fosters cross-border interoperability. This harmonisation is essential for integrated digital markets and for the export of European technologies to other jurisdictions that will eventually adopt models inspired by EU law.

c) Legal liability and risk management

The Regulation does not directly regulate civil liability for damage caused by AI, but it has important implications for the existing liability regime. Obligations of technical compliance, transparency and control become standards of professional diligence, the non-compliance of which may entail contractual, tortious or criminal liability, depending on the case (European Commission, 2022).

In parallel, the European Commission has proposed a Directive on civil liability for AI systems, which is to complement the AI Act, facilitating compensation for victims in cases of damage caused by automated systems. Thus, economic operators are required to invest not only in technical compliance, but also in legal mechanisms for assurance and ethical governance.

3.2. Impact on public administrations

a) Extended responsibilities in the use of AI

Public administrations become, through the AI Act, active regulated subjects, in particular when using AI systems in sensitive areas such as:

- education (e.g. automated student assessment),
- employment (e.g. candidate selection),
- public order and criminal justice (e.g. facial recognition, predictive analytics) (Art. 6–7 AI Act and Annex III – List of high risk systems).

In these cases, authorities must ensure that the systems used comply with all applicable requirements, including registration in the European database, human supervision, auditability of decisions and the impact on fundamental rights.

Failure to comply with these obligations can lead to sanctions, litigation and loss of public trust, especially in the context in which authorities are perceived as having an increased duty of care in protecting citizens.

b) Paradigm shift in digital governance

The implementation of the AI Act obliges administrations to adopt coherent institutional strategies for AI governance, which include:

- designating compliance officers;
- developing sustainable public procurement policies (only compliant technologies);
- training public personnel on the responsible use of AI.

In the long term, this regulation can become a catalyst for the modernization of public administration, promoting an institutional culture centered on algorithmic accountability, decision-making transparency and ethical public services.

Conclusions

The European Union Regulation on Artificial Intelligence (AI Act) marks a turning point in the development of technology law at European and international level. For the first time, a general, coherent and binding regulatory framework regulates the use and development of artificial intelligence systems, in a manner that combines technological innovation with the legal imperatives of the protection of fundamental rights, security and transparency.

The analysis carried out reveals that the AI Act is built on solid legal foundations, respecting the principles of subsidiarity, proportionality and legality, and offering an adaptable regulatory architecture, through mechanisms such as risk classification, differentiated compliance obligations and sandbox regimes for controlled innovation. Thus, the regulation reflects a balanced approach, in which excessive regulation is avoided, without compromising the protection of citizens or public safety.

From the perspective of regulatory impact, the law generates a reconfiguration of legal responsibilities for developers and users of AI systems, in particular for economic actors operating in sensitive areas. In parallel, public administrations are called upon to assume an exemplary role in the ethical and transparent use of new technologies. Compliance becomes not only a legal obligation, but also a condition of institutional legitimacy and democratic trust.

This is why it is rightly stated that human rights issues are of international concern and do not fall under the domestic jurisdiction of states, which legitimizes not only the right of intervention of international bodies, but also their obligation to intervene whenever violations of human rights, which characterize any human community, are at issue (Corsei & Ștefănoaia, 2022, p. 73).

The AI Act is, in conclusion, asserting itself as a transformative instrument, not only for the EU internal market, but also as a global reference model. By promoting a regulatory framework focused on rights and responsibility, the European Union asserts its vocation as a regulatory leader in the governance of technology, in line with its legal tradition of protecting human dignity and the rule of law. It remains to be seen to what extent the effective transposition of the rules, harmonisation between Member States and continuous adaptation to technological dynamics will consolidate this framework into a living law of artificial intelligence, capable of responding to the challenges of the digital future.

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ARTIFICIAL INTELLIGENCE AND CRIMINAL LAW: CHALLENGES, OPPORTUNITIES AND PERSPECTIVES

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Abstract: *Artificial intelligence (AI) is increasingly penetrating the field of criminal law, offering solutions for streamlining investigations, judicial decision-making and crime prevention. However, the use of AI raises complex issues regarding criminal liability, respect for fundamental rights and transparency of automated decisions.*

The main risks include algorithmic discrimination, lack of human control and the legislative vacuum regarding the regulation of AI in justice. In order to avoid abuses and protect the rights of persons involved in criminal proceedings, clear regulation is needed, ensuring transparency, fairness and mandatory human intervention in critical decisions.

Thus, AI offers important opportunities for the modernization of the criminal justice system, but these must be managed within a well-defined legal and ethical framework.

Keywords: *artificial intelligence; criminal law; discrimination; control.*

Introduction

In the last decade, artificial intelligence (AI) has become a factor of profound transformation in many fields, including justice and, in particular, criminal law. The accelerated development of technologies

based on machine learning algorithms, automatic natural language processing and facial recognition raises fundamental questions related to the application and interpretation of criminal norms, but also to the respect for the fundamental rights and freedoms of individuals. In this context, the use of AI within the criminal system is not only a matter of technological efficiency, but also a deeply legal, ethical and constitutional one.

Criminal law, as a branch of public law, regulates the most serious forms of antisocial behavior and involves sanctions with a major impact on individual freedom. Therefore, the principles governing criminal law — the legality of incrimination and sanction, culpability, presumption of innocence, individualization of punishment — are fundamental and relatively rigid, designed to guarantee the protection of the individual against state power. Any integration of AI technology in this area must be carefully assessed in light of these principles.

On the one hand, AI offers undeniable opportunities in supporting criminal investigations, in analyzing digital evidence or in managing the growing volume of information relevant to criminal cases. Through its ability to identify patterns, relationships and anomalies in large data sets, AI can help criminal prosecution bodies to detect fraud, organized crime networks or terrorist activities more quickly. Also, in courts, the use of AI for the automatic organization of files, drafting of decisions or even assisting in the assessment of the risk of recidivism seems to increase the efficiency and coherence of the act of justice.

On the other hand, these applications raise major legal issues. A first obstacle is the determination of criminal liability in the situation where a crime is committed with the help of or through an AI system. According to classical criminal law, a criminal act presupposes the existence of an active subject — a natural person or, in certain situations, a legal entity — who acts with guilt. In the case of autonomous systems, lacking consciousness, intention, or will, the question arises: who is responsible for the damages caused? Current jurisprudence and criminal law do not provide a clear answer to this dilemma.

A second problematic aspect concerns the respect for fundamental rights. Algorithms used in the assessment of defendants may

perpetuate or amplify pre-existing prejudices in the data on which they were trained, generating discriminatory results based on race, gender, socio-economic status or other criteria. This runs counter to the principles of equality before the law and non-discrimination, enshrined in the Constitution, the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union. Algorithmic opacity also affects the right to a fair trial, as the parties cannot challenge or understand the logic of automated decisions if it is inaccessible or impossible to explain.

Finally, from a legislative perspective, it is necessary to develop a specific regulatory framework to regulate the application of AI in criminal proceedings. Existing initiatives at the European Union level (such as the AI Act) and the recommendations of the Council of Europe underline the importance of a prudent and balanced approach, combining technological innovation with respect for the principles of the rule of law. It is essential that the national legislator adopts clear regulations on the limits of the use of AI in the criminal field, the criteria for validating algorithms and the related procedural guarantees.

The relationship between artificial intelligence and criminal law therefore represents a new and complex terrain, where the challenges of technology meet the demands of criminal justice. The objective of research in this area must be twofold: on the one hand, identifying ways in which AI can bring real benefits to the criminal justice system; on the other hand, building a robust legal framework that ensures that these innovations do not violate the fundamental rights of the individual and do not undermine trust in the act of justice.

1. The Use of Artificial Intelligence in the Criminal Field

Artificial intelligence (AI) is a set of technologies capable of performing human-like cognitive tasks, such as learning, reasoning, and decision-making. In the criminal field, AI is used in a variety of ways, from supporting investigations to assisting judicial decisions, generating

both opportunities for improving the efficiency of the system and major legal challenges.

Practical uses of AI in criminal law

a) Data analysis and crime investigation

AI enables law enforcement agencies to process large amounts of data - for example, communication analysis, video surveillance with facial recognition or behavioral analysis on social networks - to identify suspects and prevent crimes (*European Parliamentary Research Service*, 2021, p. 12). This can lead to faster and more efficient detection of criminals, but raises issues related to the legality and proportionality of data collection methods.

b) AI-assisted judicial decisions

In some judicial systems, predictive algorithms assess the risk of recidivism of defendants to support decisions on pre-trial detention or conditional release (Angwin et al., 2016). Such tools can help judges make more informed decisions, but they can raise risks related to transparency, impartiality and control over automated decisions (Wachter, Mittelstadt & Floridi, 2017).

c) Crime prevention (predictive policing)

The police use algorithms that analyze historical data to predict areas with a high risk of crime (Wachter, Mittelstadt & Floridi, 2017). Although this method can make resource allocation more efficient, it can perpetuate stereotypes and lead to disproportionate surveillance of certain social groups, which violates the principles of non-discrimination and the right to privacy (Barocas & Selbst, 2016).

The major legal issues are:

a) Criminal liability in the context of AI

AI systems do not have legal consciousness or will, and traditional criminal law requires the existence of an active subject who intentionally or culpably commits a criminal act (Roxin, 2017, p. 230). Thus, difficulties arise in attributing criminal liability for actions determined or

facilitated by AI - the central question being whether individuals who develop, implement or use these technologies should be sanctioned (Pagallo, 2013, p. 89).

b) Respect for fundamental rights

The use of AI in criminal proceedings may endanger fundamental rights such as the presumption of innocence, the right to a fair trial and the protection of personal data (European Court of Human Rights, *S. and Marper v. the United Kingdom*, 2008). For example, algorithms can be "black boxes" whose decisions are not transparent, which makes it difficult to challenge automated decisions (Selbst & Barocas, 2018). Also, errors or coded biases can lead to systematic discrimination.

c) Proportionality and legality of the intervention

According to the principles of criminal law and data protection, any intervention restricting fundamental rights must be clearly provided for by law, necessary and proportionate to the aim pursued (Art. 52 of the Charter of Fundamental Rights of the European Union). Many AI technologies are still insufficiently regulated, which raises the risk of abuse or excessive use without a clear legal framework.

Therefore, in order to properly integrate AI into the criminal justice system, it is imperative to develop specific regulations that ensure:

- Transparency of algorithms and the possibility of auditing automated decisions (AI Act Proposal, European Commission, 2021).
- Guaranteeing human intervention in relevant decisions, in order to respect the procedural rights of defendants (Goodman & Flaxman, 2017).
- Protection mechanisms against algorithmic discrimination and systematic errors (Kroll et al., 2017).
- Training of legal specialists to understand and use AI technologies responsibly (Raso et al., 2020).

Initiatives such as the European Regulation on Artificial Intelligence (AI Act) reflect this regulatory trend and provide a general

framework applicable also in criminal law, imposing standards of accountability and transparency.

2. Major Legal and Ethical Issues

2.1. Criminal liability in the context of the use of AI

One of the most complex legal aspects that has arisen in the context of the use of artificial intelligence in the criminal field is that of attributing criminal liability. Classical criminal law requires the existence of an active subject – a natural or legal person – who has committed the act with guilt (intention or fault), according to the principle of nullum crimen sine culpa (Romanian Penal Code, art. 16 para. (1); Roxin, 2017, p. 231).

If an autonomous AI system generates a result that leads to the commission of a crime (e.g. using an algorithm that systematically discriminates when recommending a criminal sanction or makes decisions with unforeseen negative effects), the question arises as to who is criminally liable for the damages caused. Since AI does not have self-awareness, intention or discernment, it cannot be considered a subject of criminal liability in the classical sense (Pagallo, 2013, p. 92).

Several theories have been formulated in the doctrine:

- The liability of the programmer or developer, if the algorithm is defective due to fault;
- Liability of the user (operator), if he used AI without the due diligence required by law;
- Institutional liability, similar to the criminal liability of a legal entity (Boroi, 2020, p. 445).

However, in the absence of clear regulation on autonomous AI, current criminal law has difficulties in framing such situations without the risk of abusive extension of liability or violation of the principle of legality of incrimination.

2.2. Non-discrimination and fairness of algorithmic decisions

Another major risk is related to algorithmic discrimination. AI learns from historical data sets, and this data may reflect pre-existing

social or institutional biases. Thus, an algorithm used to assess the risk of recidivism may end up disadvantageing certain defendants based on their race, gender or socio-economic status (Barocas, & Selbst, 2016, pp. 671–732).

A notorious case is that of the COMPAS system, used in the USA, which was accused of overestimating the risk of recidivism for black defendants and underestimating it for white ones (Angwin et al., 2016). Although the algorithm itself is not "racist", its results are influenced by historical data and training parameters.

This runs counter to the principles of:

- equality before the law (art. 16 of the Romanian Constitution);
- non-discrimination (art. 14 of the ECHR);
- the right to a fair trial (art. 6 ECHR), as the defendant cannot effectively challenge an automatic decision whose internal mechanisms are opaque (ECHR, case Hirsi Jamaa and others v. Italy, 2012 – principle of access to an effective remedy).

2.3. Lack of transparency and control

Many AI systems are "black boxes", meaning that their decision-making processes are not fully understood by either those who develop them or those who use them. This runs counter to the principle of transparency of the act of justice and the right to reasons for the decision.

According to Art. 6 of the ECHR, everyone has the right to know the reasons that underpinned a judicial decision. If this decision is influenced (or even taken) by an algorithm, but without the possibility of understanding or verifying its internal logic, the right to defence and to a fair trial are violate (Selbst, &Barocas, 2019).

Therefore, the need for explainable and auditable algorithms becomes crucial. The proposal for a European Regulation on Artificial Intelligence (AI Act) classifies AI applications in justice as high-risk applications, which implies strict obligations regarding transparency, human control and performance monitoring (European Commission, *Proposal for a Regulation on Artificial Intelligence (AI Act)*, COM(2021) 206 final).

2.4. Proportionality and legality of technological intervention

AI intervention in criminal proceedings must respect the principle of proportionality (also provided for in Article 52 of the EU Charter of Fundamental Rights): any restriction of a right must be provided for by law, pursue a legitimate aim and be necessary in a democratic society.
In many cases, AI technologies are introduced into criminal investigations or proceedings without a clear legal basis, in the absence of procedural safeguards, which risks leading to systematic violations of fundamental rights (European Union Agency for Fundamental Rights (FRA), "Getting the future right – Artificial intelligence and fundamental rights," 2020).

Conclusions

The intersection of artificial intelligence (AI) and criminal law is an emerging field with profound implications for the way in which criminal law norms are designed, applied and protected in a state governed by the rule of law. AI offers undeniable opportunities to streamline judicial activity - by accelerating evidentiary analyses, supporting investigations or even anticipating criminal behaviour - but these benefits cannot be dissociated from the associated legal and ethical risks and challenges.

First, from the perspective of the principle of legality of criminalisation and sanctioning, enshrined in art. 1 of the Criminal Code and art. 7 of the European Convention on Human Rights (ECHR), the use of AI raises difficulties related to the attribution of criminal liability. Autonomous systems, which can make decisions without direct human intervention, challenge the classic paradigm of the active subject of criminal law, which involves discernment and guilt. Thus, a doctrinal and legislative reassessment of the concepts of imputability and culpability in the context of the use of autonomous technologies is necessary.

Secondly, AI affects the fundamental rights of the person – such as the presumption of innocence (art. 6 §2 ECHR), the right to a fair trial and to defense (art. 6 §1 ECHR), as well as the principle of equality before the law (art. 16 of the Romanian Constitution). Automated, non-

transparent decisions, based on incomplete or biased data sets, can lead to discrimination, miscarriages of justice or even the denial of effective access to justice. In a criminal system that operates with deprivation of liberty as the ultimate sanction, these risks must be treated with utmost caution.

At the same time, the lack of a clear legislative framework regarding the application of AI in criminal procedure entails the risk of violating the principle of proportionality provided for in art. 52 of the Charter of Fundamental Rights of the European Union. Any interference by technology with individual freedoms must be not only legal, but also necessary and appropriate to the intended purpose, which requires rigorous control of the applicability of AI in this sensitive area.

In this context, it is imperative to develop a coherent, specific legal framework that regulates the use of AI in criminal justice. This should include: standards of algorithmic transparency, auditability, human oversight and the guarantee of procedural rights. Also, actors in the judicial system must be properly trained to understand and apply these technologies responsibly.

In conclusion, although artificial intelligence brings multiple opportunities for improving the criminal system, its integration must be carried out in a way that respects the foundation of European legal values: legality, fairness, human dignity and the rule of law. Only in this way can technological efficiency be avoided from becoming a threat to criminal justice.

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USING ARTIFICAL INTELLIGENCE IN FIGHTING CRIME AND RESPECTING HUMAN RIGHTS

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Abstract: *The use of artificial intelligence (AI) in the field of public safety represents a major evolution in the way authorities prevent and investigate crime. Through predictive analytics, facial recognition, big data processing and automation of judicial processes, AI can contribute to making police and judicial activities more efficient. This technology offers significant benefits, such as faster identification of criminals, anticipating crimes and reducing the burden on courts.*

According to the European Convention on Human Rights (ECHR) and the General Data Protection Regulation (GDPR), the use of AI must respect fundamental principles such as legality, proportionality and non-discrimination. In particular, Article 8 of the ECHR protects privacy, Article 14 prohibits discrimination and Article 6 guarantees the right to a fair trial.

In this context, the EU Regulation on Artificial Intelligence (AI Act), currently in the process of being adopted, proposes a classification of the risks associated with AI systems and sets strict requirements for applications used in the field of public safety.

In conclusion, the use of AI in the fight against crime must be carried out within a clear legal framework, ensuring the balance between public safety and the protection of fundamental human rights. Any application of AI in this area must be transparent, humanly controlled and subject to effective oversight and legal accountability mechanisms.

Keywords: *technology; artificial intelligence; regulation; law.*

Introduction

In the context of rapid technological transformations of the 21st century, artificial intelligence (AI) has become an increasingly used tool in various sectors of society, including in the field of public security and criminal justice. Law enforcement agencies and judicial institutions increasingly resort to automated systems to prevent, detect and investigate criminal acts. From predictive analysis of criminal behavior to facial recognition and real-time monitoring of public space, AI promises to increase efficiency, reduce human errors and optimize decision-making processes.

However, this technological evolution raises serious challenges from the perspective of fundamental human rights. The implementation of algorithms and automated systems in activities that involve the restriction of individual freedoms requires a rigorous assessment of the compliance of these practices with the norms of national, European and international law. Essential rights, such as the right to privacy (art. 8 ECHR), the right to a fair trial (art. 6 ECHR) and the principle of non-discrimination (art. 14 ECHR) can be seriously affected in the absence of solid procedural guarantees and clear legal regulation.

In this context, the analysis of the use of artificial intelligence in combating crime must take into account both the perspective of practical efficiency and the imperatives of the rule of law and the protection of human rights. A balanced approach is required, which capitalizes on the technological potential, without compromising the fundamental principles of justice and democracy. This is why it is rightly stated that human rights issues are of international concern and do not fall under the domestic jurisdiction of states, which legitimizes not only the right of intervention of international bodies, but also their obligation to intervene whenever violations of human rights, which characterize any human community, are at issue (Corsei & Ștefănoaia, 2022, p. 73).

The present study aims to critically analyze the use of AI in the criminal field, assessing the risks, benefits and applicable legal framework, with a focus on the compatibility of these practices with international human rights standards.

1. Arguments for using artificial intelligence in fighting crime

In a context marked by the complexity of forms of crime, the digitalization of society and the pressure on law enforcement institutions, artificial intelligence (AI) is emerging as a modern and efficient tool in preventing and combating crime. The use of AI in this field responds to a systemic need to increase efficiency, reduce costs and anticipate risks, but also requires strict compliance with national and international legal standards regarding the fundamental rights and freedoms of the individual.

1.1. Operational efficiency and big data analysis

The first major argument in favor of using AI in combating crime is the technology's ability to quickly and accurately process massive volumes of data, known as big data analytics. Machine learning algorithms can identify patterns of criminal behavior, correlate information from disparate sources (e.g. surveillance cameras, social networks, judicial databases) and generate alerts in real time, facilitating early intervention by law enforcement agencies (O'Neil, 2016).

This capability fundamentally transforms traditional investigative methods, giving authorities proactive insight into criminal dynamics. According to the literature, AI helps reduce response times in investigations and increase the rate of suspect identification, compared to conventional methods (Ferguson, 2017).

1.2. Crime prevention through predictive policing

Another important argument is the use of AI in predictive policing systems, which use algorithmic models to estimate the likelihood of crimes occurring in a given geographical area or time frame. Programs such as PredPol, implemented in the US, analyze historical crime data and generate recommendations for the allocation of police patrols (Brayne, 2020).

These systems allow for more efficient management of human and material resources, reducing risks and improving public safety. From

a legal perspective, the use of this type of AI is not necessarily contrary to fundamental rights, as long as it does not lead to unlawful profiling or discrimination and is subject to appropriate procedural safeguards (European Union Agency for Fundamental Rights, 2020).

1.3. Automation of judicial and administrative processes

AI can also be used to automate repetitive tasks within the judicial system: drafting documents, managing files or sorting cases. For example, in Estonia a "robot judge" system has been developed to resolve minor civil cases, while other European countries use AI to automatically generate standardized decisions (Susskind, 2019).

In a criminal context, AI can assist in assessing the risk of recidivism or social dangerousness, supporting courts in making decisions on conditional release or preventive detention. However, these applications must be used with caution, as they may affect the right to a fair trial, enshrined in Article 6 of the European Convention on Human Rights (ECHR), if the algorithms are not transparent and if human control mechanisms are missing (European Court of Human Rights Hirsi Jamaa and Others v. Italy, App no. 27765/09, 2012).

1.4. Combating cybercrime and terrorism

One area in which AI is almost indispensable is the fight against cybercrime and terrorism. AI algorithms can detect cyberattacks in real time, monitor darknets and identify radicalizing language online, thus helping to prevent attacks and subversive activities (Europol, Internet Organised Crime Threat Assessment, 2023).

According to the case law of the European Court of Human Rights, states have a positive obligation to protect the life and security of citizens (art. 2 and 3 ECHR), which justifies, under certain conditions, the use of advanced technological means to prevent major dangers (ECtHR, Osman v. the United Kingdom, App no. 23452/94, 1998).

The use of artificial intelligence in combating crime represents a significant technological advance, capable of radically transforming police and judicial activity. The efficiency, speed and analytical capacity offered by AI bring real benefits in the fight against crime, especially in

the context of emerging threats such as cyber terrorism or cross-border crime. However, these benefits must be balanced with respect for the principles of the rule of law and fundamental human rights. It is essential that the implementation of AI in the criminal field be carried out within a clear legal framework, with transparency, human control and legal accountability, in accordance with European and international standards. Therefore, the rigor of respecting fundamental rights and freedoms goes beyond the framework of the Communities, becoming a strong point in the external relations existing at the Union level (Corsei, Zisu & Țoncu, 2023, p. 55).

2. Legal challenges and human rights risks

The use of artificial intelligence (AI) technologies in law enforcement has brought significant improvements in the prevention and investigation of crime. However, this technological development raises numerous legal challenges and risks to fundamental human rights, requiring rigorous regulation and critical analysis from a human rights perspective.

2.1. Violation of the right to privacy and protection of personal data

One of the most obvious risks derives from the widespread use of AI for mass surveillance and the collection of sensitive personal data, including biometrics (facial recognition, voiceprints). This raises major issues of compliance with Article 8 of the European Convention on Human Rights (ECHR), which guarantees the right to respect for private and family life (European Convention on Human Rights, Art. 8, Respect for private and family life).

The processing of biometric data is also strictly regulated in the European framework by the General Data Protection Regulation (Regulation (EU) 2016/679 on the protection of individuals with regard to the processing of personal data and on the free movement of such data - GDPR), which imposes principles such as lawfulness, purpose limitation, data minimisation and data security. The uncontrolled use of

AI can lead to mass surveillance, affecting individuals' rights to anonymity and freedom of movement, and can create a chilling effect on free expression (Tufekci, 2015, pp. 203-218).

2.2. Algorithmic discrimination and social inequalities

A major risk associated with the use of AI in justice and policing is algorithmic discrimination, caused by biases in historical data or algorithms. Criminal risk prediction algorithms, such as COMPAS in the United States, have been accused of overestimating the risk of recidivism for minority groups, thereby amplifying social inequalities (Angwin, Larson, Mattu & Kirchner, 2016).

This phenomenon runs counter to the principle of equality before the law and the prohibition of discrimination enshrined in Article 14 of the ECHR (Prohibition of discrimination). The lack of transparency of algorithms and the possibility of challenging automated decisions amplifies the negative effects on the right to a fair trial and equal protection before the law.

2.3. Lack of transparency and accountability

AI-based automated decisions, especially in criminal matters, can affect fundamental rights, but algorithms often remain opaque ('black boxes') and affected individuals do not have access to clear explanations of the decision-making criteria (Pasquale, 2015). This runs counter to the right to a fair trial under Article 6 of the ECHR, which includes, among others, the right to a defence and to effective judicial review.

Furthermore, the lack of clear mechanisms for accountability and human scrutiny of AI decisions can lead to miscarriages of justice or abuse. The absence of uniform regulation and sound technical and ethical standards increases the risk of arbitrary use of technology (Mittelstadt et al., 2016).

2.4. Threat to freedom of expression and association

AI-based surveillance can be used to monitor social movements, protests and online discussions, threatening fundamental civic freedoms, including freedom of expression and freedom of association (Articles 10

and 11 of the ECHR). In the absence of clear limits, this surveillance can induce self-censorship and the repression of political opposition or social criticism (Gilliom & Monahan, 2013).

2.5. Respect for the principle of legality and proportionality

Any interference with fundamental rights must respect the principles of legality, proportionality and necessity, as laid down in both national legislation and the case law of the ECHR (S. and Marper v. United Kingdom, Appeal no. 30562/04 and 30566/04, 2008). The implementation of AI in the criminal field must be strictly regulated by law, pursue a legitimate aim and be proportionate to the danger sought to be avoided.

In the absence of clear regulations, the use of AI can generate arbitrary or disproportionate interference, in particular through the use of invasive surveillance technologies in public spaces or through automated decisions without adequate human control (Goodman & Flaxman, 2017, pp. 50-57).

In conclusion, the use of artificial intelligence in the fight against crime offers undeniable opportunities, but it also entails significant risks for fundamental human rights. The regulation of the use of AI must be carried out rigorously, to ensure respect for the principles of privacy protection, non-discrimination, transparency and the right to a fair trial. Without such guarantees, AI risks transforming law enforcement institutions into an opaque, unfair and potentially abusive system, endangering the rule of law and democracy.

3. The international and European legal framework on the use of artificial intelligence in combating crime

Artificial intelligence (AI) technologies are increasingly being used in the fields of public security, criminal justice and crime prevention. However, the use of these technologies raises numerous legal questions regarding their compatibility with fundamental human rights and democratic principles enshrined in international and European

treaties. This analysis examines the main legal regulations and standards applicable at international and European level, providing a systemic perspective on the obligations of states.

3.1. The European Convention on Human Rights (ECHR) and the case law of the Strasbourg Court

The ECHR, concluded under the auspices of the Council of Europe, is the main regional instrument for the protection of fundamental rights. In the context of the use of AI, several articles of the Convention are relevant:

Art. 8 – Right to private and family life: Applicable in cases of surveillance, facial recognition, collection of biometric data or predictive profiling. The European Court of Human Rights (ECHR) established in the case of S. and Marper v. v. the United Kingdom (2008) that the long-term retention of biometric data of unconvicted persons constitutes a violation of Article 8 (S. and Marper v. UK, Appl. Nos. 30562/04 and 30566/04, 2008).

Art. 6 – Right to a fair trial: This right may be violated if judicial decisions are influenced by algorithmic assessments that are not transparent or cannot be effectively challenged by litigants.

Art. 14 – Prohibition of discrimination: If AI algorithms reproduce or amplify systemic biases (racial, ethnic, social), this may lead to violations of equal treatment.

The ECHR imposes negative obligations on states (not to interfere arbitrarily with rights) and positive obligations (to protect rights through appropriate legislation and administrative measures). Thus, any use of AI by state authorities must be provided for by law, necessary in a democratic society and proportionate to the aim pursued (Uzun v. Germany, Appl. No. 35623/05, 2010, on GPS surveillance).

3.2. Charter of Fundamental Rights of the European Union

The Charter of Fundamental Rights of the European Union (CFREU), legally binding under the Treaty of Lisbon (Article 6 TEU), reiterates and develops the standards of the ECHR. Among the relevant articles:

Art. 8 – Protection of personal data: The Charter establishes an autonomous right to data protection, distinct from private life. Any automated processing of data by AI systems must respect the principles of lawfulness, transparency and individual control (EU Charter of Fundamental Rights, Art. 8, in force since 2009, legally binding).

Art. 21 – Non-discrimination: In accordance with EU secondary legislation (Directive 2000/43/EC on equal treatment), discrimination is prohibited, including on grounds of race, ethnic origin, gender or political orientation, which is relevant in the context of AI used in the assessment of suspects.

Art. 47 – Right to a fair trial and access to justice: Affirms the right to an effective remedy before a court, including against decisions taken automatically.

3.3. General Data Protection Regulation (GDPR)

The GDPR (Regulation (EU) 2016/679) provides a detailed framework for the protection of personal data, including in relation to AI systems. Article 22 of the GDPR provides for the right of any individual not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects or significantly affects the data subject (Automated individual decisions, including profiling).

The regulation also requires:

- Data Protection Impact Assessments (DPIAs) for high-risk technologies.
- Principles such as purpose limitation, data minimisation, transparency and controller accountability.
- The right of the data subject to explanations of the AI decision logic and to human intervention.

3.4. UN Human Rights Conventions and UNESCO/OECD Documents

At the international level, several treaties and recommendations cover issues related to AI and crime:

- International Covenant on Civil and Political Rights (ICCPR): Protects the right to privacy (art. 17), to a fair trial (art. 14) and prohibits discrimination (art. 26). The UN Human Rights Committee has emphasized that digital technologies should not be misused by authorities to track or control the population (General Comment No. 16 on Article 17, 1988).
- UNESCO – Recommendation on the Ethics of Artificial Intelligence (2021): Framework document that promotes the responsible, ethical and non-discriminatory use of AI. Recommends impact assessments, transparency, explainability and democratic oversight of AI.
- OECD – Principles on AI (2019): Also adopted by the Council of Europe and the EU, they encourage the development of AI that is human-centred, transparent and accountable (accepted by 42 states).

3.5. Council of Europe initiatives and proposal for EU-level AI regulation

The Council of Europe is currently working on a binding legal framework on AI, in the form of an international convention (AI Convention), which would establish common safeguards for the use of AI in relation to human rights, democracy and the rule of law.

In parallel, the European Commission proposed in 2021 a Regulation on Artificial Intelligence (AI Act) (European Commission, Proposal for a Regulation on a Harmonised Approach to AI, COM/2021/206 final), which is in the process of adoption, which introduces:

- Classification of AI systems according to risk: unacceptable risk, high risk, limited risk, minimal risk;
- Bans for systems with unacceptable risk (e.g. real-time facial recognition in public spaces);
- Strict transparency, auditing and conformity assessment requirements for high-risk systems (e.g. AI used in criminal justice).

This regulation will constitute the first comprehensive legal

framework for AI in the world, providing a reference for the responsible regulation of advanced technologies in the public and private sectors.

The international and European legal framework provides a solid foundation for the responsible use of artificial intelligence in the fight against crime. The changes that occurred domestically mainly took into account the changes that appeared in EU law regarding the applicable domestic law, starting from the idea that the legal order applicable at the level of each EU member state is subsumed under the legal order at the European level (Corsei & Ștefănoaia, 2022, p. 98). Documents such as the ECHR, the GDPR, the EU Charter and the UN treaties impose clear obligations on states to respect fundamental rights, data protection and prevent discrimination. At the same time, recent initiatives by the EU and the Council of Europe demonstrate a growing commitment to the balanced regulation of AI, so that it is compatible with democratic values and the rule of law. In this regard, the use of AI must be transparent, legally justifiable, proportionate, auditable and subject to human control, in order to ensure a balance between security and freedom.

Conclusions

The use of artificial intelligence in the fight against crime is a complex challenge that requires a balance between technological efficiency and the protection of fundamental human rights. The international and European legal framework provides essential principles and norms to guide the implementation of these technologies, ensuring respect for the rights to privacy, non-discrimination, fair trial and the protection of personal data.

The European Convention on Human Rights, the Charter of Fundamental Rights of the European Union and the General Data Protection Regulation impose clear standards on the legality, transparency and proportionality of the use of AI-based systems. At the same time, the case law of the European Court of Human Rights emphasizes the need for strong guarantees against arbitrary surveillance and non-transparent automated decisions.

At the international level, UNESCO recommendations and OECD principles add ethical and responsible governance dimensions, guiding states towards a use of AI that serves the public interest without compromising fundamental freedoms.

Recent legislative initiatives by the European Union, in particular the proposed AI Act, reflect a progressive effort to harmonise and regulate AI, with an emphasis on risk assessment, the prohibition of dangerous uses and the introduction of control and accountability mechanisms. These steps are indispensable to prevent abuse, discrimination and human rights violations, while ensuring that technology effectively contributes to security and democratic justice.

The European and international legal framework thus constitutes both a protective instrument and an ethical compass for the development and application of artificial intelligence in the field of crime. Compliance with these rules is essential to maintain public trust, strengthen the rule of law and ensure a fair balance between innovation and fundamental rights.

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ADMINISTRATION OF EVIDENCE IN THE TRIAL PHASE OF A CRIMINAL CASE

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Abstract: *By virtue of the principle of immediacy, the purpose of the judicial investigation consists in the direct and immediate administration of evidence previously obtained during the criminal investigation phase. This mode of administration gives the court the opportunity to perceive the evidence directly, a fundamental aspect for forming its own conviction on the factual situation and, implicitly, for adopting a sound solution.*
Key words: *criminal trial, evidence, judicial investigation*

Introduction

Depending on the specifics of the case brought to trial, the evidentiary framework may be expanded by administering new means of evidence, either at the request of the parties or the injured person, or ex officio, at the initiative of the court. This evidence is also administered directly by the court, using the same procedural means as during the criminal investigation phase. However, the judicial investigation is fundamentally different from the criminal investigation phase in the conditions for conducting evidentiary activity.

Thus, the evidence is administered directly before the court, each participant having the opportunity to formulate objections and combat the claims of the others. Therefore, the re-administration of evidence obtained during the criminal investigation does not constitute a simple formal resumption of it, but implies a new direct perception by the court,

under the specific conditions of the trial. Even if the court has the responsibility to lead and supervise the conduct of the judicial investigation, it no longer has an active role in the administration of evidence, the task of proposing it falling mainly to the prosecutor, the parties and the injured person (Crișu, 2024, p.202).

The court has, however, the possibility – without being obliged – to order ex officio the administration of certain evidence, in a subsidiary manner, to the extent that it considers that the evidence already administered is not sufficient to form its conviction on the case. Although the legislator sought to establish a more arbitral role for the court, the procedural rules still allow for the exercise of a control of legality and relevance over the evidence, since its admissibility is subject to the censorship of the court, which has the power to admit or reject it by a reasoned decision, in accordance with the provisions of art. 100 para. (3) of the Code of Criminal Procedure.

Beginning of the judicial investigation

The judicial investigation usually begins with the re-administration of evidence from the criminal investigation phase, but the court is obliged to do so only with regard to that evidence that it considers to be pertinent, conclusive and useful. In any case, the court cannot base its decision on the statements of persons who were not re-examined before it. The parties and the injured party may request the re-administration of evidence excluded in the preliminary chamber, as well as that rejected by the criminal investigation bodies, but also the proposal of new evidence, regardless of whether it was formulated for the first time during the trial phase.

The judicial investigation is considered to have begun implicitly by carrying out the first investigative act, which usually consists of hearing the defendant (Zarafiu, 2015, p.426) without excluding the possibility that it may begin through another procedural act. This procedural moment marks the limit up to which the injured person can become a civil party in the criminal trial, and if he or she does not have the capacity to exercise or has limited capacity, the prosecutor can

exercise the civil action on his or her behalf. Also until the beginning of the judicial investigation, exceptions regarding the material and personal incompetence of the court may be invoked, in situations in which a hierarchically superior court to the competent one has been notified.

Evidence administered during the criminal investigation phase, which is not contested by the parties, will not be re-administered during the judicial investigation. These will be subject to adversarial debate in the presence of the parties, the injured party and the prosecutor, and may be taken into account by the court at the time of deliberation. Evidence is considered uncontested if its content, resulting from its administration during the criminal investigation phase, is accepted by the party, including in the event that it is unfavorable. Acceptance of evidence does not, however, limit the party's right to propose other means of evidence in its defense.

In the event that the content of evidence is contested, the court is obliged to re-administer it during the judicial investigation, unless it considers, with good reason, that the respective evidence is not pertinent, conclusive or useful for resolving the case. In such a case, the court will not be able to base its decision on that evidence previously administered during the criminal investigation phase, but not administered before the panel of judges.

Thus, in the event that, during the criminal investigation, twenty eyewitnesses were heard, the court may consider that, after hearing ten of them, additional re-hearings are no longer necessary. However, the court will not be able to refer, in the reasoning of the decision, to the statements of those who were not heard directly during the trial phase.

The case law has correctly shown that the mere challenge to the evidence administered by the parties is not sufficient for the admission of the request, the court's assessment being mandatory that this step is necessary to fulfill the purpose of the evidence, as defined in Article 98, Criminal Procedure Code (Bucharest Court, Criminal Section, Conclusion of 23.04.2014, in Neagu, Damaschin, & Iugan, 2023, p. 158).

Hearing of the defendant

The hearing of the defendant during the judicial investigation is preceded by the establishment of his identity, in accordance with the provisions of art. 378 para. (1) of the Code of Criminal Procedure. Subsequently, the defendant is given the opportunity to make a free statement on the facts and circumstances relevant to the case, as they are perceived and assumed from the perspective of his own defense. This stage cannot be substituted by a simple question regarding the maintenance of the statements previously given during the criminal investigation phase, since the defendant's statement represents an essential means of defense and an important element in the process of forming the court's conviction.

Only after the completion of this free statement, the defendant may be subjected to direct questions, in a procedural order determined by law: first by the prosecutor, then by the injured person, the civilly liable party, the other defendants, their lawyers, as well as by his own defense attorney. The questions are asked directly, without the intervention of the presiding judge, whose intervention is limited to the censorship of any irrelevant, inconclusive or unnecessary questions, in consultation with the other members of the panel. Rejected questions are mandatory recorded in the conclusion of the hearing.

Subsequently, the members of the panel may ask additional questions to the defendant, in a subsidiary manner, to the extent that they consider them necessary for the complete and correct clarification of the case.

In the event that the defendant shows hesitation or states that he no longer remembers certain facts or circumstances or in the event that there are contradictions between the statements given previously and those made before the court, the presiding judge is entitled to request explanations, and may, if necessary, read out the previous statements, in whole or in part. However, the defendant cannot be compelled to give statements, benefiting from the right to remain silent. Consequently, in the event of refusal to answer, the court may proceed to read the statements previously given during the criminal investigation.

By virtue of the right to defense and the principle of finding the truth, the defendant may be re-heard whenever the court deems it necessary. In cases where there are several defendants, the hearing of each is carried out in the presence of the others, in order to ensure the contradictory and direct nature of the debate and to allow each to know the content of the statements of the others and to formulate questions, if necessary.

By way of exception, the court may order the separate hearing of the defendants, in the absence of the others, when the finding of the truth requires such a measure. In this case, the defendants are successively removed from the courtroom and heard individually. Subsequently, the statements thus obtained are read to the other defendants, in order to inform them of their content and to allow them, if necessary, to ask questions.

Hearing the parties and the injured party

According to the provisions of art. 380 of the Code of Criminal Procedure, after hearing the defendant and, where applicable, the co-defendants, the court proceeds to hear the injured party, the civil party and the civilly liable party, in accordance with the provisions of articles 111 and 112 of the same code, which regulate the manner of hearing these procedural participants.[1] The statements made by the injured party and the other procedural parties have the value of evidence, being likely to contribute to finding the truth and, implicitly, to the fair resolution of the case.

The hearing procedure applicable to these procedural subjects is governed by the same rules as in the case of the defendant, a fact justified

[1] By Law no. 70/2025, amendments and additions were made to article 111 of the Code of Criminal Procedure, regarding the hearing of the minor injured party, as well as of injured parties, for whom the existence of specific protection needs has been established under the law.

by the procedural position that the law attributes to each of them in the criminal trial, as interested participants in the correct determination of the solution to the criminal action and, if applicable, to the civil action.

During the hearing, the aforementioned persons have the opportunity to make free statements regarding the facts alleged to the court, and subsequently questions may be asked directly by the prosecutor, the defendant, his/her defense counsel, as well as by the other parties – the injured party, the civil party and the civilly liable party – or by their defense counsel. Also, the president of the panel of judges, as well as the other members thereof, may ask questions if they consider that they are necessary for finding the truth and for the fair resolution of the case.

The court has the prerogative to reject questions that are not pertinent, conclusive or useful to the case, these questions being expressly mentioned in the conclusion of the hearing. At the same time, the injured party, the civil party and the civilly liable party may be re-heard whenever the court deems it necessary, in order to complete the evidentiary material or clarify relevant aspects.

Although in practice the hearing of these participants is not carried out constantly, since, in general, their procedural position is expressed through written statements, we believe that the direct hearing should constitute a constant of the criminal trial, since it represents an essential means of judicial investigation, intended to contribute to the complete clarification of all aspects of the case.

Hearing of the witness, expert and interpreter

According to the provisions of art. 373 of the Code of Criminal Procedure, after the roll call is made, the witnesses are removed from the courtroom and are re-entered one by one, for the purpose of the hearing. Before the actual start of the deposition, the court verifies the identity of the witness and orders the taking of the legal oath, in accordance with the provisions set out in the General Part of the Code of Criminal Procedure.

The witness is given the opportunity to make a free statement, regarding the facts and circumstances known in connection with the case,

without being interrupted. Subsequently, if deemed necessary, questions may be asked of him, in the order provided for by law: first, by the party who proposed him for hearing. If the witness was proposed by the prosecutor, the latter may ask him questions directly, followed by the defendant, the injured party, the civil party and the civilly liable party. If the witness was proposed by one of the parties, questions may be asked successively by the latter, then by the prosecutor, the injured party and the other parties.

The court has the prerogative to reject questions that are not relevant, conclusive and useful for resolving the case, and the questions thus rejected are recorded in the conclusion of the hearing. Both the president of the panel of judges and the other members thereof may ask questions of the witness whenever they deem it necessary to find out the truth and the fair resolution of the case.

In the process of obtaining the witness's statement, certain circumstances may arise that require the adaptation of the evidence, as follows:

a) The witness's statement must be freely expressed, without reading a previous text. In the event that the witness holds a relevant document for the deposition, its consultation and reading before the court is permitted, subject to examination by the parties. The court may decide to attach the document to the file, in original or copy.

b) If the hearing in court of a witness previously heard during the criminal investigation phase or within the procedure provided for in art. 308 of the Code of Criminal Procedure is no longer possible for objective reasons, the court may order the reading of the previously given statement, in compliance with the principle of immediacy and only after taking the necessary steps for the direct hearing.

c) In order to establish the truth, the reading of the previous statement is also admissible when there are contradictions between the statement during the criminal investigation phase and the one in court or when the witness states that he no longer remembers the relevant facts or circumstances. This procedure is applied after the witness has freely

expressed himself, followed by the request for the necessary explanations.
d) In the event that, at the established deadline, one or more witnesses do not appear, the court may decide, in a reasoned manner, either to continue the trial in their absence or to postpone the case for a new deadline, in order to rehear, with the appropriate summons of the absent witnesses.

The procedural rules regarding the hearing of witnesses are applicable, accordingly, also in the case of hearing the expert or the interpreter, within the limits dictated by the specifics of their procedural role. Thus, the expert may be heard in relation to the conclusions of the expert report drawn up or in order to assess the opportunity to order a supplement or to carry out a new expert examination. As for the interpreter, he may be heard in relation to the translations made during the criminal trial, when the clarifications are necessary for the resolution of the case. Although art. 381 of the Code of Criminal Procedure expressly mentions only witnesses and experts, its provisions extend, by analogy, to the interpreter, with the exclusion of those procedural institutions which, by their nature, are not compatible, such as the institution of confrontation.

Postponement for new evidence

After the administration of all evidence obtained during the criminal investigation, the presiding judge shall request, in the order provided by law, the views of the prosecutor, the injured party, the parties and their defense attorneys on the necessity of administering new evidence. “New evidence” means evidence that has not previously been administered, either during the criminal investigation phase or during the trial. Proposals for new evidence must be accompanied by the mention of the facts or circumstances to be proven, as well as, as appropriate, the identification data of the witnesses or experts or the indication of the place where the material means of evidence are located. For example, in the event that, during the criminal investigation phase, a specialized finding was made, during the trial, an expert examination may be

requested, or, if the expert examination was made, a new expert examination may be requested, or it may be proposed to hear witnesses who attended the on-site investigation, being entered in the minutes drawn up by the criminal investigation body, but who were not heard at all during the criminal investigation.

The court puts the request for new evidence into the contradictory discussion of the procedural participants, and subsequently gives a reasoned ruling, admitting or rejecting the request in relation to the admissibility, relevance, conclusiveness and usefulness of the evidence. If the court grants the request for the administration of new evidence, it may order the continuation of the trial in the same session or postpone the case, according to art. 385 of the Code of Criminal Procedure, for the period necessary for its administration. If it considers that sufficient evidence has already been administered to clarify the case, the judicial investigation is declared closed, and the trial proceeds to the debate phase.

Uselessness or impossibility of administering evidence and waiving of evidence

In accordance with the provisions of art. 383 para. (3) of the Code of Criminal Procedure, in the event that, during the judicial investigation, a previously approved piece of evidence proves to be useless or impossible to administer, the court may order, by reasoned decision and after hearing the prosecutor, the injured party and the parties, not to administer it. The measure may be taken either at the request of the participants in the proceedings, or ex officio.

When the impossibility concerns evidence administered during the criminal investigation phase, the court will subject it to adversarial debate and will assess its probative value in resolving the case.

At the same time, according to the first paragraph of the same article, the prosecutor, the injured party and the parties may waive the evidence previously proposed. The waiver is discussed in a public hearing, and the court decides on it through a reasoned conclusion.

Although it may approve the non-administration of evidence, the court is not bound by the will of the party, and may decide to maintain the evidence if it considers it necessary for the fair resolution of the case.

Completion of the judicial investigation

The completion of the judicial investigation represents the procedural moment in the trial stage in the first instance in which the president of the trial panel finds that all the evidence considered to be pertinent, conclusive and useful for the fair resolution of the criminal case has been completely administered. This moment occurs after the prosecutor, the injured party and the parties to the trial no longer make requests for the administration of new evidence or, in the case of such requests, they have already been resolved in accordance with the legal provisions.

Until this procedural moment, the civil party has the possibility to modify the scope of the civil claims, either by increasing or reducing them, as well as to correct any material errors in the request for incorporation as a civil party (Udroiu, 2024, p.616). It may also request a change in the method of repairing the damage, requesting the granting of monetary compensation in the event that reparation in kind is no longer possible.

Also until the closure of the judicial investigation, the civilly liable party may intervene in the criminal trial, and, exceptionally, changes may occur in the composition of the trial panel.

In the event that no new requests are filed, or existing requests have already been resolved, the president of the panel orders, by express declaration, the termination of the judicial investigation, at which point the stage of debates on the merits of the case is passed.

Resumption of the judicial investigation

Resumption of the judicial investigation is a procedural remedy by which the court, noting during the deliberation the need to clarify some essential aspects of the case, orders its reinstatement and sets a new

trial date, in order to administer additional evidence within the judicial investigation. This measure is justified exclusively in the event that the resolution of the case cannot be achieved thoroughly and legally without supplementing the evidence.

In the event that the trial was conducted according to the simplified procedure of recognition of guilt, and the court finds that it is necessary to administer additional evidence, other than documents, it is obliged to reinstate the case and order the resumption of the judicial investigation, in compliance with the principle of adversarial proceedings. As a result of ordering the resumption of the judicial investigation, the court will proceed to summon the injured party, the parties and, if applicable, the other procedural subjects, for the established trial date.

Conclusions

Following a detailed analysis of the administration of evidence in the trial phase of a criminal case, it can be concluded that this procedural phase constitutes the central link of the criminal process, having a major relevance both in terms of establishing the judicial truth and in achieving the purpose of criminal justice. By its nature, the trial concentrates the entire evidentiary and legal analysis activity, being the moment when the court assesses the legality and validity of the accusation, with direct effects on the freedom and fundamental rights of the person under investigation.

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THE RIGHT TO PROPERTY AND MECHANISMS FOR RECOVERY OF CRIMINAL ASSETS IN THE LEGISLATION OF THE REPUBLIC OF MOLDOVA FROM THE PERSPECTIVE OF FUNDAMENTAL RIGHTS PROTECTION AND THE EFFECTIVENESS OF COMBATING CRIME

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Abstract: *State interference with the right to property in the context of criminal proceedings represents a particularly sensitive and complex issue, as it entails the restriction of a fundamental right enshrined in both the Constitution and international treaties, including the European Convention on Human Rights. According to the jurisprudence of the European Court of Human Rights, any measure that limits the right to property such as seizures, confiscation, inqyisition, asset freezing, or the imposition of criminal fines, must meet three essential criteria: it must be prescribed by law, pursue a legitimate aim, and be proportionate to that aim. Failure to satisfy these conditions may render the measure arbitrary, thereby exposing the state to liability for the violation of fundamental rights.*

In the Republic of Moldova, amid an intensified campaign against organized crime and corruption, special mechanisms have been established to enable state intervention with respect to assets owned by individuals involved in criminal activity. These instruments include extended confiscation, the administration of seized assets by the Criminal Assets Recovery Agency, and other procedural measures specific to the criminal justice system. However, the implementation of such mechanisms raises serious concerns regarding their compatibility with European human rights standards.

These developments give rise to a series of practical and constitutional challenges: the risk of abuse by public authorities, the difficulty of maintaining a fair balance between the public interest and individual rights, and the pressing need to align the domestic legal framework with the standards established by the European Court of Human Rights (ECtHR).

Only by ensuring such a balance can the effective protection of the right to property in criminal proceedings be guaranteed.

Keywords: *property; criminal proceedings; criminal assets; procedural coercive measures.*

Introduction

Within the constitutional and legal framework of the Republic of Moldova, protecting public interest and combating criminal phenomena require the establishment of special legal tools enabling the state to intervene in assets acquired or used for criminal purposes.

Such legal interferences are regulated by a complex set of legal norms from the Criminal Code (Criminal Code of the Republic of Moldova 2002), the Criminal Procedure Code (Criminal Procedure Code of the Republic of Moldova, 2023), the Law on the Criminal Assets Recovery Agency (Law on the Criminal Assets Recovery Agency, 2017), the Government Decision approving the Regulation on the evaluation, administration, and valorization of (seized) criminal assets, and other normative acts in the Republic of Moldova.

Among these mechanisms are: special and extended confiscation of assets, administration of seized assets by the Criminal Assets Recovery Agency, criminal seizure, and other measures.

The Criminal Code of the Republic of Moldova (Criminal Procedure Code of the Republic of Moldova, 2023) provides in articles 106 and 106¹ two main forms of confiscation:

1. Special confiscation, applied to assets used in the commission of a crime, obtained from a crime, or directly or indirectly resulting from a crime. This measure is ordered by a final court decision and results in the loss of ownership rights.
2. Extended confiscation, a more advanced intervention

measure, applicable when the court establishes beyond a reasonable doubt that the assets were acquired through criminal means, even if they cannot be linked to a specific crime. This may apply to assets obtained before or after the crime if there is a clear discrepancy between the person's assets and their lawful income. Specifically, if:

a) the value of assets acquired by the suspect/accused/convicted person in the five years before and, if applicable, after the offense exceeds their lawful income by more than 20 average monthly salaries as forecasted by government decision;

b) the court is convinced that the assets may derive from criminal activities. This conviction can be based on the gap between lawful income and asset value, lack of a plausible legal source, or links to organized crime (Criminal Code, 2002, art. 106¹).

1. Legal analysis of extended confiscation in Moldovan legislation

Extended confiscation is an extraordinary legal-criminal mechanism designed to combat illicit accumulation of wealth or property in the context of serious and organized crime. As described in article 106¹ of the Criminal Code (Criminal Code of the Republic of Moldova, 2002), it complements special confiscation, surpassing the principle of *nulla poena sine culpa*, as it allows the seizure of assets not directly linked to a specific crime, but presumed to be of criminal origin.

The legal norms suggest that extended confiscation can be used upon conviction for certain serious crimes, corruption, money laundering, drug trafficking, organized crime, if the court finds a substantial discrepancy between legal income and acquired assets. Unlike classic confiscation, this tool partly shifts the burden of proof: once the prosecutor shows a major discrepancy and that the assets were acquired during a relevant timeframe, the burden shifts to the defendant to prove the legal origin of the assets.

A similar mechanism exists in the United States, where the burden partially shifts to the defendant once authorities demonstrate a significant discrepancy between assets and lawful income. This is often expressed in

"*but for*" terms, so that property constitutes criminal proceeds if the offender would not have obtained or kept it but for the offense. This includes both direct and indirect proceeds and auxiliary benefits (Brun, 2021, p. 30).

In the UK, the Proceeds of Crime Act (POCA) 2002 allows criminal confiscation post-conviction and extends to assets acquired through criminal activity, especially if the court establishes a "criminal lifestyle" based on recidivism or illicit income from other offenses (Smith, 2003, p. 184).

Unlike Moldovan law, which considers a five-year window before and after the offense, UK law considers a period of at least six months.

Conceptually, extended confiscation relies on a material approach to criminal liability, aiming to restore social fairness and remove the economic benefit of crime. It reflects a legal fiction focusing on asset recovery rather than personal punishment, aligned with international standards like the UN Convention Against Corruption and EU Directives.

In Moldova, like in other countries, a key element in applying extended confiscation is ensuring the protection of fundamental rights, especially property rights (Constitution of the Republic of Moldova, 1994, art. 46; ECHR, Protocol No. 1, art. 1)

The ECHR has consistently ruled that such measures are compatible with the right to a fair trial and the principle of proportionality if there is a clear legal framework, possibility of court challenge, and a reasonable presumption of illicit origin (Phillips v. United Kingdom, 2001).

In practice, applying extended confiscation faces numerous challenges: difficulties documenting asset-income discrepancies, lack of a unified financial analysis methodology, and complexity in investigating systemic corruption. In this context, Criminal Assets Recovery Agency plays a crucial role by offering technical and informational support to law enforcement through financial expertise and asset tracing in foreign jurisdictions.

2. National jurisprudence on extended confiscation

Despite legislative alignment with international standards, extended confiscation in Moldova is rarely applied. Reports from the National Anticorruption Center and Criminal Assets Recovery Agency show an increase in asset freezes, but finalized extended confiscation cases remain isolated.

Notable cases involve convictions for corruption by public officials, where courts confiscated property well above lawful income (e.g., vehicles, real estate, bank accounts). In several post year 2020 rulings, defendants failed to justify assets worth hundreds of thousands of euros, which were confiscated under art. 106¹ (Criminal Code of the Republic of Moldova, 2002).

However, jurisprudence is still developing, and courts apply this measure cautiously, often demanding direct evidence of origin, even though the mechanism allows confiscation without a direct link to a specific crime.

This cautious approach may stem from a desire to avoid infringing on rights protected by Art. 1 of Protocol No. 1 ECHR.

Extended confiscation is indispensable in combating financial and economic crime, but its success depends on political will and legal provisions ensuring the mechanism's application, including specialized training for prosecutors and judges on handling illicit origin presumptions.

Although Moldova has a relevant legal framework, judicial practice needs consolidation, inter-institutional cooperation must improve, and law enforcement and financial investigations require adequate preparation.

The Constitutional Court of Moldova, in its Decision No. 6 of April 16, 2015, ruled that: "Legally acquired property cannot be confiscated (Art. 46 para. 3 of the Constitution). Such sanctions may be applied if property was used for or resulted from a crime (Art. 46 para. 4). Confiscation is a sanction applied to the owner for criminal or administrative offenses. […] However, such confiscation must always be

legally regulated. According to Art. 72 (n) of the Constitution, only Parliament can regulate offenses and penalties through organic laws."

The Court emphasized that special confiscation applies to assets used in or resulting from crimes, while extended confiscation also targets other assets presumed to stem from criminal activity.

The Venice Commission, in its interim opinion for Bulgaria (82nd plenary session, 2010), stated: "It is important for the legislator to clarify the level of evidence required for confiscation, to avoid unjustified interferences with property or fair trial rights. Such clarity ensures legal security and predictability."

Regarding third-party transfers intended to avoid confiscation, the Constitutional Court cited Directive 2014/42/EU, which allows confiscation if the third party knew or should have known the purpose of the transfer.

The Court concluded that extended confiscation, as regulated, does not infringe private property or the presumption of innocence, provided the state proves the illicit origin of the assets.

Currently, the Constitutional Court is reviewing Challenge No. 108g of May 5, 2025, concerning the constitutionality of provisions in the Criminal Procedure Code and Art. 106¹ of Criminal Code on extended confiscation. A ruling is still pending.

3. The Seizure Imposed During Criminal Investigation

The Criminal Procedure Code of the Republic of Moldova (Criminal Procedure Code of the Republic of Moldova, 2003) regulates the imposition of criminal seizure over the assets of the suspect, accused, or defendant, with the purpose of ensuring special or extended confiscation, or guaranteeing the recovery of damages caused by the crime.

This measure may also be applied to assets held by third parties, if it is proven that the transfer was made to avoid confiscation.

In the field of combating economic and financial crime and corruption, a key role is played by mechanisms for identifying, seizing, managing, and realizing assets acquired through criminal means.

In the Republic of Moldova, this competence is entrusted to the Criminal Assets Recovery Agency, a specialized body established under Law No. 48 of March 30, 2017, on the Criminal Assets Recovery Agency, with autonomous status within the National Anticorruption Center.

Under the legal framework, the Criminal Assets Recovery Agency is responsible not only for identifying criminal assets, but also for their temporary management during the criminal proceedings, in order to preserve their patrimonial value and prepare them for potential confiscation.

According to the provisions of the aforementioned Law, Criminal Assets Recovery Agency may administer the seized assets either directly or through public or private entities. These assets may include movable and immovable property, financial assets, or shares in commercial companies.

The administration of seized assets must comply with the principles of legality, transparency, economic efficiency, and integrity in public administration.

Criminal Assets Recovery Agency’s competence in managing seized assets is a key element in the chain of recovering damage caused by criminal offenses. The success of asset recovery does not depend solely on the efficiency of criminal investigations or court confiscation orders, but also on the state's ability to preserve and capitalize on the seized assets.

Thus, strengthening Criminal Assets Recovery Agency’s role is a priority within the national anti-corruption strategy and the broader justice reform agenda.

4. The Right to Respect for Property

Confiscation, in any form, constitutes an interference with the right to property. However, the European Court of Human Rights (ECtHR) has established as a principle that such measures can be compatible with the

Convention, provided they are prescribed by law, pursue a legitimate aim, and are proportionate and necessary in a democratic society.

The ECtHR has held in numerous cases (e.g., Philips v. the United Kingdom, 2001; Gogitidze and Others v. Georgia, 2015) that extended confiscation does not violate the right to property, as long as appropriate procedural safeguards are in place, such as:

- the possibility to challenge the measure before a court;
- the existence of a fair trial (ECHR, 1950, art. 6);
- the reasonable and justified nature of the presumption regarding illicit origin.

Therefore, the national mechanism regulated by Article 106¹ of the Criminal Code of the Republic of Moldova, which allows for confiscation of assets in cases of a significant discrepancy between wealth and lawful income, is in line with ECtHR jurisprudence, insofar as it is applied with respect for the principles of proportionality and fairness.

Hence, the legal provisions of the Republic of Moldova do not contravene Article 6 § 2 of the Convention (ECHR, 1950), provided that courts do not automatically presume the illicit nature of assets and ensure the possibility of effective defense.

Accordingly, the imposition of seizures, the realization, and administration of assets must take place within a clear and foreseeable procedural framework, with safeguards against abuse.

The right to defense, the reasoning of imposed measures, and the opportunity to challenge them in court are essential to ensure compatibility with the standards of article 6 of the ECHR.

A key aspect concerns the proportionality of the measures in relation to the legitimate aim pursued. In this sense, confiscation must not be arbitrary or disproportionate to the gravity of the offense or the value of the damage. The application of the mechanism must be individualized, based on objective criteria and well-reasoned in each case.

Therefore, property is one of the areas to which the European Court of Human Rights has recognized the applicability of article 6 of the Convention (ECHR, 1950).

Conclusions

Confiscation, including extended confiscation in the Republic of Moldova, represents an essential legal-criminal mechanism for combating illicit enrichment and organized crime.

Regulated by Article 106[1] of the Criminal Code, it provides the state with tools to act upon assets whose legal origin cannot be justified, in cases where a significant discrepancy between declared wealth and lawful income is identified.

Although compatible with ECHR standards, practical application remains limited due to evidentiary challenges and the reluctance of courts. The mechanism involves a partial reversal of the burden of proof, while still requiring a fair trial. The success of this instrument depends on the professionalism of prosecutors, the specialization of judges, and the technical support provided by Criminal Assets Recovery Agency.

Extended confiscation is not a criminal sanction in the classical sense, but rather a measure for the recovery of the value of assets acquired unlawfully, ensuring the balance between the right to property and the public interest is essential.

To this end, precise legislation, coherent and transparent financial analysis methodologies, and institutional will are required. Consolidating jurisprudence in this area is fundamental for the effective application of such measures.

Respecting the principles of legality, proportionality, and procedural fairness is imperative to ensure the legitimacy and sustainability of these instruments in a state governed by the rule of law.

Extended confiscation thus stands as an essential tool in the modern era of criminal justice, addressing the need for an effective response to profit-driven crime.

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PARENTAL ALIENATION

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Abstract: *Parental alienation is an increasingly common phenomenon. Imagine a parent who brainwashes a child. This produces negative effects in the child's life in the long term. Child alienation influences and should influence court decisions. A child can become alienated from the parent who initiated the divorce. The parent who ends up spending more time with the child ends up having hostile behavior towards the other parent. The paper aims to present the gravity and complexity of the phenomenon of parental alienation, to underline the consequences of this type of emotional abuse, as well as to highlight the applicable national and international legislative framework, while also offering solutions for preventing and combating this destructive behavior for the best interests of the child.*

Keywords*: parental alienation; negative effect; alienated; divorce.*

Introduction

Parental alienation is a complex and increasingly common phenomenon in contemporary society, affecting the psychological and emotional development of the child. It occurs when one of the parents or other people influence the child to reject the other parent/one of the parents, without a valid reason. This generally occurs in the case of

divorce or separation, when conflicts between former partners clearly affect the children.

Parental alienation has been recognized in recent years, but it has always had effects. They will have attachment difficulties, anxiety, depression or behavioral disorders. Children often suffer from feelings of guilt and confusion in such a situation. The same consequences can also occur for the parent who is removed from his child.

From a legal point of view, parental alienation represents a challenge for legislative systems around the world. In Romania, this phenomenon is difficult to prove in court. Therefore, an update of the legislation is necessary from this point of view. Ignorance of this phenomenon, which can occur both directly and indirectly, supports the perpetuation of negative consequences. Even parents, knowing this phenomenon, can adapt their behavior, being aware that a child is not a method of revenge.

The following will present the main causes, consequences, solutions for this phenomenon, as well as the legal perspective, taking into account the regulations in force. Considering that in Romania there are more and more divorces than marriages, it is necessary to understand what a child custody process means, but also what it involves beyond the misunderstandings between parents, which are often traumatic.

1. The concept of alienation

Parental alienation is a form of psychological violence by which one of the parents or persons responsible for raising and caring for the child, intentionally, or unintentionally creates, accepts, or perpetues a situation in which the child ends up showing unjustified or disproportionate restraint or hostility towards either parent.[1] The

[1]Law no. 123 of April 30, 2024 amending and supplementing Law no. 272/2004 on the protection and promotion of the rights of the child, published in the Official Gazette of Romania no. 414 of May 7, 2024.

alienating parent/person is responsible for the existence of a situation of parental alienation, and the fostered parent is the parent towards whom the child shows unjustified or disproportionate restraint or hostility.

Therefore, alienation is produced by any person, manifested by the child towards one or both parents. This denigration carried out by a person (including one of the parents) in front of the child, against one or both parents, aims to distance him. The relationship between the two is distorted. The child will have strong feelings of confusion, and his reaction in the relationship with the parent will be an interpretation of the information provided by the alienator. The relationship between two parents has the child as the "main victim". An unhealthy relationship will create a child identical to it. We often wonder which of the parents the child resembles the most. In reality, the child does not resemble either parent individually, but rather reflects the quality of the realationship between them. A relationship in which beyond conflicts, adults know how to manage what a child perceives helps in his development. Deprivation of an affectionate relationship with one of the parents represents a form of emotional abuse. We can argue that that child is in danger. He needs help following such abuse.

The family is the starting point for any person, it is the one that leaves its mark on adult life. Obstructing the relationship with one of the parents, no matter how much affection the other shows, will affect the child's growth in a harmonious environment. When this happens intentionally, the child's mental health is seriously affected.

We should not classify parental alienation as a mental health illness. The avoidance that a child has in such a situation represents a retention of his own feelings of affection that he has towards the parent from whom he is estranged, but also the impossibility of being with him, of communicating with him. This is the result of the alienating parent exercising revenge, contempt, hatred towards the alienated parent.

We might think that when a child is separated from one parent, they actually have a loving relationship with the other, but this is impossible. In reality, the “good” parent exercises continuous control through obvious or subtle actions or inactions. He is the one who

quenches his thirst for revenge through a child. Even if a parent's opinion of the other is based on certain facts, nothing gives the other the right to separate the child from him. A "bad" spouse is not necessarily a "bad" parent. Therefore, the relationship with his own child can continue.

Parental alienation is abuse, as the parent manipulates the child, giving him appropriate treatment based on his behavior with the other parent. It is not normal for a child to be an ally in the denigration of his parent. He only becomes confused, guilty, agitated. Much too heavy and psychologically painful tasks are placed on the child's shoulders. Living in a family environment, he now has to learn whole stories about how one of his parents does not love him. The child perceives his parent as a dangerous person. Any interaction with him causes him even more suffering. It creates dependence on the alienating parent, wanting to do anything to please the latter.

2. How does it manifest?

The alienating parent will plant certain thoughts and actions in the child's mind, directly or indirectly, verbally or nonverbally, that will lead him to a negative image of the other parent. He will perceive him as an enemy [1].

He sabotages the child's relationship with the other parent through various means, such as: taking legal action to restrict contact, filing criminal complaints, failing to comply with court orders, prohibiting gifts, phone conversations, involvement in activities. Even when the minor spends time with the other parent, the first will look for any method to control their activities or to destroy them. He does his best to induce a feeling of guilt, making the child choose who he wants to love.

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[1]The alienating parent has specific language, such as: "We would be better off if your mother/father would leave us alone.", "He doesn't care about you, he doesn't want you.", "We need money, and your mother/father doesn't want to give it to us.", "Your mother/father is enjoying the new family, he doesn't love you anymore."

The alienating parent is dominated by the obsession of removing the child from his or her parent and does not realize the mistake he or she is making.

3. Categories of alienating parents

As we mentioned, alienation can occur intentionally or unintentionally, resulting in three categories of behaviors of the alienating parent.

1. Mild parental alienation – the alienating parent adopts a firm position, from his behavior emerging a subtle programming of the child. He is aware that the child's separation from his parent does not benefit the child, so he does not make it a goal. We are in the presence of a naive parent. His statements are mild, stemming from the conflict he had with his partner, but they do not reflect on the child. He recognizes that the child's relationship must be mentioned by both and does not put obstacles. The children see the state of irritability between the two, they are affected, but nothing leaves its mark on their relationship with them. They have the guarantee of affection from both sides.

2. Moderate alienation – the parent in this category is consumed with anger. He has clear activities to alienate the child from his parent. He will practically do everything in his power to not allow the other person to spend time with the child, but accepts if this is necessary following a certain schedule established by an authority. He is active in the child's relationship with the alienated parent, but also aware that this must happen even if he does not agree. It is a carousel of reactions. The intention is good, but feelings of anger take control.

Impulsiveness makes him criticize the other in front of the child. He knows he was wrong and often explains the situation to the child. They show rigidity, negative feelings, but they can overcome them.

3. Severe alienation – the hatred towards the other parent is clear. He projects his feelings visibly, making it very clear that there can be no relationship between the child and the parent. He proclaims himself in the role of victim, is innocent and takes advantage of the child's mind to

create serious images. He often claims in front of the child that he was abused by his partner and does everything he can to use the child. Reason does not exist, they have the impression that they are doing the right thing. Parents in this category of alienation are obsessed with attracting the child to their side, with making the child agree with them. They do not consider the needs of the children. The younger the children are, the faster they will achieve their goal. We might think that with the separation, alienation begins. However, this process, at the time of divorce, has already begun. The reasons of the alienating parent can be justified. They may experience such feelings even because of abuse, but the problem arises when they do not heal, and the parents have the impression that through the child they will remain obliged to maintain the relationship with the other parent.

4. Stages of alienation

In the first stage, the alienating parent's encouragement is only superficial. He supports the child's relationship with the ex-partner, but there are also moments when he denigrates him. This entire stage is dominated by subtlety. Even if the parent is sincere, he only projects a negative image of his parent in the child's mind. He considers the relationship between the two to be useless or not that important.

The second stage is characterized by clearer actions. The parent who stays with the child refuses to communicate with the other, refuses to involve him in activities, but above all refuses his decisions. Even if the former partners do not understand each other, raising and educating the child is a common task. The relationship between them is governed by a language in which respect does not exist. The child will have an image of a "good" parent and a "bad" parent.

The third stage represents a complete erasure of the emotional bond between the child and the alienated parent. Children end up having a vehement, clear, precise behavior regarding the refusal to interact with the other parent. Children have a pure, clean soul. Therefore, feelings of hatred towards their parent do not appear out of nowhere, but are learned.

5. International legal aspects

International regulations regarding the prevention and combating of parental alienation play an important role. Thus, the UN Convention on the Rights of the Child[1] is a fundamental international document that guarantees the rights of children in the world. Article 9 provides for the prohibition of separating a child from his or her parents, except in cases where this is absolutely necessary (such situations may represent mistreatment, neglect, or parental separation) following the decisions of the competent authorities. At the same time, the Convention provides that a child must maintain a relationship with both parents even if the two parents have separated. Consequently, the Convention has the role of protecting children against parental alienation, establishing that any action that leads the child to reject one of the parents, without a legitimate reason (for example, violence), represents a violation of his or her rights. Thus, parental alienation is a form of abuse with lasting effects. Signatory states are obliged to take all necessary measures to prevent parental alienation.

This international document establishes that the best interests of the child must be prioritized in any decision. Courts, as well as competent authorities, must create measures to protect the child from such abuse. These may consist of psychological counseling, mediation of relationships, supervision of relationships between parent and child.

If it reaches the point where parental alienation has produced its effects, it must also be removed. Here too, there must be measures such as: changing custody, imposing a visitation schedule, or extreme measures such as temporarily placing the child in an environment protected from all harmful influences.

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[1]Adopted by the United Nations General Assembly in 1989. Romania applied the provisions of this Convention through Law No. 18/1990 for the ratification of the Convention on the Rights of the Child.

The UN Convention not only evokes children's rights, but also encourages clear solutions. Moreover, the rights of parents are also regulated. If a parent is prevented from having a relationship with his own child, then his rights are violated. No parent can be deprived of his rights, and his relationship will not be considered inferior compared to the other.

The Hague Convention on the Civil Aspects of International Child Abduction[1] can also be used in cases of cross-border parental alienation. A parent can abduct a child in order to take him to another country. Thus, the authorities of that state must protect the rights of the parent from whom the child is removed and re-establish the relationship between the parent and the child. The Convention regulates procedures for the return of the abducted child, having as a criterion the protection of the best interests of the child.

Regulation (EC) No 2201/2003[2] provides for the recognition and enforcement of decisions on custody and guardianship of children. It recognises procedures for resolving conflicts between parents leading to parental alienation.

When a court in one country issues a decision regarding custody or financial rights, other countries must enforce these decisions in accordance with international treaties, as a way to prevent parental alienation.

6. National legal aspects

Law No. 272/2004 on the protection and promotion of the rights of the child[3] regulates extremely important provisions regarding parental alienation.

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[1]Done in 1980 at The Hague, published in the Official Gazette of Romania no. 243 of 30 Sept. 1992.

[2]Council Reegulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

[3]Published in the Official Gazette of Romania no. 159 of March 5, 2014

The principle of the best interests of the child (art.3 of Law no. 272/2004) is a primary consideration in all decisions concerning the protection of the child. Any attempt to influence the child to remove the other parent is contrary to this principle. At the same time, the child has the right (art. 4) to a healthy upbringing and family environment, which involves the participation of both parents. Parental alienation is contrary to this rule. This law also recognizes psychological and emotional abuse of the child, but also the fact that this is as harmful as physical abuse.

Indirectly, Romania protected children against parental alienation until 2024, when the reality also took on a legislative form. Thus, Law no. 123/2024 was adopted to amend and supplement Law no. 272/2004 on the protection and promotion of the rights of the child. This law established parental alienation as a form of child abuse for the first time in Romanian legislation. It provides an express definition of it, as well as the sanctions that can be imposed on the alienating parent. Parental alienation has gained momentum, with society becoming increasingly aware of it. A child who is alienated by his or her own parent may end up denying his or her filiation. Those who are abused today will be abusers tomorrow. Thus, society enters a circle from which it cannot escape without a clear framework of sanctions.

It should be noted that not only parents can contribute to this alienation, resulting in multiple implications. Thus, the scope of responsibility is expanded. Parental alienation was considered mainly a phenomenon that occurred within the framework of disputes between parents (ex after divorce). However, by including more people, it is recognized that grandparents, relatives, new partners of the parents, educators, family friends or even institutions can also have a role in the upbringing of the child by a parent. This change could help combat cases in which, for example: a grandparent or other relative actively intervenes against one of the parents, speaking negatively about him in front of the child, a new partner of a parent influences the child not to see the other parent or teachers, child psychologists support alienation, favoring one parent and rejecting the other. The authorities will be able to analyze

more carefully not only the actions of the parents, but also external influences. This could allow for faster intervention in serious cases.

Of course, there are also potential risks and abuses. Sometimes what a parent perceives as alienation may just be normal peer influence. For example, a child who spends more time with grandparents may become more attached to them, and the parent may view this as a form of alienation. If the law is not clearly worded, parents may start filing complaints against the other parent's relatives just to gain an advantage in custody.

At the same time, the principle of keeping siblings together is introduced. In the context of parental alienation, the preservation of essential emotional ties is favored. Siblings have a unique bond, and keeping them together can contribute to a sense of stability and continuity, even when the relationship with one of the parents is strained or damaged due to the alienation.

Article 18 of the amending law provides that : in order to restore and maintain the child's personal relationships, the public social assistance service and, where appropriate, the general directorates of social assistance and child protection at the level of each sector of the municipality of Bucharest have the obligation to arrange for counseling, provided by specialists from the public social assistance services or authorized bodies, both to the child and to his or her parents, at their request or ex officio, and when there is suspicion of parental alienation or any other form of violence against the child and the court has been notified, they have the obligation to request that it conduct an expertise. In the event that one of the parents prevents or negatively affects the child's personal relationships with the other parent, by failing to comply with the program established by the court or agreed with the other parent, or refuses or opposes compliance with the measures provided for in paragraph (4), the public social assistance service and, where appropriate, the general directorates of social assistance and child protection at the level of each sector of the municipality of Bucharest, at the request of any of the parents, will order the monitoring of the child's personal relations for a period of up to 6 months, simultaneously with the request addressed to the guardianship court in order to supplement the agreement

of the opposing parent or, where appropriate, modify the measures regarding the child.

The judge may establish parental alienation at the request of one of the parents, at the request of the prosecutor or at the request of the General Directorate of Social Assistance and Child Protection, as the main action. In an ongoing trial, the judge hears the minor with the participation of a psychologist from the General Directorate of Social Assistance and Child Protection, following which a report of findings will be drawn up.

Article 89 of the current regulation is amended by allowing any natural or legal person, as well as the child, to notify the General Directorate of Social Assistance and Child Protection for situations of parental alienation. Therefore, easy access to protection is noted. Allowing anyone to notify the DGASPC ensures that problems related to parental alienation can be reported quickly. This is essential to intervene promptly in situations where the child's relationship with one of the parents is negatively affected. The fact that organizations or institutions can also bring cases of alienation to the attention of the authorities means that the entire community becomes a control and prevention mechanism. This contributes to broader accountability in society, where family problems are recognized and treated seriously. By giving the child the opportunity to express themselves and notify, the law validates and protects their right to express their grievances or to report situations that affect their well-being, putting the best interest of the child at the forefront.

Law No. 123/2024 was a necessity for today's society, bringing closer to reality the bonds between parents and children. Guilt in loving a parent is inconceivable. A child must have two parents even if they do not agree with each other.

By taking steps to bring the child back into contact with the alienated parent, the child will be able to trust the parent again. However, the fact that the child was alienated from his parent and then the relationship was restored can have consequences for the alienating parent, as the child has the ability to understand that the parent actually

lied about his parent. Therefore, measures must be applied firmly, so as not to fix one problem and create another instead.

We might think that the judge who is faced with such a situation is the one who decides all the aspects. However, such a variant cannot be accepted. The intervention of several institutions, authorities is necessary. The role of the judge is to sanction the alienating parent, but this decision does not change or improve in any way the emotional abuse suffered by a minor. Thus, the intervention of psychologists is required.

As mentioned above, the amending law is extremely important, but not complete. While it is clear that a child must be protected, art. 99 and art. 100 on placement are legal instruments designed to ensure the protection of the child when the family situation becomes harmful, including in cases of parental alienation. However, it can be argued that the regulations are indeed sometimes excessive or too rigid. Critics argue that overly detailed and strict regulation on placement can lead to excessive interventions, in which the child is removed from the family environment even in cases where the situation could be remedied through other methods of mediation or conciliation. Thus, the question arises whether too radical a measure is required to "protect" the child. Placement, although sometimes necessary, can have long-term adverse effects on the child's development and attachment relationships. Separation from parents and the family environment can lead to additional trauma, especially since there is no plan for reintegration and post-placement support. The fact that anyone can report issues related to parental alienation means that, in combination with the regulations on placement, there is a risk of subjective or abusive application of the law. This puts pressure on the responsible institutions, which must have solid expertise and rigorous procedures in place to avoid hasty decisions.

7. Case Law

Civil judgment no. 3571 of November 14, 2018, pronounced by the Câmpina Court[1] represents an example in this matter. Thus, the court had to establish the following aspects: the exercise of parental authority, the establishment of the minor's domicile and the maintenance pension. The plaintiff wanted to spend time with the minor, even at his own domicile, but the defendant opposed it. Through a psychosocial investigation that assessed the living conditions of both parents, it was established that the plaintiff was employed by a company in Israel, had a rented apartment in Câmpina, and when he was taking care of the minor he was assisted by his mother.

The court imposed an obligation on the defendant to encourage and facilitate the maintenance of personal ties between the child and the parent. It also established that the authorities must intervene to the extent that this prevents the establishment of a relationship between the two. According to the case law of the European Court of Human Rights, created in application of Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, "from the moment and by reason of the very circumstance of the child's birth, there exists between the parents and the child a constitutive bond of family life which subsequent events cannot destroy except in exceptional circumstances" (the case of Berrehab v. Netherlands) - the personal bond which represents a fundamental element of family life, and measures which prevent these relations represent an interference with the right to family life" (the case of Johansen v. Norway).

[1] https://portal.just.ro/204/Lists/Jurisprudenta/DispForm.aspx?ID=201

8. Artificial Intelligence in the legal analysis of parental maintenance

Given that the phenomenon of parental alienation is receiving increased attention from the authorities, being increasingly present in child custody disputes, identifying and correctly treating this phenomenon involves a multidisciplinary approach, which involves bringing together legal, psychological and social elements. At the same time, the evolution of technology raises the issue of integrating artificial intelligence into the legal system, including in delicate cases such as those concerning the relationships between parents and children. Artificial intelligence is a branch of computer science that develops systems capable of imitating human cognitive processes, such as learning, reasoning, pattern recognition or decision-making. In the legal field, AI applications include case law analysis, automatic document drafting, risk assessment in criminal cases and, more recently, the prediction of court decisions. But how can a child's life be helped by an artificial intelligence system?

It is true that by processing similar previous decisions regarding custody, AI can highlight decision-making patterns, recurring factors that may influence the granting of custody, but also the degree of legal recognition of alienated behaviors.

At the same time, natural language processing (NLP[1]) can be used. Thus, algorithms can analyze messages and parental behavior,

[1] Natural Language Processing is a field that deals with the interaction between computers and human language. Thus, NLP helps a computer understand, interpret, generate and respond to human language, whether it is speech or text. It can detect emotions or intentions in a message (if an aggressive tone is used), it can analyze the feelings in a text (positive, negative, neutral), it can automatically recognize keywords or the dominant theme in a conversation. In short, it can be used to analyze the content of messages between parents, social reports or statements to identify manipulative, megaactive, instigating language.

managing to highlight derogatory language, manipulation tactics, and the level of cooperation between the child and the adults around him.

Furthermore, based on an implemented history, AI can provide the level of probability that a certain family configuration will lead to alienation, giving the judge another perspective on the circumstances.

Applications based on artificial intelligence can track compliance with the visitation schedule (automatic check-ins, alerts, scheduled messages), and can identify repeated attempts to obstruct contact with the other parent.

However, none of these AI system capabilities will be able to understand family ties.

We must be aware that AI cannot feel empathy. Although it is capable of learning a lot, it can guess, it can make predictions and synthesize many documents, but it cannot assimilate empathy with anything. It cannot understand child trauma or subtle emotional suffering. The lack of the human factor leads to distorted conclusions.

AI should not be understood as a substitute for the legal process, but as a support tool capable of streamlining the analysis and complementing human perspectives. In this sense, a balanced approach, in which judges, lawyers and psychological experts collaborate with technology, can lead to justice that is faster, more informed and more sensitive to the needs of the child . However, the use of AI must be governed by ethical principles, the protection of fundamental rights and human control over the final decision. Therefore, the existence of artificial intelligence is only a good thing if it is used where and how it is needed, but in determining the extent to which a parent or other person has alienated a child it is irrelevant.

Conclusions

Parental alienation is a serious problem, requiring an approach from multiple perspectives, as well as a connection between authorities, professionals, parents, and society.

Protecting the rights of the child, supporting parents are essential steps to prevent and combat this phenomenon, which can affect the long-term development and well-being of the children involved. The love that a child feels for his or her parent must not be destroyed, regardless of what happens between the adults. Furthermore, they must be supported to express their feelings about what is happening. The anger of one of the parents does not justify distancing themselves from the other. The child should not be put in a position to choose between the two, should not know the accusations of each and be a victim of them. Therefore, alienation is an extremely sensitive area, requiring additional regulations that provide increased protection for the rights and legitimate interests of children.

References

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