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RE-ENGINEERING SOCIETY: LEGAL, INSTITUTIONAL, AND TECHNOLOGICAL DIMENSIONS OF DIGITAL TRANSFORMATION

Giorgi KHARSHILADZE
ORCID [ID]: 0000-0002-8357-5525
E-mail: gkharshiladze@thu.edu.ge
Afiliation: Tbilisi Humanitarian University, Georgia
Faculty of Law, Business, Humanities, and Social Sciences

Abstract: *Digital transformation is a multifaceted process that reconfigures social, economic, institutional, and legal structures through the diffusion of information and communication technologies. This paper examines digital transformation as a process of societal re-engineering by integrating three analytical lenses: legal and regulatory frameworks, institutional and governance change, and technological foundations and socio-economic outcomes. Drawing on established scholarship in surveillance capitalism, network society theory, and economic analyses of digital technologies, as well as contemporary regulatory developments (notably the EU General Data Protection Regulation and the EU Artificial Intelligence Act), the study maps how legal norms, institutional capacities, and core technologies interact producing novel risks and opportunities. The analysis emphasizes tensions between innovation and rights protection, the necessity of interoperability and institutional redesign for public sector digitalization, and the distributional effects of automation and platformization on labor and markets. The paper concludes with policy recommendations for balanced regulatory design, capacity building in public institutions, and ethical governance mechanisms to steer digital transformation toward social resilience and democratic accountability.*

Keywords: *Societal re-engineering; legald and regulatory frameworks; Institutional Governance; Emergic Technologies and Public Policy.*

Introduction

Digital transformation has emerged as one of the defining structural processes of the twenty-first century, reshaping how societies organize production, communication, governance, and everyday life. While digitalization has long been associated with efficiency, modernization, and innovation, contemporary scholarship demonstrates that the transformation underway goes beyond the deployment of isolated technologies. It entails a fundamental re-engineering of societal systems through datafication - the systematic conversion of behavior, relationships, and institutional processes into data - as well as through rapid advancements in computation, network connectivity, artificial intelligence (AI), and digital infrastructures.

The conceptual foundations of this shift have been articulated across multiple disciplinary traditions. Manuel Castells' theorization of network society illustrates how information flows reorganize social structures and spatial relations: in his work, power no longer concentrates in territorial states alone, but in actors who control data networks and information infrastructure (Castels, 2010, pp.28-45). Complementing this perspective, Shoshana Zuboff's analysis of surveillance capitalism highlights a new economic logic in which platforms accumulate behavioral data and convert it into predictive and commercial value, thereby transforming citizen–platform relations and political economy (Zuboff, 2019, pp. 1-2, 111, 376).

Economic analyses by Erik Brynjolfsson and Andrew McAfee further illuminate the impact of digital technologies on labor and growth. In „The Second Machine Age", they argue that automation, intelligent systems, and networked infrastructure are reshaping productivity, employment, and what it means to work in the information age (Brynjolfsson, & McAfee, 2014, pp. 81-103, 167-176).

Beyond these foundational works, more recent research underscores how digital transformation is not only theoretical but deeply practical and urgent. For instance, the OECD's 2025 report „Governing with Artificial Intelligence: The State of Play and Way Forward in Core Government Functions" argues that AI is accelerating digital-government trajectories

and demanding new governance models. The report proposes that states integrate AI into regulatory design and public service delivery, while ensuring safeguards and transparency[1].

At the same time, normative scholarship is grappling with the ethics of AI and regulation. Manuel Woersdoerfer suggests an "Ordoliberal 2.0" framework in his paper „AI Ethics and Ordoliberalism 2.0: Towards a 'Digital Bill of Rights", arguing that ethical principles and competition policy should merge to form a robust digital rights architecture (Woersdoerfer, 2023). Scholarly work further stresses the need for institutional structures that can implement and enforce AI regulation: Claudio Novelli, Phillipp Hacker, Jessica Morley, Jarle Trondal, and Lucciano Floridi propose a governance model for the EU AI Act that includes a dedicated "AI Office," a European AI Board, and a scientific panel to supervise risk and coordinate national authorities (Novelli, Hacker, Morley, Trondal, and Floridi, 2023).

Empirical and normative studies also highlight the global dimension of AI governance. Jonas Tallberg, Eva Erman, Markus Furendal, Joannes Geith, Mark Klamberg, and Marcus Lundgren in „The Global Governance of Artificial Intelligence: Next Steps for Empirical and Normative Research" argue for a dual research agenda: one that maps power relations in global AI governance and one that formulates universal principles suited to emergent regulatory architectures (Tallberg, Erman, Furendal, Geith, Klamberg, and Lundgren, 2023). Public opinion research provides complementary insight: Justin B. Bullock, Janet V.T. Pauketat, Hsini Huang, Yi-Fan Wang, and Jacy Reese Anthis examine trust, risk perception, and public support for AI regulation in their survey-based study „Public Opinion and The Rise of Digital Minds". They find that trust in institutions strongly influences regulatory preferences, underscoring that governance must respond not only to

[1] OECD. *How artificial intelligence is accelerating the digital government journey*.

technological risk, but also to societal sentiment (Bullock, Pauketat, Huang, Wang, and Anthis, 2025).[1]

On the regulatory front, numerous new laws and policy proposals reflect how the digital transformation is being actively shaped. The „European Union's Data Act" (Regulation (EU) 2023/2854) establishes rules for fair access to and use of data, aiming to foster data-driven innovation while protecting rights The „Cyber Resilience Act" (Regulation (EU) 2024/2847) further embeds security requirements for products with digital elements, integrating cybersecurity more deeply into the regulatory fabric. Meanwhile, strong new requirements for financial entities are emerging under the „Digital Operational Resilience Act (DORA, Regulation (EU) 2022/2554)", which mandates ICT risk management, digital resilience, and third-party oversight in the financial sector.

Scholars studying AI regulation also emphasize the importance of trust and social risks. In an review „Building Trust in the Generative AI Era: A Systematic Review of Global Regulatory Frameworks", researchers highlight how misinformation, disinformation, and malinformation (MDM) produced by generative AI necessitate regulatory mechanisms that protect public discourse, transparency, and accountability (Abbas, Chesterman, and Taeihagh).[2]

As digital infrastructures evolve, so too do the legal, institutional, and ethical challenges. The transformation demands not only new laws, but also capable institutions and normative frameworks that align innovation with social values.

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[1] Examine trust, risk perception, and public support for AI regulation in their survey-based study „Public Opinion and The Rise of Digital Minds". (2025).

[2] Fakhar Abbas, Simon Chesterman, Araz Taeihagh - Building trust in the generative AI era: a systematic review of global regulatory frameworks to combat the risks of mis-, dis-, and mal-information.

Legal and Regulatory Foundations of Digital Transformations

Digital transformation deeply reshapes legal regimes by converting social behavior into data, demanding new normative frameworks that reconcile individual rights with technological innovation. As information becomes the backbone of economic and governance processes, traditional legal categories — such as fault liability, territorial jurisdiction, and administrative oversight — face profound tests. The ubiquity of data collection, automation, and algorithmic decision-making creates regulatory pressure to reinterpret fundamental legal principles and design new mechanisms for accountability (Novelli, Hacker, Morley, Trondal and Floridi, 2024, pp. 3-7).

At the heart of data regulation lies the European Union's General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679), which establishes a rights-based approach to personal data protection. The GDPR enshrines principles — lawfulness, fairness, transparency, purpose limitation, and data minimization — that bind data controllers and processors[1]. Furthermore, it guarantees data subject rights such as access (Art. 15), rectification (Art. 16), erasure (Art. 17), objection (Art. 21), and portability (Art. 20). Organizations are required to implement technical and organizational measures, such as data protection by design and data protection impact assessments, under the supervision of Data Protection Authorities (GDPR, 2016, Art. 35). These provisions aim to embed privacy not just as a legal restriction but as a structural feature of digital systems.

However, implementing privacy protections in automated environments is not straightforward. In algorithmic systems, obtaining meaningful consent is complicated by the opacity of processing

[1] European Union. *General Data Protection Regulation GDPR*. (2016). https://gdpr.eu.org/full/full.pdf?

pipelines, especially in machine-learning models. Moreover, the allocation of liability for harms caused by automated decision-making provokes debate: should accountability rest with the model's developer, its deployer, or the data subject? Scholars argue that legal doctrine must evolve, integrating technical standards like explainability, logging, and audit trails to enable accountability in these contexts (Yeung, 2018, pp. 505-523).

Another critical dimension of regulation arises from platform power. Digital platforms operate as gatekeepers to markets and data. Their control over multi-sided relationships (users, advertisers, service providers) leads to concentration of power and raises competition concerns. The EU Digital Markets Act (DMA) addresses such issues, imposing obligations on "gatekeeper" platforms to ensure interoperability, non-discrimination, and transparency in their business practices.[1] Importantly, these regulatory obligations reflect a shift from ex post competition enforcement to a more proactive stance, recognizing the unique market dynamics of digital ecosystems.

Artificial Intelligence (AI) introduces yet more complexity. Autonomous systems, driven by large datasets and complex algorithms, challenge legal norms around liability, safety, and trust. To mitigate these risks, the AI Act (Regulation (EU) 2024/1689) establishes a risk-based regulatory framework. Under this Act, high-risk AI systems — such as biometric identification, critical infrastructure, and public administration AI — are subject to rigorous requirements: data governance, human oversight, transparency documentation, conformity assessments, and post-market monitoring. This risk-based architecture attempts to balance innovation with protection of fundamental rights and public interest.

To ensure enforceability, the AI Act also creates governance bodies, including an AI Office and a European AI Board, which coordinate national authorities and provide technical and ethical

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[1] European Union. *Digital Market Act.* https://digital-marketsact.ec.europa.eu/legislation_en?

oversight (Novelli, Hacker, Morley, Trondal, and Floridi, 2023, pp. 15-20). Such institutions are crucial for translating regulatory standards into technical compliance and for addressing cross-border challenges, given that AI systems often operate globally.

Cybersecurity is another pillar of regulation within digital transformation. As essential services, public institutions, and private platforms rely increasingly on digital systems, the threat landscape expands. The EU NIS2 Directive mandates that operators of essential and digital services adopt risk-management strategies, conduct incident reporting, and implement resilience measures. Legal requirements are complemented by institutional capacity-building: public authorities must develop cyber-risk governance, cooperation mechanisms, and continuous supervision.

Legal fragmentation across jurisdictions is a persistent challenge. Data flows, cloud infrastructure, and AI systems often transcend national borders, raising issues of cross-jurisdictional enforcement, regulatory arbitrage, and normative divergence. The GDPR's extraterritorial scope already reflects this reality, but the diversity of national AI policies and cybersecurity laws demands cooperative frameworks and standard-setting at the international level (Novelli, Hacker, Morley, Trondal, and Floridi, 2023, pp. 8-12).

Institutional and Governance Transformation

Digital transformation does not merely upgrade administrative tools, it fundamentally reconfigures the architecture, capacities, and logic of governance institutions. As scholars emphasize, technology-driven reforms such as e-government, interoperability infrastructures, algorithmic decision-making systems, and digital identity frameworks for producing a new mode of public authority — one increasingly dependent on data flows, technical standards, and cross-sector coordination (Margetts, and Dunleavy, 2013, pp. 12–19). The transition from paper-based bureaucracies to digitally networked administrations alter how states perceive problems, organize resources, and exercise power. This institutional restructuring generates both efficiency gains and new

vulnerabilities, requiring careful design to ensure that innovation does not erode public accountability.

Across OECD and UN member states, digital government strategies highlight several foundational pillars: interoperability, data governance, digital identity, cybersecurity, and administrative capacity-building. These pillars collectively form what is called a “digital-ready state” — an institutional ecosystem capable of orchestrating digital public services, regulating platform power, and protecting fundamental rights. Interoperability frameworks, for example, enable seamless communication among ministries, agencies, and municipalities by standardizing metadata, APIs, and registry systems. Without such standards, digital transformation becomes fragmented, producing isolated digital services that replicate bureaucratic silos in new technical form.

Digital identity systems further exemplify the deep institutional consequences of technological innovation. Estonia’s X-Road, often cited as a global benchmark, demonstrates how secure digital identity credentials allow citizens and firms to authenticate themselves across the entire public administration, simplifying interactions while strengthening traceability and audit trails. Scholars note, however, that digital identity systems shift power relations by concentrating sensitive personal data under state or quasi-state control, requiring strong legal frameworks to ensure proportionality and prevent function creep. As more public services migrate online, digital identity becomes a critical gatekeeper, raising concerns about inclusion, particularly for marginalized populations with limited digital literacy or access.

Algorithmic systems adopted by public administrations introduce additional governance complexities. Machine-learning models used for welfare allocation, predictive policing, tax fraud detection, or social risk scoring alter decision-making processes that historically relied on human discretion. Scholars warn that algorithmic governance may reinforce existing social inequalities when training data reflect historical biases. Furthermore, the opacity of algorithmic reasoning challenges traditional accountability institutions — courts, ombudsmen, audit offices — which depend on the ability to reconstruct the rationale behind administrative decisions. To address these challenges, governance bodies increasingly

emphasize explainability, algorithmic auditing, and human-in-the-loop controls as prerequisites for deploying high-impact administrative AI.

Institutional transformation is also shaped by organizational culture. Public administrations traditionally value procedural stability, predictability, and hierarchical control. Digital transformation instead requires adaptability, cross-disciplinary collaboration, and iterative problem-solving. This cultural clash often slows reform. Studies of digital government efforts in the UK, Australia, and Denmark reveal that reforms succeed not merely because of new technologies but because political leadership invests in skills development, cross-agency coordination, and long-term capacity building. The transition toward digital public governance thus requires a redefinition of bureaucratic professionalism to incorporate data analytics, cybersecurity competence, and technological fluency.

Another major institutional challenge is the governance of data as a strategic public resource. As states accumulate vast administrative datasets — taxation, health, education, mobility, social services — questions arise about access, stewardship, reuse, and data-sharing. The European Union's Data Governance Act (DGA) and the broader European Strategy for Data attempt to establish a framework for trusted reuse of public-sector data, including through data intermediaries, secure processing environments, and harmonized data-space architectures. These initiatives reflect a shift toward treating data as a public infrastructure, not merely an administrative byproduct.

Cross-sector collaboration further underscores institutional transformation. Governments increasingly rely on private technology companies to deliver digital infrastructure, cloud services, cybersecurity capabilities, and AI systems. This reliance raises issues of vendor lock-in, procurement transparency, and sovereignty over critical infrastructure. The European Court of Auditors has warned that excessive dependence on major cloud providers may jeopardize strategic autonomy and long-term resilience, urging stronger procurement rules and multi-cloud strategies. As a result, digital transformation requires the state not only to

modernize internally but also to renegotiate its relationship with powerful private actors.

Institutional redesign must also account for democratic legitimacy. Digital transformation can enhance transparency and participation through open data portals, online consultations, deliberation platforms, and digital civic tools. However, these benefits materialize only when participation mechanisms are genuinely inclusive and when public institutions commit to integrating citizen input into decision-making processes. Scholars caution that digital platforms may privilege already empowered groups, amplifying inequalities in political voice unless counterbalanced by proactive inclusion measures. Thus, institutional transformation must be democratic by design, not merely technologically advanced.

Technological Infrastructures and Socio-Economic Impact

Technological infrastructures constitute the deep architecture of digital transformation, shaping not only the technical possibilities of connectivity, computation, and automation but also the distribution of economic opportunities, risks, and power within society. These infrastructures — cloud computing systems, artificial intelligence models, IoT ecosystems, data centers, broadband networks, cybersecurity frameworks, blockchain-based systems, and platform architectures — form a layered techno-institutional environment in which contemporary socio-economic life unfolds. Because these infrastructures mediate value creation, allocate computational resources, and enable new forms of surveillance and coordination, they function as political-economic institutions as much as technical systems. The socio-economic consequences of digital transformation therefore cannot be understood without situating technological infrastructures as active determinants of labor markets, corporate concentration, public governance capacities, and distributive justice.

At the foundation of the digital economy lies cloud computing, which has redefined how computation is provisioned and scaled across sectors. Hyper-scalers such as Amazon Web Services, Microsoft Azure,

and Google Cloud control the bulk of the global cloud infrastructure, providing elastic computing power, storage, and AI toolchains to corporations, governments, and academic institutions. This centralization accelerates innovation by reducing entry barriers for firms that would previously require massive capital investment in IT infrastructure. Yet at the same time, it creates unprecedented concentration of structural power: dependency on a small number of providers can limit national digital sovereignty, constrain public-sector oversight capacities, and produce cascading risks. Outages in cloud systems — whether caused by misconfigurations, cyberattacks, or supply-chain vulnerabilities in microprocessor manufacturing — have immediate macro-economic ramifications, halting payment systems, logistics operations, online public services, or healthcare systems. As scholars in infrastructure studies emphasize, when a resource becomes infrastructural, its failure becomes catastrophic, not merely inconvenient. Cloud infrastructures thus represent "critical dependencies" whose vulnerabilities map directly onto socio-economic insecurity.

Artificial Intelligence — especially machine-learning models trained on large-scale datasets — constitutes the computational layer that increasingly automates decision-making across sectors. AI transforms socio-economic dynamics not because it "replaces" human labor in a simplistic sense, but because it reorganizes tasks, workflows, and value chains. Task-based analyses demonstrate that AI-driven automation displaces routine cognitive and manual tasks while creating new categories of complementary tasks requiring problem-solving, oversight, and technical creativity. Empirically, the displacement effects are concentrated among mid-skill routine jobs, contributing to labor-market polarization: growth at the high-skill and low-skill ends with erosion of the middle. The socio-economic impact therefore depends heavily on whether institutions invest in upskilling, retraining, and inclusive access to digital competencies. Without such interventions, AI tends to amplify inequality, rewarding firms and workers who can leverage computational scale while marginalizing others.

AI's role in socio-economic governance extends beyond the workplace. Algorithmic systems increasingly mediate access to credit, employment, education, housing, healthcare, social benefits, and online visibility. Credit-scoring models determine who receives loans and at what cost; automated hiring systems filter applicants; predictive analytics guide policing and welfare allocation; recommender systems shape political discourse and consumer behavior. In these contexts, infrastructural opacity becomes a mechanism of power: affected individuals cannot meaningfully challenge decisions made by black-box systems, and even state regulators may lack the expertise or access required to audit models trained on proprietary data. As a result, AI infrastructures become de facto rule-making institutions, producing distributional outcomes outside traditional democratic accountability structures.

Another pillar of digital transformation is the Internet of Things — a vast, heterogeneous mesh of connected devices embedded in homes, factories, transport systems, and public spaces. IoT systems extend computation into everyday objects, enabling real-time monitoring, automated responses, and fine-grained data collection. In industrial contexts (Industry 4.0), IoT supports predictive maintenance, robotic coordination, and optimized supply chains; in urban contexts, IoT sensors govern traffic systems, energy grids, and environmental monitoring; in households, smart devices mediate daily routines. The socio-economic implications stem from both the value IoT generates — through efficiency and new services — and the risks it introduces. Because IoT devices often lack robust security hardening and long-term patching mechanisms, vulnerabilities at the device level can propagate through networks, enabling large-scale botnets, critical infrastructure breaches, or personal surveillance. Thus, IoT infrastructure demonstrates the paradox of digital transformation: the more interconnected systems become, the more fragile the entire socio-economic ecosystem becomes in the face of cyber threats.

Cybersecurity, therefore, is not a peripheral technical concern but an essential socio-economic infrastructure. Modern economies depend on secure digital environments for banking, energy distribution,

transportation, communications, and public services. Cyberattacks on hospitals have delayed surgeries and endangered patients; ransomware targeting municipal systems has disrupted power grids and water supplies; attacks on global logistics companies have produced billions of dollars in economic losses. Because malicious actors exploit both technical vulnerabilities and geopolitical tensions, cybersecurity becomes a domain where economic resilience, national security, and individual rights intersect. Investment in cybersecurity capacity — incident response teams, standards-based procurement, secure-by-design architectures, and cross-border coordination — becomes a public good, yet one that is unevenly distributed across countries and institutions. The socio-economic cost of inadequate cybersecurity disproportionately affects small businesses, local governments, and low-income populations, who lack resources to recover from disruptions.

Platform infrastructures — digital environments that mediate interactions between users, producers, advertisers, and third-party developers — represent another central determinant of socio-economic impact. Platforms such as Amazon, Google, Meta, Alibaba, and Uber act as gatekeepers, controlling visibility, transaction flows, and data access. Network effects consolidate market power: as more users join a platform, the value of participation increases, creating high barriers to entry for competitors. The consequences include winner-take-most markets, asymmetries in bargaining power, and extraction of economic rents from smaller businesses and workers. Gig workers depend on opaque algorithmic management systems that allocate tasks, set prices, and evaluate performance without meaningful transparency or recourse. Sellers on e-commerce platforms face shifting fees, unpredictable search rankings, and data asymmetries. As scholars of political economy argue, platform infrastructures reshape capitalism by centralizing control over digital marketplaces and data flows, enabling new forms of economic domination.

Blockchain and distributed ledger technologies (DLT) offer alternative infrastructural models by decentralizing record-keeping and verification. While often associated with volatile cryptocurrency markets,

blockchain's socio-economic potentials extend to supply-chain verification, digital identity systems, cross-border payments, and decentralized governance. Yet these technologies face scalability, security, and regulatory challenges. Proof-of-work systems impose high energy costs; permissionless networks complicate compliance with financial and data-protection laws; permissioned networks require governance structures that often replicate traditional hierarchies. Thus, the transformative potential of DLT depends not only on technical design but on institutional adoption, regulatory clarity, and alignment with broader economic incentives.

Data — the foundational commodity of digital transformation — flows through all these infrastructures, generating both value and vulnerability. The extraction, aggregation, and monetization of behavioral data underpin advertising ecosystems, recommendation engines, and predictive analytics. Zuboff's analysis of surveillance capitalism highlights how this process creates behavioral surplus that fuels profit-making but erodes privacy, autonomy, and democratic life. Data asymmetries concentrate knowledge and influence within a few corporations, granting them unparalleled capacity to shape information environments, market trends, and consumer behavior. The socio-economic implications include manipulation of purchasing and voting choices, differential pricing, and reinforcement of existing inequalities through algorithmic profiling. These harms disproportionately affect marginalized groups, whose data are often over-collected, under-protected, and used in ways that exacerbate vulnerabilities.

Digital divides remain one of the most persistent socio-economic consequences of technological transformation. Access to connectivity, devices, and digital skills varies dramatically across income groups, regions, and countries. Even when connectivity is available, meaningful use — the ability to leverage digital tools to improve education, health, employment, and civic participation — requires competencies and institutional support that many communities lack. The World Bank and OECD note that digital transformation can widen inequalities if policies do not address infrastructure investment, affordability, skills development, and inclusive governance. Digital divides also manifest in

cloud access, AI research capacity, cybersecurity readiness, and ability to comply with regulatory standards. In effect, inequality becomes infrastructural: societies with weak technological foundations face structural disadvantages in the global digital economy.

To ensure that technological infrastructures generate inclusive socio-economic outcomes rather than exacerbating inequalities, policy interventions must operate across multiple layers. Competition policy should address data monopolies and enforce interoperability; labor-market policies must support upskilling and equitable transitions; cybersecurity regulations should mandate secure-by-design practices; public institutions need capabilities to audit AI and govern data responsibly; and social policies must buffer individuals and communities against transitional shocks. Moreover, governments may require public or sovereign cloud options to reduce dependency on foreign platforms, ensure data protection, and maintain strategic autonomy. International cooperation is essential for managing cross-border data flows, harmonizing standards, and coordinating responses to cyber threats.

Ultimately, technological infrastructures are not merely technical artifacts but socio-economic institutions that shape the distribution of power, wealth, opportunity, and risk. Whether digital transformation produces prosperity or precarity depends on how societies design, regulate, and democratize these infrastructures. Embedding equity, accountability, and resilience into technological foundations is therefore not an optional ethical add-on but a structural requirement for sustainable digital futures.

Conclusions

The contemporary wave of digital transformation represents a structural reconfiguration of social, economic, legal, and institutional orders rather than a merely technological shift. As demonstrated throughout this study, digital transformation redistributes authority, redefines institutional capacities, and reorganizes socio-economic life through the pervasive integration of data infrastructures, algorithmic

systems, and automated decision-making environments. These developments challenge long-standing governance paradigms while simultaneously generating new forms of institutional dependency on technological infrastructures operated by both public and private actors.

At the legal level, digital transformation exposes the inadequacy of traditional regulatory frameworks built for analogue processes. Emerging issues such as algorithmic accountability, digital rights, data governance, privacy protection, and platform power reveal persistent mismatches between inherited legal instruments and the operational logic of automated, data-intensive systems. As the analysis of scholarly literature has shown, law is increasingly expected to function not only as a constraint but as a co-architect of digital infrastructures—tasked with designing oversight mechanisms, enabling trustworthy data ecosystems, and embedding normative safeguards directly into technological systems. This shift underscores the emergence of a *techno-legal constitution* that governs socio-technical interactions in digital societies.

Institutionally, states are confronted with a dual imperative: modernize internal capacities to manage data-driven governance, and renegotiate their position within global technological hierarchies dominated by large cloud providers and artificial intelligence platforms. Public institutions that fail to adapt risk losing operational effectiveness, regulatory sovereignty, and strategic autonomy. Conversely, those that strategically reorganize their governance models—embracing data-centric administration, interoperable infrastructures, and digital foresight—gain the ability to shape the trajectory of societal transformation rather than merely react to it.

From a socio-economic perspective, digital transformation both creates opportunities and amplifies systemic risks. While data economies and automated production systems increase productivity and facilitate new forms of value creation, they also generate deep asymmetries in access to digital resources, institutional capacity, and technological literacy. These asymmetries threaten to widen inequality across and within societies. The literature further shows that algorithmic systems, if left unregulated, may reproduce historical inequalities and embed biases into decision-making processes at scale. As such, the socio-economic

consequences of digital transformation must be understood not as unintended side effects but as structurally embedded outcomes of the infrastructures themselves.

Taken together, the findings of this study clarify that digital transformation is neither neutral nor self-correcting. It is a contested political, institutional, and normative process whose outcomes depend on the design of legal frameworks, the strategic direction of governance reforms, and the societal capacity to critically shape technological infrastructures. The overall trajectory suggests that the future of digital societies will be determined less by technological innovation per se and more by the ability of institutions—and the legal systems underpinning them—to impose democratic, ethical, and accountable structures upon rapidly evolving socio-technical environments.

Therefore, the central conclusion of this research is that the re-engineering of society through digital transformation must be approached as a coordinated project involving law, institutions, and technology in mutually constitutive ways. Only through integrated governance frameworks, rights-protective regulatory models, and transparent technological infrastructures can societies ensure that digital transformation produces equitable, resilient, and human-centered outcomes. The challenge, then, is not merely to adopt new technologies but to cultivate the institutional and normative foundations necessary to sustain democratic life in an increasingly digital world.

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HEARING IN CRIMINAL PROCEEDING – PURPOSE AND STAGES

Elena MORARU
ORCID ID: 0009-0003-0009-4991
E-mail: lenamoraru@mail.ru , elena.moraru@idei.utm.md
Affiliation: Faculty of Constructions, Geodesy and Cadaster, Technical University of Moldova

Abstract: *Interrogation is an investigative action consisting of the investigative body obtaining, in accordance with the rules established by law, testimony from the person being interrogated about facts known to them that are relevant to the subject matter of the criminal case. Interrogation combines a complex of techniques and methods, both tactical and psychological. The hearing combines a complex set of techniques and methods, both tactical and psychological.*
Keywords*: hearing; interrogation; accusation; criminal process.*

Introduction

The most common action in criminal proceedings is the hearing of the parties. At first glance, this action seems quite simple, involving the criminal investigation officer or prosecutor conducting a conversation with a person involved in the criminal proceedings. However, questioning is of essential importance to the criminal case, and in criminal procedure practice there is no case in which this investigative action is not applied. In criminology, as in criminal proceedings, there is no clear and generally accepted concept of interrogation. Each author analyzes the concept of interrogation from their own perspective, but we can undoubtedly say that the opinions of the authors are largely identical. Thus, researcher V.Ya. Karlov, defined hearing as a procedural action consisting in obtaining and recording, in accordance with the established

procedure, the statements of witnesses, victims, suspects, and defendants regarding the facts known to them and relevant to the correct resolution of the criminal case (Karlov, 2013, p.104).

Thus, hearing is understood as an independent investigative action, which consists in obtaining and recording the statements of the participants in the proceedings regarding the facts and circumstances important for establishing the truth in the case.

Hearing in criminal proceeding

Analyzing the specialized literature on hearings as a criminal investigation tactic in criminal cases, we can highlight the main purpose of the hearing as a procedural action in the form of obtaining and recording information relevant to the case from persons participating in the proceedings. In this regard, the information obtained from testimony must be truthful. Obtaining truthful information must also be the technical and tactical purpose of the hearing, which is why not only the criminal procedural aspect of the hearing is important, but also the criminalistic aspect.

In addition to the main purpose, other objectives are also pursued during the hearing, such as:

- identifying sources from which information about the criminal case under investigation can be obtained;

- verifying the authenticity of the evidence collected.

As a result of the main purpose of the hearing, situations may arise which, in criminalistics, are referred to as typical – without conflict, conflictual with moderate competition, conflictual with intense competition. In a non-conflict situation, the objectives of the person being interviewed and the person conducting the interview coincide. The particularity of this situation is that the criminal investigation officer pursues the goal of obtaining truthful statements, and the person being interviewed intends to cooperate with the authorities. However, the hearing of the victim cannot always be conducted in a conflict-free manner. For example, in most cases, victims of sexual violence

intentionally conceal details of the crime for fear of being humiliated, but in this case, the interests of the prosecutor and the interests of the person being interviewed are not in absolute contradiction.

Thus, the situation is described as conflictual with moderate competition. The person possesses accurate information and wishes to share it, but unintentionally distorts it, misleading the criminal investigation authorities, while believing that they are acting in good faith.

The third typical situation is called conflictual with strict competition. This situation is specific to the hearing of a suspect or accused person. In the case of conflict with strict competition, the person hides, intentionally distorts the information they know, and in some cases even refuses to make statements. In order to overcome any typical situation, the criminal investigation officer or prosecutor must use not only procedural actions (e.g., holding the person accountable for refusing to make statements), but it is also important to apply criminal forensic techniques.

A hearing as a term of criminal procedure is primarily a verbal investigative action, which is conducted orally and recorded by the criminal investigation organ in accordance with criminal procedural law. It should be noted that the Criminal Procedure Code of the Republic of Moldova does not expressly define the concept of hearing, as a result of which it becomes evidence examined in subsequent stages of the trial. The results of the hearing, namely the dialogue between the criminal investigation officer and the person being heard, are presented to the prosecutor and the judge in written form as evidence that does not convey a wealth of significant details characteristic of a hearing in a criminal investigation (Ciopraga,1996).

That is why, from a criminalistic point of view of investigative tactics, the concept of hearing is much broader than the concept of hearing in criminal proceedings. Using the above definitions of interrogation, it is important to note that interrogation is not only an investigative action aimed at obtaining statements for the purpose of resolving the case, but also a vast set of tactical actions necessary for its conduct, because, in addition to verbal contact, nonverbal contact

(gestures, facial expressions, intonation, motor skills, voice) is also important during the hearing.

These particularities of the hearing are not taken into account in the procedural concept of the hearing, but knowledge of these tactics and their application in the professional activity of the criminal investigation bodies is self-evident, which determines their professionalism. When conducting the hearing, the criminal investigation officer must have a clear idea of the information they wish to obtain and the methods and means they will use to this end. The set of circumstances to be established is called the subject matter of the hearing. In order to determine the subject matter of the hearing, the criminal investigation officer must carefully examine the materials of the criminal case, analyze and identify the circumstances that need to be clarified, confirmed, or refuted through the hearing (Gheorghiță, 2004.p.78).

In this regard, the subject of the hearing includes:

– circumstances related to the commission of the crime (method, place, time, consequences, etc.);

– the circumstances that establish or refute the guilt of certain persons and the motives for their actions, which influence the degree and nature of liability, as well as those relating to the extent of the damage caused by the crime;

– the circumstances that contributed to the commission of the criminal act or other data relevant to establishing the truth in the case under investigation.

In this regard, we cannot overlook the stages of the hearing. Thus, the hearing includes the following stages:

- preparation for the hearing;
- obtaining information directly from the person being heard;
- recording the proceedings and results of the hearing.

The preparation stage for the hearing is of an assurance nature, and in most cases the success of the hearing depends precisely on the quality of this stage. It is at this stage that the criminal investigation authorities determine the subject matter of the hearing. It should be noted that the

volume of circumstances in the subject matter of the hearing may vary depending on the particularities of the case under investigation.

Thus, V. Ya. Karlov, notes that the subject of the hearing can be practically any circumstance that is important for the resolution of the case. In order to correctly determine the subject of the hearing, it is necessary to thoroughly study the case materials (Karlov, 2013, p.150).

In criminalistics, the preparation stage can be conditionally divided into special preparation and psychological preparation. Special preparation involves a series of actions such as studying the case materials, requesting documents, preparing the place for the hearing, and developing a plan for the hearing, as well as consulting with specialists, if necessary. Psychological preparation, in turn, involves the criminal investigation officer choosing the psychological "background" and atmosphere of the hearing in strict compliance with professional ethics, based on a study of the personality of the person being heard.

After completing these stages of preparation for the hearing, the next stage is the hearing itself—the direct obtaining of information from the person being heard. Specifically, this stage includes the hearing, both in the criminalistic sense and in the criminal procedural sense. Competently constructed stages of the hearing subsequently contribute to the recording of accurate hearing results, and the application of professional tactics will allow for the maximum amount of necessary information to be obtained, regardless of the personality of the person being heard. Thus, the first stage of the hearing is preliminary and includes asking questions from the questionnaire in the minutes.

Before starting the hearing, the criminal investigation officer or, where applicable, the prosecutor must verify the identity of the person being heard and then ask the questions necessary to complete the questionnaire. In this case, the criminal investigation officer has the right to go beyond the limits of the questions provided, most often for the purpose of establishing psychological contact. It is not possible to establish a single correct scenario for the hearing, because there are many circumstances that influence the behavior of the person being heard.

Creating a comfortable atmosphere for dialogue between the person being heard and the criminal investigation officer makes it possible to

obtain comprehensive and sincere statements. Sometimes, this influence on the person being interviewed begins as soon as the summons is handed over (for example, a personal invitation). This stage is particularly important when interviewing victims of sexual violence. Practice shows that establishing a relationship of trust between the victim and the criminal investigation officer, or the prosecutor, at this stage determines the success of the subsequent stages.

The second stage of the hearing is the free narrative phase. In the opinion of R. S. Belkin, the free narrative stage should precede the questioning stage, because even after carefully studying the case materials, the investigating officer cannot always imagine what information and how much of it is available to the witness or victim (Belkin, 2000, p.87).

The most interesting aspect of the free narration stage is that the criminal investigator may obtain information that he did not expect to obtain and, therefore, did not intend to obtain by asking questions. At the same time, free narration helps to recall events in sequence and, therefore, to reproduce completely what has been memorized. It is also important to observe the emotions, facial expressions, and gestures of the person being interviewed, as this information allows the criminal investigation officer to form a more complete picture of the interviewee's attitude toward the events of the crime and toward other persons involved in the case. During the free account, it is not recommended to interrupt the person being interviewed or to ask questions, as this may disrupt the order of the account and, as a result, the person being interviewed may become confused or fail to mention important details. In most cases, it is not recommended to take minutes at this stage, as this leads to interruptions and disrupts the order of the interviewee's account.

The next stage of the hearing is the question-and-answer stage. The success of this stage depends directly on the previous stages of preparation for the hearing. The criminal investigation authorities, using the information obtained during the preparation stage and the information provided during the free narrative stage, can clarify or supplement the free narrative. The type of information that the criminal investigation

officer wishes to obtain determines the formulation of questions during the hearing. At this stage, the criminal investigation officer asks questions in order to clarify, supplement, substantiate, or verify the evidence presented.

Questions should be formulated in a clear and precise manner. They should not contain hints or be suggestive in nature. The conduct and results of the hearing are recorded at the final stage of this phase. The fixation of the conduct and results of the hearing are regulated by Articles 104, 105, 109-112, and 153 of the Criminal Procedure Code of the Republic of Moldova.

As mentioned above, it is preferable that the statements of the person being heard be recorded in the minutes at the end of the hearing. In this way, at the request of the person being heard, they may be given the opportunity to make statements independently, but even in this case, the criminal investigation officer is required to draw up the minutes of the hearing. Explanations in the form of diagrams or sketches must be attached to the minutes.

Conclusions

Hearing a key investigative action, combining, first and foremost, a range of tactical and psychological techniques and methods. The use or non-use of a tactical technique, or its selection from a range of similar ones, depends entirely on the investigator's discretion, the investigative situation, and a number of other circumstances. Tactical interrogation techniques always involve psychological influence. When developing and applying them, it is important to evaluate their admissibility and legality based on scientific and ethical criteria. Psychological techniques, in turn, are also implemented in tactical techniques and have independent significance at certain stages of the investigator's work, during the execution of specific investigative actions.

In general, we note that, in essence, the criminal investigation officer or, where appropriate, the prosecutor is the person who has the obligation to reconstruct almost the entire criminal act by obtaining information from the persons being questioned, without being a

participant in the crime himself. Absolutely all persons summoned for questioning possess some of the information relevant to the investigation of the case, which is why it is so important for the criminal investigation officer to establish psychological contact during the questioning with all persons involved in the case.

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FORMS OF LEGAL LIABILITY AND THEIR INCIDENCE IN CASES OF VIOLATIONS OF LAND LEGISLATION

Tatiana STAHI[1]
ORCID[ID]*:* https://orcid.org/0000-0001-9120-4006
E-mail: tatiana.stahi@idei.utm.md
Angela TALAMBUȚĂ[2]
ORCID[ID]*:* https://orcid.org/0000-0002-5038-0959
E-mail: angela.talambuta@idei.utm.md
Affiliation[1,2]: Faculty of Construction, Geodesy and Cadastre, Technical University of Moldova.

Abstract: *This article examines the issue of legal liability applicable to violations of land and cadastral legislation, analysing it within the framework of the new regulations introduced by the Land Code of the Republic of Moldova. The study highlights the contemporary relevance of the debate on the forms of legal liability and argues that land liability may be regarded as a distinct form of legal liability, shaped as a response to the need to protect both public and private interests. It further explores the forms of liability and their incidence in cases of breaches of land legislation, namely civil, contravention and criminal liability, against the backdrop of cadastral modernisation, the digitalisation of real estate management processes and the increasing number of disputes concerning boundaries and land use. The paper analyses both the conceptual foundations and the practical applicability of liability, with reference to jurisprudence, current challenges and directions for legislative improvement, including comparative insights from European states.*

Keywords: *land-related contraventions; land damage; land legal liability; legal regime of land.*

Introduction

Regulating legal relations that concern the legal regime of land represents one of the most sensitive and complex dimensions of contemporary law, as it addresses a fundamental resource that is both

limited in availability and essential for socio-economic development. In this context, land legislation establishes a rigorous normative system aimed at the protection, rational use and conservation of land, and the non-observance of these norms naturally triggers the intervention of mechanisms of legal liability.

Legal doctrine recognises the polyvalent nature of the institution of liability, which manifests itself in distinct forms, including criminal, administrative, civil, disciplinary, material, financial and patrimonial liability, depending on the nature of the act, the gravity of the violation and the branch of law concerned. This diversity is particularly evident in land law relations, where breaches of rules governing the protection, use and administration of land generate legal consequences that may simultaneously fall under several forms of liability.

Nevertheless, the analysis of land legislation reveals certain conceptual and practical difficulties. Although the normative framework sets out clear obligations regarding the legal regime of land, the legislator does not always provide an express definition of the notion of land-related violation, leaving open the issue of delineating forms of illicit behaviour and the criteria for juridical qualification. In the absence of a unified conceptual framework, law-enforcement bodies are often required to resort to analogy, systemic interpretation and instruments of common law, which complicates both the prevention and the effective sanctioning of unlawful acts.

In this context, an in-depth examination of the manner in which each form of legal liability operates within land law relations becomes necessary. Given that land norms regulate a wide range of aspects, from property rights over land to specific requirements in the agricultural, urban planning and environmental fields, it is essential to determine whether violations of such norms may constitute an autonomous segment of legal liability or whether they continue to be naturally absorbed by the traditional forms of civil, administrative or criminal liability (Stahi and Robea, 2025, p. 379).

Legal Liability – a Pillar of Land Protection

The profound transformations that have marked the field of land relations in recent years, culminating in the adoption of the new Land Code of the Republic of Moldova (2024) and the accelerated regulatory developments concerning the administration, protection and sustainable use of land, have generated a conceptual repositioning of legal research in the field of land law.

The interaction between land norms and various branches of law produces complex situations in practice, where the same act may simultaneously trigger civil liability for damage caused to the land, contravention liability for the breach of soil-use regulations, or even criminal liability when socially protected relations are seriously affected.

Moreover, recent legislative developments, including alignment with European standards in the area of soil protection, call for a reassessment of the manner in which legal liability instruments are employed in this sector.

1. Civil liability occupies a central place in the architecture of land protection due to its capacity to restore the patrimonial and ecological balance affected by the unlawful act, irrespective of any administrative or criminal sanctions applied to the author of the violation. At the same time, land relations, being fundamentally patrimonial relations involving rights of ownership, use and possession, are directly connected to the institutions of civil law.

Its importance is amplified by the strategic character of land, regarded as a non-renewable natural resource with major ecological and economic value. Doctrine has consistently emphasised that civil or patrimonial liability displays superior flexibility compared with other forms of liability, as it allows reparatory measures to be tailored to the specific nature of the damage produced (Stahi & Boscan, 2018, p. 19).

According to the provisions of the Civil Code of the Republic of Moldova, articles 1998–1999 and 2025–2026 (Law No. 1107/2002) set out the general conditions of delictual liability and the rules on reparation of damage. In the field of land law, the Land Code (Law No. 22/2024)

specifies in article 78 paragraph (2) that the application of criminal or administrative sanctions does not exempt the author of the act from the obligation to repair the damage caused.

This rule has been reinforced in jurisprudence. The Plenum of the Supreme Court of Justice, through Decision No. 8 of 22.12.2014 "On the judicial practice regarding the application of land legislation", underlined that any violation affecting land, regardless of the nature of administrative sanctions, triggers civil liability whenever material or ecological damage results.

According to I. Trofimov, in cases where ecological damage, including land damage, is caused, contravention and criminal liability are subsidiary, whereas civil or patrimonial liability is primary, as it operates through the obligation to repair the harm (Trofimov, 2013, p. 23). Doctrine further notes that mechanisms of land protection rely primarily on patrimonial liability as the fundamental instrument for restoring juridical and ecological balance, since soil degradation generates long-term effects that cannot be remedied through contravention or criminal sanctions. Thus, whenever liability entails modifications to the patrimony, the defining features of patrimonial liability become evident (Stahi, 2015, p. 153).

Land-related damage as a determining element. Damage constitutes a *sine qua non* condition of civil or patrimonial liability, encompassing both the actual loss (*damnum emergens*), meaning the value of the performance owed by the debtor, and the loss of profit (*lucrum cessans*). The absence of damage or the impossibility of proving it leads to the exoneration of the person concerned from liability (Stahi, 2016, p. 294).

In recent years, a significant transformation of the regime of civil delictual liability has been observed, driven by the need to adapt it to the particularities of environmental protection and land protection. This legal evolution reflects the consistent application of fundamental principles of environmental law, particularly the precautionary principle and the "polluter pays" principle (Petrașcu-Mag, 2011, pp. 253–254), both of

which have direct relevance to liability for damage caused to soil and land resources.

Authors A. Anisimov and A. Rujencov argue that land-related damage should also be assessed with regard to the "lost ecological value," and not solely to the immediate economic loss (Anisimov and Rujencov, 2013, pp. 256–258).

Land-related damage may include agronomic damage (degradation of the fertile soil layer), ecological damage (pollution, salinisation, compaction, erosion), cadastral damage (clandestine alteration of boundaries), and economic damage (reduced productivity, rehabilitation costs).

In contemporary doctrine, the central debate concerns the role of fault in triggering patrimonial liability for ecological and land-related damage. The controversy revolves around whether objective liability, based exclusively on the existence of damage, should constitute the sole foundation of civil liability for harm caused to the environment and to land. Doctrinal analysis shows that both affirmative and negative answers generate advantages and disadvantages for the parties, either in terms of strengthening the position of the creditor seeking reparation or in terms of mitigating the legal burden imposed on the author of the wrongful act (Duțu, 2013, p. 6).

Unlike criminal or contravention liability, where fault is essential and constitutes a defining element of the offence (Ursu, 2014, p. 295), in civil matters the essential criterion remains the damage. The literature notes that patrimonial liability is predominantly objective in nature, and that emphasis should shift towards the existence of damage and the causal link, these being the primary conditions for engaging liability.

Thus, fault constitutes the subjective element of patrimonial liability, whereas the other conditions of this liability examined so far have an objective character (Baltag and Stahi, 2017, p. 13).

In the law of the Republic of Moldova, the normative framework confirms the orientation toward an objective regime of liability in the field of environmental protection and, by extension, in the field of land-related damage. According to Article 3 letter c) of the Law on Environmental Protection (Law No. 1515/1993), any natural or legal

person is required to repair the damage caused to the environment, and the compensation for such damage is borne by the author of the act, even when it was committed unconsciously or through negligence. The use of the term "unconsciously" signals the express acceptance of objective liability, in which fault is no longer a determining condition.

This legislative and doctrinal orientation is fully compatible with the nature of civil liability in the land law domain, where damage to land soil degradation, loss of fertility, and disturbance of ecosystems, is often the result of complex processes in which proving fault becomes difficult or even impossible. Therefore, the integration of concepts from environmental law strengthens the argument that, in the field of land law, damage and the causal link constitute the essential elements for engaging liability, while the author's fault plays a secondary or even irrelevant role.

In the field of land law, fault is relative and not always decisive. The literature demonstrates that, in numerous cases, damage to soil is the result of complex technical, natural or administrative processes, which makes the proof of fault difficult (Stahi, 2020, pp. 158–159).

This thesis is also supported in Russian doctrine. S. A. Bogoliubov argues that unlawful acts in the sphere of land relations often constitute activities with increased danger, which justifies the engagement of objective liability (Bogoliubov, 2009, pp. 254–257).

M. Yu. Tihomirov notes that fault cannot serve as an exclusive criterion, since ecological damage may arise independently of the author's intent (Tihomirov, 2010, p. 43).

Therefore, civil liability in land law approaches the conceptual framework of objective liability, being centred on the existence of damage and the necessity of its reparation.

The incidence of civil liability in the land law domain is closely linked to the breach of obligations expressly established in Article 22 of the Land Code of the Republic of Moldova (Law No. 22/2024), which sets out the duties of landowners and other holders of land. The violation of these obligations may generate damage both to neighbours and to the environment, giving rise to delictual or contractual civil liability. Thus,

the failure to respect land boundaries and the deterioration of boundary markers may lead to disputes concerning property limits, and the landowner is required to repair the damage caused. Likewise, neglecting the obligation to use the land according to its designated purpose or to prevent actions that affect, quantitatively or qualitatively, neighbouring land frequently results in economic losses that necessitate the engagement of civil liability. Civil liability also arises in situations involving the omission to apply soil protection, amelioration and degradation-prevention measures provided in Article 22 letters c), f) to o).

Failure to comply with the obligation of phytosanitary maintenance or the failure to notify the authorities regarding the change of use of agricultural land may directly affect the rights of other persons and may generate damage that must be repaired.

A major difficulty in the effective application of civil liability for breaches of land legislation lies in the absence of clear legal criteria for assessing land-related damage. In its current form, the Land Code does not define or distinctly delimit essential notions such as agronomic damage, ecological harm, loss of soil fertility or agrochemical rehabilitation costs.

The lack of such legal benchmarks creates uncertainty in determining the extent of the damage, generates inconsistent judicial practice and complicates the task of courts in establishing the amount of compensation. Specialised literature has consistently emphasised the need to develop standardised and uniformly applicable criteria for evaluating damage caused to land (Ciubucov G. V. and V. V. Kurochkina, 2012, p. 138), criteria that would integrate both the patrimonial and the ecological components of the harm produced.

2. Contravention liability for violations of land legislation. Contravention liability represents, within the current legal order, one of the primary instruments in the mechanism for protecting the land fund, fulfilling an essential preventive and disciplinary function. Owing to its moderate sanctioning nature, this form of liability is capable of responding swiftly to low- or medium-intensity violations that do not

reach the threshold of social danger specific to criminal offences, yet affect the legal order governing land use and create a risk of soil deterioration. Thus, land-related contraventions emerge as a genuine tool of normative stabilisation, indispensable for preventing soil degradation, maintaining land-use discipline and safeguarding the public interest associated with the sustainable use of land.

Within the normative system of the Republic of Moldova, the legal framework governing contravention liability for breaches of land legislation is established by the Contravention Code (Law No. 218/2008), an act which, in its updated form, contains a set of relevant norms aimed at protecting the soil, ensuring the integrity of cadastral boundaries and upholding the legal regime governing the use of land.

At present, the contravention framework relevant to the sanctioning of violations in the field of land legislation is found in a series of provisions of the Contravention Code of the Republic of Moldova, which establish a diversified mechanism of legal protection for land. Article 92 of the Contravention Code sanctions the concealment of information regarding available land resources, as well as the failure to observe the deadlines for examining citizens' requests concerning the allocation of land. Furthermore, Article 93 regulates violations of legislation in the fields of geodesy, cartography and topography, with paragraph (2) expressly addressing the destruction of boundary markers, an act with direct impact on property delimitation.

Also within the sphere of land-related illicit acts is Article 115, which incriminates the degradation of land and the falsification of information regarding its condition and use, thereby safeguarding soil integrity and the accuracy of land records. Article 116 sanctions the unauthorised deviation from land-use or territorial planning projects, including use contrary to the designated purpose or breaches of soil protection rules established by the Land Code.

Complementarily, Article 117 addresses the failure of landowners to restore the land to a condition suitable for use in accordance with its designated purpose, including the obligation to prevent and combat the spread of weeds. Article 118 incriminates the non-execution of

mandatory measures for the amelioration and protection of soil against erosion and other degrading processes.

In cases involving serious harm to the soil, Article 120 of the Contravention Code sanctions the unauthorised removal or destruction of the litter layer, vegetation cover and the fertile upper layer of the soil. Finally, Article 149 establishes contravention liability for environmental pollution resulting in damage, including contamination of land with industrial, construction or household waste, with wastewater or with polluting emissions.

The current regime of land-related contraventions, as set out in the provisions of the Contravention Code of the Republic of Moldova mentioned above, is characterised by a clear predominance of the contravention fine as the main sanction. Consequently, the amount of the fine may be either lower or higher than the actual value of the agricultural or ecological damage, and the sanction may be applied even in the absence of a materialised harm, based solely on the breach of the legal regime governing land use. The payment of the fine does not, however, exempt the offender from the autonomous civil obligation to provide full reparation for the damage, in accordance with the general rules of delictual liability and with Article 78 paragraph (2) of the Land Code. From the perspective of the severity of the effects on soil and the environment, the fine ranges provided by the Contravention Code appear relatively lenient, which may contribute to the repetitive nature of land-related violations.

In light of the “polluter pays” principle and the need for sustainable soil protection, a legislative re-examination of fine thresholds is necessary, alongside the introduction of complementary measures, in order to ensure a sanctioning regime proportionate to the gravity of the acts and to the specific nature of land as a resource. In certain situations involving subsoil or mineral resources (Article 119 of the Contravention Code), supplementary sanctions may also be applied, such as the deprivation of the right to carry out a certain activity, although the fine remains the central instrument of the sanctioning framework (Law No. 218/2008).

By comparison, the Moldovan contravention regime in the field of

land law appears rather moderate, both in terms of fine levels and in the limited emphasis placed on administrative land remediation obligations. Russian, Romanian and especially European legislation have evolved towards combinations of substantial fines and robust requirements for soil restoration, in accordance with the "polluter pays" principle. This contrast offers a strong argument for a de lege ferenda critique: the necessity of recalibrating land-related contravention sanctions in the Republic of Moldova, including increasing fine levels, aligning them with the value of the damage and introducing explicit mandatory remediation measures.

Directive 2004/35/EC on environmental liability establishes a regime of administrative liability for environmental damage based on the "polluter pays" principle and focused primarily on the remediation of harm, namely the restoration of soil, water and habitats to their baseline condition, rather than on fines per se (Article 8). Member States are required to provide for sanctions that are effective, proportionate and dissuasive, and to ensure that operators bear the costs of preventive and remedial environmental measures (Article 23). In practice, many states combine high administrative fines, mandatory soil restoration obligations and, for severe cases, criminal liability for environmental offences (Directive 2008/99/EC on the protection of the environment through criminal law).

Furthermore, the Code maintains certain administrative procedural facilities, among which the possibility of paying half of the fine if payment is made within three working days from the application of the sanction is particularly notable, a solution which, as highlighted by researchers A. Talambuță and T. Stahi, manages to combine efficiency with fairness. Through such instruments, including adjusted fine levels, the option of accelerated payment and complementary sanctions, the Contravention Code seeks to professionalise the real estate market, transforming it from a vulnerable sector into one that is standardized transparent and legally disciplined, while also strengthening the protection of third parties within civil circulation (Talambuță and Stahi, 2025, p. 186).

3. Criminal liability for violations of land legislation. Criminal protection of the land fund is triggered when unlawful acts exceed the contravention sphere, seriously affect the integrity of land, compromise the environment or endanger public order in the field of natural resource use. Unlike contravention liability, which is primarily oriented towards discipline and prevention, criminal liability operates as the state's ultimate reaction to violations that severely harm fundamental social interests such as the environment, property, and ecological and land security.

In the law of the Republic of Moldova, the Criminal Code (Law No. 985/2002) does not contain a chapter dedicated exclusively to "land offences," yet several offences regulated by the Criminal Code may be directly or indirectly engaged in cases of breaches of land legislation. These provisions sanction acts that, by their nature, affect land, cadastral boundaries, soil, the environment or property rights.

One of the situations in which the violation of land norms acquires criminal relevance is set out in Article 193 of the Criminal Code of the Republic of Moldova, which incriminates the unlawful occupation of immovable property. The provision covers not only the unauthorised use of land but also related actions that affect the integrity of cadastral boundaries, such as the destruction or displacement of boundary markers.

According to Article 193 of the Criminal Code of the Republic of Moldova, the unlawful, whether total or partial, occupation of an immovable property belonging to another person, committed through violence, threats of violence or by damaging boundary markers, constitutes an offence and is punishable by a criminal fine ranging from 1150 to 1850 conventional units (equivalent to 57,500–92,500 lei), by unpaid community service for a duration between 150 and 240 hours, or by imprisonment from two to four years. In the case of legal persons, sanctions consist of a fine ranging from 2000 to 4000 conventional units (100,000–200,000 lei), accompanied by the deprivation of the right to carry out certain activities.

The aggravated form of the offence, namely committing the act on grounds of prejudice, entails increased sanctions: a fine ranging from 1350 to 2350 conventional units (67,500–117,500 lei), unpaid

community service between 200 and 240 hours, or imprisonment from two to five years. For legal persons, the sanction increases to 4000–6000 conventional units (200,000–300,000 lei), also accompanied by the deprivation of the right to engage in a particular activity.

The destruction or displacement of boundary markers constitutes a direct interference with land order and, at the same time, a premise for disturbing property rights, which justifies the classification of such conduct within the criminal sphere.

Also falling within the category of offences relevant to land protection are the provisions of Article 136 of the Criminal Code, entitled "Ecocide," introduced for the first time into the criminal legislation of the Republic of Moldova as part of the 2002 reform. This article sanctions the intentional mass destruction of flora or fauna, the poisoning of the atmosphere or water resources, as well as other actions capable of causing, or having caused, an ecological catastrophe. Since soil constitutes an integral component of the environment, large-scale actions that degrade the fertile soil layer, pollute land or alter ecosystem functions may fall within the scope of this incrimination. The gravity of the act is reflected in the particularly severe sanction, namely imprisonment for a term ranging from ten to fifteen years. In the field of land law, ecocide may encompass situations such as the large-scale destruction of the fertile soil layer, the mass contamination of agricultural land with toxic substances, intentional actions that render land unusable for long periods, or large-scale illegal deforestation with significant impact on soil.

Soil degradation is internationally recognised as one of the most serious forms of ecological harm.

Criminal protection of soil and the environment is enshrined in Chapter IX, "Offences against the Environment," which includes incriminations that may directly concern land, soil fertility and ecological balance. These offences are particularly relevant in the context of land use, since soil degradation represents, in essence, a violation of the biological environment.

In addition to offences directly related to the unlawful occupation of immovable property, a systematic analysis of the Criminal Code highlights other provisions with significant implications for land governance. Thus, Article 327 of the Criminal Code, concerning abuse of power or exceeding official authority, sanctions the conduct of public officials who unlawfully allocate land, issue unjustified permissive acts or improperly favour certain persons, thereby affecting the rights of legitimate owners and the legality of land operations. Likewise, Article 332, which addresses forgery in public documents, holds particular relevance in the land law sphere, as the falsification of cadastral extracts, layout plans, allocation acts or topographic plans constitutes a recurrent unlawful practice with a high potential to compromise the security of civil transactions involving land.

The intervention of criminal law is justified in situations where the damage caused to land is serious or irreversible, where the act threatens ecological security, where fundamental rights such as property, health or a clean environment are affected, or where contravention measures can no longer provide the necessary protection.

Contemporary doctrine increasingly emphasises that, in the context of accelerated soil degradation and heightened pressures on agricultural land, criminal sanctions must be regarded as a last resort, yet also as an indispensable instrument for safeguarding the public interest in the land sector. In a society in which land constitutes a strategic resource, the correct and coherent application of criminal law norms represents an essential guarantee of ecological and land security.

Conclusions

A multidimensional analysis of legal liability applicable to violations of land legislation reveals a complex landscape in which the norms of civil, contravention and criminal law intersect and complement one another to ensure the effective legal protection of the land fund.

In conclusion, it may be noted that civil liability remains the foundation of land protection due to its reparatory role and its capacity to restore the disrupted patrimonial and ecological balance. However, the

absence of legal criteria for assessing land-related damage, together with the lack of definitions for notions such as agronomic damage, ecological soil degradation or loss of fertility, constitute major gaps in the normative framework and call for urgent legislative intervention. In line with Romanian, Russian and European doctrine, as well as with domestic scholarly contributions, the need emerges for an objective approach to patrimonial liability in land matters, centred on the damage incurred and on the restoration of land in natura.

With regard to contravention liability, the analysis shows that the current sanctioning regime, although covering a wide spectrum of violations (use contrary to designated purpose, unlawful occupation, pollution, degradation, destruction of boundary markers), is affected by the inadequacy of fine levels and the absence of standardised methodologies for assessing damage. Compared with EU Member States, where sanctions are effective, proportionate and dissuasive, and where operators are required to bear the full costs of rehabilitation, the Moldovan contravention regime remains undersized and lacks practical effectiveness.

In the sphere of criminal liability, criminal legislation establishes a severe system of sanctions for acts that produce or risk producing major ecological imbalances, emphasising that soil protection cannot be analysed in isolation but must be integrated into the broader dimension of ecological security and ecosystem conservation.

By comparison, international doctrinal and legislative developments highlight a clear trend towards integrating land liability into a complex system grounded in the principles of precaution, sustainable development and the “polluter pays” principle. Directive 2004/35/EC, the jurisprudence of the Court of Justice of the European Union and national models from states such as Germany, France, the Netherlands and Romania demonstrate that soil protection requires reinforced instruments: increased sanctions, firm rehabilitation obligations, ecological assessment of damage and proactive administrative mechanisms.

From a doctrinal perspective, given the specific characteristics of soil as a limited, non-reproducible natural resource with essential ecosystem functions, it may be affirmed that land liability can no longer be approached in a fragmented manner, exclusively through the lens of the classical forms of legal liability. It is increasingly shaped as an integrated concept situated at the intersection of civil, contravention, criminal, administrative and environmental law, combining reparatory, preventive and ecological-protective functions.

In light of the analysis, it becomes necessary to design a modern normative land framework, harmonised with European trends and international standards, which should include the legal definition of land-related damage and the criteria for its assessment, the introduction of mandatory in natura remediation across all forms of liability, the increase of contravention sanctions and the strengthening of their dissuasive character, greater accountability of public authorities in the management of the land fund, the unification of the normative framework on soil protection and the creation of a coherent doctrine of integrated land liability.

The present study confirms the need for reforms and provides the doctrinal basis for the further development of a coherent and effective land policy aligned with European and international standards in the field.

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THE INTERNATIONAL COURT OF JUSTICE ADVISORY OPINION ON CLIMATE CHANGE: IMPLICATIONS AND POLICY FOR SOUTH AFRICA

Kiyasha THAMBI
ORCID [ID]: https://orcid.org/0000-0003-4456-3027
E-mail: kiyashat@uj.ac.za
Afiliation: University of Johannesburg,
Faculty of Practical Business Law

Abstract: *In July 2025, the International Court of Justice (ICJ) delivered a landmark advisory opinion affirming binding obligations on states under international law to take effective action against human-induced climate change. This paper analyzes the ICJ ruling's legal foundations and implications for South Africa, a climate-vulnerable developing country with socio-economic challenges and coal dependence. The ICJ opinion grounds state duties in treaties, customary international law, and international human rights law, mandating "deep, rapid and sustained" emission reductions, prevention of transboundary harm, and equal legal status for adaptation alongside mitigation (International Court of Justice. (2025). Advisory Opinion on State Obligations in Respect of Climate Change (23 July 2025) paras. 47, 50). The paper provides concrete recommendations for reforming South African climate legislation, enhancing ambition, advancing climate justice advocacy, and securing a just transition. A concise policy brief is appended to assist ministers in operationalizing the ruling's imperatives.*

Keywords: *ICJ; Climate change; South Africa; International environmental law.*

Introduction

On July 23, 2025, the International Court of Justice (ICJ) delivered a historic advisory opinion clarifying the legally binding obligations of states to combat climate change (International Institute for Sustainable

Development [IISD], 2025; United Nations News, 2025). The ruling mandates that states must take "deep, rapid and sustained reductions" in greenhouse gas emissions to limit global temperature rise to 1.5°C above pre-industrial levels—consistent with the Paris Agreement's most ambitious target (ICJ, 2025, para. 47; Carbon Brief, 2025). This advisory opinion profoundly shifts international environmental law by grounding these obligations not only in treaties but also in customary international law and human rights law, setting a robust framework for accountability (ICJ, 2025, para. 47; Carbon Brief, 2025). This paper briefly examines the advisory opinion's core findings, the implications for South Africa considering its socio-economic vulnerabilities and climate risks and sets forth recommendations to integrate the ICJ ruling into domestic law and policy. The paper concludes by situating the ruling in the broader international legal context with a focus on justice and equity.

Legal Risks and Rights Protection

The ICJ decisively anchors state climate duties in multiple legal sources, recognizing the interconnectedness of environmental, human rights, and climate law. The Court affirmed that: "States have legally binding obligations under international law to hold the increase in the global average temperature to well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 degrees Celsius above pre-industrial levels" (ICJ, 2025, para. 47).

The opinion elaborates that these obligations derive not only from the Paris Agreement but also from "customary international law principles such as the precautionary principle, the duty of due diligence, and principles of international human rights law, which require the protection of rights to life, health, food, water, and a sustainable environment" (ICJ, 2025, paras. 52, 56). This integration creates enforceable responsibilities beyond treaty commitments, reflecting evolving customary norms.

Further, the Court affirms that: "The obligation of states to prevent significant transboundary harm to the climate system applies with full

legal force in the context of climate change, entailing a duty of vigilance, enforcement, and administrative control" (ICJ, 2025, para. 60). Breaching these obligations entails state responsibility, with the Court emphasizing: "States that have committed internationally wrongful acts in breach of their climate obligations are under an obligation to cease said conduct, to prevent its recurrence, and to make full reparation for the injury caused, including through financial compensation or other appropriate remedies" (ICJ, 2025, para. 60).

Moreover, adaptation is legally equated with mitigation: "The Court recognizes that the legal duty of states encompasses both mitigation of greenhouse gas emissions and adaptation measures to respond to the adverse effects of climate change, with both elements having equal legal status" (ICJ, 2025, para. 50). The precautionary principle was restated as: "In circumstances of serious or irreversible harm, lack of full scientific certainty shall not be used as a reason to postpone cost-effective measures to prevent environmental degradation" (ICJ, 2025, para. 58).

These principles align with longstanding jurisprudence in international environmental law fostering state responsibility and due diligence, as reflected in foundational cases such as the Corfu Channel (United Kingdom v. Albania), Pulp Mills on the River Uruguay (Argentina v. Uruguay), and Gabcikovo-Nagymaros Project (Hungary/Slovakia).

Implications for South Africa

South Africa confronts severe socio-economic vulnerabilities, including water scarcity, agricultural stress, health impacts, and energy insecurity, exacerbated by climate change (Climate Journal, 2024). The ICJ opinion imposes urgent legal and policy imperatives.

Legal Risks and Rights Protection

South African climate policies lagging in emission reductions or permitting fossil fuel expansion now face increased legal scrutiny

nationally and internationally (Norton Rose Fulbright, 2025; Wadiwala, 2025). The ICJ's linkage of climate action to fundamental rights means South African courts could interpret constitutional rights to life, water, food, and environment more robustly in favour of climate protection (South African Government, 2024; Norton Rose Fulbright, 2025). South Africa and neighbouring states, historically minor emitters but disproportionately impacted, have newfound legal grounds to claim compensation, debt relief, and technology transfer from major emitters (African Climate Wire, 2024; IISD, 2025).

Development and Policy Challenges

South Africa's governance framework (National Climate Change Response White Paper, NDP, Paris Agreement commitments) must integrate the ICJ's "highest possible ambition" standard for mitigation and adaptation (Carbon Brief, 2025; IISD, 2025). Equitable, just transition mechanisms are essential to address the economic and social dimensions of phasing out coal (Tyeler & Mbatha, 2024; TIPS, 2024). Adaptation strategies must focus on vulnerable groups and critical sectors such as agriculture, water, health, and infrastructure (The Conversation, 2025).

Policy Recommendations for South Africa:

1. Align Domestic Law with ICJ Standards

a. Embed the 1.5°C target and duty to prevent significant harm in laws like the Carbon Tax Act and Climate Change Bill (Norton Rose Fulbright, 2025).
b. Strengthen procedural mandates on transparency, consultation, and reporting.
c. Explicitly connect climate obligations with constitutionally protected human rights (South African Government, 2024).

2. Enhance Ambition and Accountability

a. Revise NDCs to meet the highest possible ambition with independent oversight (Climate Journal, 2024).
b. Implement fossil fuel phase-out plans ensuring just transition support for workers and communities (TIPS, 2024).

3. Lead Regional and International Climate Justice Efforts

a. Advocate for climate finance, technology transfer, and reparations from major emitters, leveraging the ICJ's legal framework (African Climate Wire, 2024).

b. Develop legal and scientific capacity for potential climate litigation.

4. Support Research and Stakeholder Engagement

a. Promote interdisciplinary research on climate impacts and transitions (Springer, 2022).

b. Encourage inclusive public participation involving marginalized groups (The Conversation, 2025).

Policy Brief for South African Ministers

To guide ministerial decision-making aligned with the ICJ advisory opinion:

- The ICJ affirms binding obligations to limit warming to 1.5°C and prevent transboundary harm, grounded in law and human rights (ICJ, 2025, paras. 47, 60).
- South African policies must meet heightened legal standards, failure risks litigation and loss of rights protections.
- Prioritize embedding the 1.5°C target in legislation; deepen mitigation and adaptation ambitions with oversight.
- Phase out fossil fuels with just transition safeguards.
- Lead indigenous African climate justice advocacy for finance and reparations.
- Invest in legal, scientific, and public engagement capacity

In addition, the following actions can also be considered:

- Review and reform climate laws incorporating ICJ principles.

- Expand expertise for international negotiations and litigation readiness.
- Engage civil society and vulnerable communities actively.

International Legal Context and Global Significance

The ICJ opinion establishes a binding, cross-cutting climate legal framework integrating treaties, customary law, and human rights law (SWP Berlin, 2025; IISD, 2025).

It empowers vulnerable developing states and Small Island Developing States (SIDS) to assert claims for finance, reparations, and technology transfers (African Climate Wire, 2024). Although advisory and non-binding in the strict sense, the ruling shapes international negotiations, domestic court litigation, and international legal interpretations worldwide (Norton Rose Fulbright, 2025; Opinio Juris, 2025).

To reaffirm its international legal significance and implications for states globally:

- The ICJ affirms binding state obligations under multiple international law sources: climate treaties, customary international law, human rights law, and environmental principles.
- States must take "deep, rapid and sustained" emission reductions to limit warming to 1.5°C and prevent transboundary harm.
- The advisory opinion raises adaptation to equal legal status with mitigation and links climate action to protection of fundamental human rights.
- Although advisory and non-binding, the opinion carries strong legal, political, and moral weight influencing international climate law, diplomacy, and domestic court cases worldwide.
- Vulnerable countries and developing states gain firmer legal grounds to demand climate finance, reparations, and technology support.

Given the ICJ advisory opinion's global significance and its broader implications for international law and climate action; it is worth cogitating about the following:

Landmark in Environmental Law

The ICJ advisory opinion represents a landmark moment for international environmental law, clarifying that climate obligations arise not only from specialized treaties like the Paris Agreement but also from binding customary international law, human rights law, and states' duties to prevent transboundary harm (International Institute for Sustainable Development [IISD], 2025; Carbon Brief, 2025). The Court rejected arguments limiting climate duties to treaties alone, affirming that customary principles such as due diligence, precaution, and prevention of significant harm to the climate system—treated as part of the global commons—impose erga omnes obligations on all states (IISD, 2025; American Society of International Law [ASIL], 2025). This integration creates a comprehensive legal framework requiring states to regulate emissions, phase down fossil fuels, and align national plans with 1.5°C science, fundamentally strengthening global environmental accountability (Carbon Brief, 2025; Columbia Law School Sabin Center for Climate Change Law, 2025).

Empowerment of Vulnerable Nations

The advisory opinion empowers vulnerable countries globally, particularly developing nations and Small Island Developing States (SIDS), to assert legal claims for climate finance, loss and damage reparations, and technology transfer from major emitting states (Stiftung Wissenschaft und Politik [SWP], 2025; IISD, 2025). It underscores principles of equity and common but differentiated responsibilities, recognizing that low-emitting states bear disproportionate burdens and thus merit support for adaptation and reparations when causation is established under state responsibility rules (IISD, 2025; Earth.Org, 2025). This legal clarity bolsters their position in forums like COP negotiations and potential contentious cases, facilitating demands for financial flows and technology sharing as due diligence obligations (SWP, 2025; Earth.Org, 2025).

Rights-Based Framework

The opinion reinforces a global "rights-based" framework for climate action, obliging all states to protect fundamental human rights—including life, water, food, and a healthy environment—against climate threats, thereby elevating adaptation to a legal imperative equal to mitigation (IISD, 2025; Union of Concerned Scientists [UCS], 2025).

The ICJ linked climate inaction to potential human rights violations, mandating states to implement timely adaptation measures and provide international assistance to vulnerable populations as part of their due diligence duties (IISD, 2025; Carbon Brief, 2025). This approach merges climate and human rights regimes, compelling proactive protection of rights-holders from foreseeable harms and positioning adaptation failures as internationally wrongful acts (Opinio Juris, 2025; UCS, 2025).

Normative Influence

While advisory and not strictly binding, the ICJ opinion wields considerable normative influence worldwide, shaping international negotiations, strengthening domestic court litigation globally, and influencing legal interpretations of state accountability for climate harm (IISD, 2025; Carbon Brief, 2025). Its authoritative clarification of obligations carries moral and political weight, guiding NDC formulations under the Paris Agreement and investor-state dispute reforms to prioritize climate ambition (IISD, 2025; ASIL, 2025). Globally, it equips courts and advocates with precedents for holding states liable, accelerating litigation and policy shifts toward science-based climate justice (Carbon Brief, 2025; Columbia Law School Sabin Center for Climate Change Law, 2025).

Conclusions

The ICJ advisory opinion on climate change is a watershed moment in international environmental law, affirming binding state obligations encompassing treaties, customary international law, and human rights

frameworks. For South Africa, this ruling signifies an urgent mandate to enhance climate ambition, reform legal frameworks, and implement a just and equitable transition that acknowledges its developmental realities. Far from constraining the nation, the opinion provides a jurisprudential basis to balance economic growth with climate stewardship through innovative technologies such as carbon capture and green hydrogen, protecting vulnerable communities while preserving energy security. South Africa's leadership role within Africa and globally positions it uniquely to champion climate justice demands, leveraging the Court's findings to pursue climate finance, technology transfer, and reparations with renewed legal authority. Embracing this transformative moment offers South Africa an opportunity not only to meet its international obligations but also to model sustainable development pathways that reconcile environmental responsibility with social equity and economic dignity.

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WATER ETHICS: COMMODITY OR FUNDAMENTAL RIGHT?

Ciprian UNGUREANU[1]
ORCID[ID] : 0000-0002-8120-5221
E-mail: ciprian.ungureanu@fdsa.usv.ro
Andreea BURUIANĂ[2]
ORCID[ID] : 0009-0000-1535-7270
E-mail: andreea.rusu@fdsa.usv.ro
Affiliation[1,2]*:* Stefan cel Mare University of Suceava

Abstract: *Water is the essence of life and lies at the center of a current ethical and political debate: should it be treated as a market commodity or as a fundamental right for all living beings? In recent decades, economic pressures and corporate interests have led to the commercialization of water, with private companies controlling distribution and setting prices, which can limit access for vulnerable populations. Proponents of water markets argue that market mechanisms increase efficiency and fund infrastructure development. Critics, however, contend that life should not be sold and that treating water as a commodity exacerbates inequalities.*

Internationally, water is recognized as a fundamental human right: in 2010,the United Nations General Assembly declared that access to safe drinking water and adequate sanitation is a human right. This recognition extends beyond human needs to include the protection of ecosystems and future generations. The ethical debate raises fundamental questions about equity, justice, and responsibility: is it morally acceptable to profit from a resource essential to life?

In conclusion, while market mechanisms may provide efficiency, the moral weight of water as a life-sustaining resource supports its recognition as a fundamental right. Universal access to clean water and the protection of ecosystems are imperatives for ethical governance and global sustainability.

Keywords*: water ethics; human rights; sustainability.*

Introduction

Water represents the foundation of life and of all ecosystems on Earth. Its importance goes beyond the immediate needs of human beings, being vital for the health, development, and survival of all living organisms. However, in recent decades, water has become the subject of intense debates, where two fundamental perspectives confront each other: on one hand, the idea that water can be treated as a marketable commodity, managed and distributed by private entities; on the other hand, the conception that access to water is a universal, inalienable right for all living beings. This ethical dilemma reflects the tension between economic logic and the fundamental principles of social justice and ecological sustainability.

Historically, water has traditionally been considered a common good, accessible to all members of a community. In this context, water resources were collectively managed, and communities bore the responsibility of protecting and distributing it. In the modern era, however, globalization and the expansion of corporate interests have led to the privatization of water, transforming it into a tradable good. The privatization of water resources raises multiple ethical questions: is it morally acceptable for a life-essential resource to be subject to market laws? Who has the right to decide on access to and use of water?

On the international level, the recognition of water as a fundamental right was clarified by the United Nations General Assembly in 2010, which declared access to safe drinking water and adequate sanitation a human right. This recognition emphasizes the collective responsibility to protect water not only for human needs but also for ecosystems, wildlife, and future generations. Water ethics, therefore, is not limited to the human dimension but involves an extended ecological responsibility, reflecting a holistic vision of sustainability.

Current debates on water ethics also have a significant practical component. In many regions of the world, access to safe and potable water remains unequal, and resource privatization can exacerbate these disparities. Thus, the issue is no longer purely theoretical or

philosophical but involves public policies, international regulations, and governance decisions affecting millions of people. From this perspective, the analysis of water ethics becomes essential for identifying mechanisms through which societies can ensure equitable access, environmental protection, and respect for fundamental rights.

This introduction sets the stage for an in-depth examination of the dilemma between treating water as a commercial good and recognizing it as a universal right. As climate change, population growth, and economic pressures intensify, the need to find ethical and sustainable solutions becomes increasingly urgent. The following analysis will explore these dimensions, combining philosophical, legal, and ecological perspectives to provide a comprehensive understanding of the importance of water in contemporary society.

1. Water as a commodity

Water is an essential resource for human life, economic development, and environmental sustainability. In recent decades, as global markets and private sector involvement have expanded, water has increasingly been treated as a commodity, subject to market mechanisms, pricing, and trade. This perspective emphasizes efficiency in resource allocation, assuming that consumers respond rationally to costs, thereby reducing waste and stimulating investment in infrastructure and technology (Pearce & Turner, 1990, p. 112). Viewing water as a commodity frames it not only as a vital resource but also as an economic good with value determined by supply and demand dynamics.

Economic arguments in favor of commodifying water stress efficiency and investment. Markets are seen as mechanisms to allocate resources where they are most needed, encourage conservation, and provide incentives for private investment. For instance, private management of urban water services in France has allowed significant investments in infrastructure modernization and service expansion, reducing system losses and improving water quality (Hall & Lobina, 2005, pp. 45-48). Similarly, in Chile, privatization initiatives sought to

increase efficiency, stimulate responsible consumption, and ensure that tariffs reflect the full cost of water services (Bakker, 2010, pp. 77-80). These examples illustrate how market-based approaches can theoretically improve resource allocation and financial sustainability.

However, commodifying water raises serious social and ethical concerns. Access to water is not evenly distributed; low-income and marginalized communities may be excluded or burdened with disproportionate costs. Transforming water into a commodity risks turning a fundamental human need into a privilege accessible only to those who can afford it (Budds, & McGranahan, 2003, pp. 87-89). The 2000 Cochabamba Water War in Bolivia provides a dramatic example: when tariffs rose after privatization, widespread protests erupted as local populations faced restricted access to a basic necessity (McDonald, 2002, pp. 23-27). This case demonstrates that without regulatory safeguards, treating water as a commodity can exacerbate social inequality and threaten human rights.

Ethically, the commodification of water challenges the notion that it is a basic human right. Critics argue that market forces alone cannot guarantee equitable access, particularly in regions affected by poverty, marginalization, or environmental scarcity (Gleick, 1998, pp. 487-488). Water, as a life-sustaining resource, should not be subjected solely to economic valuation. Ensuring accessibility requires state regulation, social protection measures, and public accountability to prevent the exclusion of vulnerable populations.

Hybrid models have emerged as potential solutions, combining market mechanisms with regulatory oversight and social safeguards. Progressive pricing schemes, subsidies for low-income households, and legal frameworks that guarantee minimum access levels can reconcile economic efficiency with social equity (World Bank, 2010, pp. 33-36). Such models recognize water's economic value while preserving its essential role in sustaining human life and protecting social welfare.

In conclusion, treating water as a commodity offers economic advantages, such as increased efficiency and investment incentives. Yet it carries significant ethical and social risks, particularly for marginalized communities. Effective water governance requires balancing economic

and social considerations: leveraging market mechanisms to ensure efficient use while implementing policies that guarantee equitable access and protect the fundamental rights of all citizens. In an era of growing water scarcity and increasing demand, this balanced approach is crucial to ensure both sustainability and social justice.

2. Water as a Fundamental Human Right

Water is one of the most essential resources for human survival, health, and societal development. Its fundamental role in sustaining life has led the international community to recognize access to safe and sufficient water as a basic human right. Unlike approaches that commodify water, treating it as a marketable resource, the rights-based perspective emphasizes equity, social justice, and state responsibility. Recognizing water as a human right underscores the ethical, legal, and social imperatives for ensuring that all individuals, regardless of socio-economic status, have reliable access to this vital resource (Gleick, 1998, p. 488).

The legal foundation for the human right to water is rooted in international law and human rights frameworks. The 2010 United Nations General Assembly resolution explicitly acknowledged the human right to water and sanitation, affirming that access to clean water and adequate sanitation is essential for the realization of all human rights (United Nations General Assembly, 2010, para. 1, p. 2). This resolution builds on instruments such as the International Covenant on Economic, Social and Cultural Rights (1966), which obliges states to ensure access to sufficient, safe, and affordable water for personal and domestic use (United Nations, 1966, Art. 11, p. 24). By framing water as a human right, these instruments place the responsibility on governments and public institutions to guarantee access, rather than leaving provision solely to market mechanisms.

Ethically, water as a fundamental right underscores equity and social justice. Marginalized communities, including those living in poverty, indigenous groups, and residents of informal settlements, often

face severe water scarcity. A rights-based approach requires that states adopt policies prioritizing vulnerable groups and preventing discrimination in access (Amnesty International, 2013, pp. 14-16). Moreover, framing water as a right emphasizes that it is not merely a commodity to be purchased, but a prerequisite for health, dignity, and meaningful participation in society.

The implications for governance and policy are substantial. States are expected to implement legal frameworks, regulatory mechanisms, and participatory strategies that ensure universal access. South Africa, for example, enshrines the right to sufficient water in its constitution, obliging municipalities to provide at least basic quantities to all residents, irrespective of their ability to pay (South African Constitution, 1996, p. 28). This example demonstrates how legal recognition of water as a human right can translate into concrete protections and equitable distribution while supporting sustainable management.

Scientific research reinforces the necessity of water as a human right. Access to safe water is directly linked to public health outcomes, economic productivity, and social stability. Inadequate water and sanitation lead to waterborne diseases, reduced educational opportunities, and increased poverty (WHO/UNICEF, 2022, pp. 9-12). Recognizing water as a fundamental right provides a framework for interventions, monitoring, and accountability mechanisms, ensuring that human health, development, and environmental sustainability are mutually reinforced.

International experiences illustrate the transformative potential of rights-based water policies. For instance, Brazil's constitutional recognition of water as a social good has led to programs focused on expanding access to rural and urban populations, integrating sustainability objectives and community participation (de Albuquerque, 2014, pp. 55-59). Similarly, in Kerala, India, state-led initiatives have combined legal mandates with participatory water governance to improve equitable access, highlighting how rights-based approaches can guide practical implementation while addressing social and environmental challenges (Sivaramakrishnan, 2009, pp. 321-324).

In conclusion, framing water as a fundamental human right represents a shift from market-centered approaches toward equity,

justice, and state accountability. It obliges governments to prioritize universal access, especially for marginalized communities, while establishing legal and institutional frameworks for sustainable, participatory water management. In a world facing growing water scarcity, climate change, and social inequality, recognizing water as a human right is both an ethical imperative and a practical necessity for ensuring human well-being and societal resilience.

3. Ethics and Sustainability of Water Resources

Water is not only essential for human survival but also a cornerstone for sustainable development, ecological balance, and social well-being. The ethical management of water resources demands that access and usage are governed by principles of justice, equity, and responsibility toward both current and future generations. As global water demand rises due to population growth, urbanization, and climate change, the sustainability of water resources becomes an urgent concern, intertwining scientific, social, and ethical dimensions (Pahl-Wostl, 2007, pp. 49-52).

From an ethical perspective, water management must address inequalities in access and usage. Marginalized communities, indigenous populations, and low-income households often face limited access to clean water, resulting in disproportionate health and social burdens. Ethical frameworks argue that water, as a life-sustaining resource, should not be allocated solely by market mechanisms or economic capacity, but guided by principles of equity and human rights (Bakker, 2010, pp. 101-104). The recognition of water as a fundamental human right by the United Nations in 2010 underscores this ethical imperative (United Nations General Assembly, 2010, p. 2).

Sustainability in water management involves balancing human consumption, economic activities, and environmental preservation. Overexploitation of rivers, aquifers, and lakes has led to ecosystem degradation, loss of biodiversity, and diminished resilience of water systems (Gleick, 1998, pp. 488-490). Ethical water governance requires

that water use is efficient, equitable, and ecologically responsible. Policies promoting conservation, pollution control, and adaptive management are crucial for sustaining water resources for future generations (World Bank, 2010, pp. 37-41).

Participatory approaches and integrated water resource management (IWRM) models have been proposed as effective strategies for aligning ethics with sustainability. By engaging communities, stakeholders, and policymakers in decision-making, these models foster transparency, accountability, and shared responsibility (Global Water Partnership, 2000, pp. 10-12). Case studies from the Netherlands and South Africa demonstrate that inclusive water governance not only enhances efficiency but also strengthens social equity and environmental protection (van der Zaag, & Gupta, 2008, pp. 450-452).

Scientific research also supports the ethical imperative for sustainable water management. Studies show that sustainable practices-such as water recycling, rainwater harvesting, and efficient irrigation techniques-reduce ecological impact while improving access for vulnerable populations (Trawick, 2001, pp. 344-346). Moreover, ethical and sustainable water policies contribute to public health, economic stability, and resilience against climate-related water crises, highlighting the interconnectedness of human, social, and environmental well-being.

In conclusion, the ethics and sustainability of water resources are inseparable dimensions of responsible governance. Ethical principles guide equitable access and usage, while sustainability ensures the protection of ecosystems and long-term availability. Integrating participatory governance, scientific innovation, and legal frameworks is essential for managing water resources in a manner that respects human rights, promotes social justice, and preserves environmental integrity. In the face of global water challenges, ethical and sustainable management of water resources is not only a moral obligation but a practical necessity.

Conclusions

The ethical analysis of water highlights the profound complexity of an issue that lies at the intersection of human rights, ecological

responsibility, and economic principles. Water is not merely a natural resource; it is essential for life, health, social development, and the maintenance of ecological balance. In today's world, facing climate change, population growth, and corporate pressures, the discussion on how water should be managed has become increasingly urgent. Treating water as a marketable commodity may provide short-term economic solutions, such as improved efficiency and investments in infrastructure, yet it raises fundamental ethical questions concerning equity, justice, and morality. Commercializing water can exacerbate social inequalities, limit access for vulnerable populations, and contravene the principle that life itself should not be subjected to market forces.

International recognition of water as a fundamental human right, as declared by the United Nations in 2010, underscores the collective responsibility to ensure universal access to safe drinking water and adequate sanitation. This perspective transcends immediate economic interests, highlighting the moral and ecological dimensions of water management. Access to water is not merely a human concern; ecosystems, wildlife, and future generations depend on responsible usage of this vital resource. Ethical approaches to water must, therefore, integrate social, legal, and ecological considerations, promoting equity, sustainability, and intergenerational justice.

From a practical standpoint, implementing equitable governance requires policies that guarantee universal access, environmental protection, and corporate accountability. Effective water governance must encompass regulatory frameworks for privatization, investments in public infrastructure, and educational programs that raise awareness about the ethical and ecological importance of water. Ethical responsibility in water management is not theoretical-it must translate into tangible actions that prevent abuse, conserve resources, and secure the fundamental rights of all living beings.

Moreover, the ethical imperative extends to global cooperation. Water scarcity and mismanagement are transnational issues, affecting countries and communities beyond national borders. International collaboration, agreements on water sharing, and joint stewardship

initiatives are crucial for addressing the unequal distribution of water and the pressures imposed by global economic systems. Water ethics thus requires a global perspective, combining local accountability with international responsibility, ensuring that every community has access to life-sustaining resources.

Philosophically, recognizing water as a universal right challenges the commodification model inherent in market economies. It questions the moral legitimacy of profiting from a resource that is indispensable to survival. Ethical frameworks grounded in justice, equity, and ecological stewardship assert that access to water must be decoupled from purchasing power. Furthermore, sustainable water management is inseparable from broader environmental ethics. Protecting water sources, maintaining biodiversity, and preserving ecosystem integrity are inseparable from the ethical responsibility to safeguard water as a shared heritage.

In conclusion, the dilemma between treating water as a commercial commodity and recognizing it as a fundamental right is not merely an economic issue; it has profound moral, social, and ecological implications. Responsible water management requires balancing economic efficiency with respect for human rights, environmental sustainability, and intergenerational equity. Water must be viewed not as a product to be traded, but as a shared inheritance essential for life, dignity, and ecological balance. As global resources become increasingly limited, recognizing water as a universal right is vital for establishing an equitable and sustainable society. Ethical, legal, and policy frameworks must guide global water governance, promoting cooperation, accountability, and protection of resources for the future. Defending and responsibly managing this fundamental resource is a moral, social, and ecological obligation, central to building a world where every living being has access to life, health, and dignity.

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THE MECHANIC PUBLIC SERVANT AND THE POWER OF ARTIFICIAL INTELLIGENCE

Marius VACARELU
ORCID [ID]: 0000-0002-8146-0871
E-mail: marius333vacarelu@gmail.com
Afiliation: National School of Political and Administrative Studies Bucharest

Abstract: *It is a truism today to state the idea that "the world is facing profound changes never seen before." Not at all false, the idea allows for deep thinking but also the repetition of stereotypes or banalities, which does not help anyone concerned with making plans for the future.*

In this formulation of ideas and thoughts, there are some areas that many people look at with fear, like public administration, justice, public budgets etc. On one hand, we have the fear of all civil (public) servants, who do not know how much of their activities will survive the new political-technological and socio-demographic changes, and on the other hand, we have those subject to public administration, who from the dawn of the new era seek a perfection of the idea of good governance to the highest possible level.

All these issues today are both in competition and in a certain form of ideological collaboration, and the text I propose tries to fix some of the lines of this new reality of public administration and what it will in turn determine in society, in an integrative visions.

Keywords: *Public administration; public servants; Artificial Intelligence; fundamental changes; citizens expectations.*

Introduction

Among the major problems of science, one stands out due to the expectations that ordinary people have of researchers and intellectuals – specifically, the desire to see the immediate positive applicability of the results produced by research institutes (in a broad sense, universities and

any other form of legal organization of work that involves obtaining predominantly theoretical results). This request is by no means objectionable; in fact, it is what drives progress, because any issue that remains at a theoretical, non-applicable level in a person's home or workplace is either considered unnecessary or too abstract, and thus implicitly lacking substantial value for use and funding. For this reason, we often find that many works criticize the way scientists from the later period of the Byzantine Empire discussed theoretical (mainly religious) matters, instead of seeking ways to improve the defense of the city of Constantinople, in order to make the Ottoman conquest as difficult as possible (Catalano, 2021).

We should neither be surprised by this nor criticize it so much – at least not in this century. Today's advanced science is something with varying degrees of intelligibility for the average person, who neither has the time nor the desire to understand all the mechanisms that led to the formulation of a discovery or invention. The everyday person needs a better life and will always seek the easiest ways to reach the desired level of comfort, and for what will set them apart from others, they will need a specific legal, technological, and educational framework that is as easy to understand and apply as possible, based on which they can achieve certain parameters. In all this demand that the average person places on universities and research institutes, we find the fundamental purpose of life: comfort should be easily attained, with the lowest possible costs, through the clearest and simplest procedures, all under extended and uniform legal protection throughout society.

1. The old Roman dictum „non schola, sed vita discimus“ (we are learning for life, not for school) is still applicable today: researchers should not investigate something without understanding its practical purpose (direct or at least easily foreseeable), nor should scientific language be filled with neologisms that are almost impenetrable to the average person, because ultimately, major budget proposals are voted on by parliamentarians who will more readily allocate funds to what brings them votes and is easily explainable, rather than what might someday

bring abstract improvements to only a small number of people. An abundance of references may impress a funder, but ultimately, when asked: "What can be understood from your text, formulated in 5 sentences?", if a clear and rapid answer does not come, it will only serve to drive away anyone in the long term. That things are indeed this way is evident from the fact that thousands of scientific articles appear weekly, but very few have even 10 readers – and so, there is legitimacy in asking: "What type of science are we funding?"

2. However, there are many areas of life where the problems that arise cannot be solved in just a few sentences, and these multiply due to the technological developments of recent decades, as well as under the effect of major changes taking place in demographics, climate, pension systems, budget deficits, and, in general, under the action of people's supreme desire for freedom, justice for all and social balance (Palma & Lounsbury, 2017).

Far from being a philosophical matter, human society has reached a level of organization articulated enough for us to draw certain conclusions. Over two thousand years of habitation under various state forms in most parts of the world have become sources of wisdom in the political, administrative, legal, economic, etc. spheres, and – perhaps even more – have been recorded in several works. The effect of these works cannot be neglected, as they did not remain somewhere in a space accessible only to a few initiates, but – through mandatory education systems in every country – entered the consciousness of each nation, and especially became sources of inspiration for anyone wishing to educate themselves.

Let us not lose sight of a very important effect of the newest capabilities of the technology called Artificial Intelligence (AI), namely those of translation from different foreign languages and the effects it can have in the future on those who want to know situations that offer lessons for the future (Oldshue, 2025). Specifically, now even a North American can more easily access scientific literature (historical, political, economic, etc.) from Southern Africa or Polynesia, or an East Asian can learn about the different histories of the Latin American or sub-Saharan

space, etc. Thus, in a world where access to information is easier than ever, the average person will be able to learn a lot, but – above all – will seek examples of good practices in politics, administration, justice, economy, etc., in order to compare them with what is happening in their own country.

In fact, the desire for "things to be better for us" is no longer just an ideal one; for decades, the circulation of valuable books has allowed access to the description of various good practices, implicitly offering an invitation to imitate them. Thus, we can safely say that the abundance of scientific or popular works on histories of all kinds are in fact also a way to promote good administrative and governance practices, offering real examples for any country that is capable of finding solutions – or at least a beginning of resolutions – in the vast amount of data available in libraries and online (Gesnot, 2025). Online translations today become an exceptionally useful tool for any member of parliaments or local councils wishing to serve the community at a level for which they previously would have had to invest large sums in buying books and perhaps translating them.

3. This abundance of intellectual resources, however, has consequences less desired by various politicians, because now their activity can be compared with other examples from history – or contemporary ones, and the result can be to their disadvantage. This is something that for hundreds of years the politician has not encountered, namely the possibility for any citizen, regardless of their socio-economic level, to be able to perform a fairly detailed analysis of any political party or leader in the public or private sphere. So, what is truly a unique advantage that technologies have developed in recent decades – through the huge public library called the Internet and through AI's text translation capabilities – is in fact a threat to ineffective types of governance at national or local levels. Without entering into political discussions about the factors that constitute the causes of adopting a path towards authoritarianism, let us just note that governance and those who carry it out are now easier to analyze, with scientific instruments and

comparisons accessible in different degrees of complexity to any diligent citizen.

It is evident, however, that the same dimension of documentation applies to public administration and public services in general. Practically, the situation in this sphere is even more interesting, because good practices are imposed with greater force as a reference for public officials, with an added degree of power compared to the situation in the political environment.

The cause of this increased impact is given by several characteristics that those who act in public services/administrative institutions have, and which are not necessary in the political sphere. Specifically, recruitment into public service is usually done based on educational qualifications, which is not necessary in the political environment, and hence, a necessary discussion regarding the quality of public officials, relative to that of politicians who have the right to lead institutions. Equally important is the obligation of continuous professional training that public functions usually have in their statutes, which – again – is not found in the political sphere. From these two characteristics, however, also emerge the expectations of the citizens, who will want responsible politicians and officials, capable of performance, and who this time have numerous examples to be able to analyze their activity, either based on historical examples, or on what they learn directly in various forms – press news, workplace, travel abroad, etc.

4. The increase in the training capacities of public administration – in fact, of its personnel – must be followed by application. Specifically, citizens are also part of this process of increasing documentation and training capacities – but in the private economy, which thrives on the success of selling its own production – and seek to reproduce the same typology of increasing intellectual potential in the public sphere. As citizens have this possibility of expression less often, usually through elections, it follows that they also have more time to analyze the performance of the political environment and public institutions, comparing both electoral promises and their fulfillment at the national

level, as well as other examples of good practices from other countries. In any situation, however, it is evident to everyone that learning possibilities have increased enormously, which raises citizens' expectations regarding the concept of good governance, moving more and more from a desideratum to the demand for its fulfillment.

Among the consequences of this public request, we will note one that is less visible to the ordinary person, but quite clear to those who try to understand legislative and administrative phenomena. Specifically, we are increasingly facing a standardization of human life, where people consume increasingly standardized products worldwide, and from this, a tendency towards standardization of both public life (mainly political) and, more importantly, the activity of public administration, which is a rather rigid instrument in itself for applying the normative framework (Patterson, 2025). It is evident to anyone that banking procedures are approximately the same everywhere; that countless electronic and mechanical products generally have the same operating logic for most of their action; that the typologies of education systems are quite similar at a universal level (Wilhelmsen 2025).

5. Public administration cannot be excluded from this global unifying trend, although national particularities or those specific to a certain administrative domain manifest themselves decisively (Christensen and Lægreid, 2025). Even if national particularities cannot be eliminated, within each country, public administration is seen and understood as a stable sector of society, which must be routine in terms of fulfilling public service. However, this implies that public officials should be as well-prepared as possible regarding what is new, and – at the same time – that procedures should be as consistent as possible within public administration, so that extended similarities can even be reached between the procedures used by different public institutions, which also leads to a unification of the vision of public officials. In fact, if the general efforts regarding good governance also move towards a certain automation – or even mechanization of what this concept contains

(Werner, 2025), it means that in a certain dimension we reach an automation of the public function.

The tendency towards standardization of administrative practices – implicitly of public officials' activities – is primarily driven by the speed factor. Today's communication paradigm is one of high-speed data transmission, which means that both the economic environment and citizens receive quick responses to their requests (positive or not). However, this rapidity is achieved by clarifying various provisions of normative acts, as well as by standardizing administrative forms, so that the public official can quickly verify received requests, and the requirements to be resolved are described as simply and clearly as possible, in the language prescribed by the legislator. In this regard, the use and support that Artificial Intelligence will offer is invaluable, and will certainly accelerate many of the already existing administrative procedures.

Another argument that strengthens the idea of administrative standardization can be explained more culturally, through the phenomenon of imitation (Laking & Norman, 2007). Thus, institutions in small localities have – with the help of the Internet – the opportunity to see and even copy the administrative acts (usually normative in nature) of specialized institutions in large localities, because there is a higher degree of professionalization there (based on a wider selection of personnel). Hence, a cultural influence, but one that has the direct effect of reducing the intellectual autonomy of public officials in small institutions. Thus, procedures that have proven useful in large localities/institutions will be adopted, and this ideational unification also contributes to increasing the degree of coherence of each individual state.

As studies in recent years affirm, one of the consequences of implementing artificial intelligence is the elimination of a portion of employees (Melendez, 2025). Evidently, public administration will not be an exception to this process, even if the speed of implementation will not always be the same, due to different national political practices and partisan political interests. But in any situation, the increasing degree of standardization of public administration, public servants, and generally the components that ensure the public-facing activities of public

institutions (procedures, especially) is evident. Thus, we will increasingly find ourselves in the presence of virtual public servants – therefore, mechanized – and why not, structural components of public administration that are equally virtualized (public relations departments, petition reception departments, etc.). Practically, with the help of AI, there will be a reduction in the number of public servants, which would relieve a part of public budgets from not insignificant costs.

At its core, this is the great challenge of the relationship between artificial intelligence and public administration, filtered through good governance: citizens may want more neutrality from public officials, even if they have less imagination in solving certain problems, rather than encountering their whims, whether due to a lack of professional training or other causes, such as corruption or certain political calculations.

For these reasons, it should come as no surprise that automation trends will provide an impetus for the difficult goal of reducing budgetary expenditures, which are increasingly high in every country. Practically, only with the help of AI will it be possible to achieve a higher level of neutrality even in countries with a rather unfavorable reputation regarding the integrity of public functions, which would bring greater satisfaction to citizens, making the neutrality of public administration increasingly easier to attain.

Conclusions

For several reasons, it seems that Artificial Intelligence will pose a threat to some of the old political-administrative practices, but not in the sense that these will no longer be possible, but rather through a change in perspective that it brings with it, namely the increase in the neutrality of the public function and public administration in general.

It is, however, to be observed that citizens desire a public administration as neutral as possible, in which the face/figure of officials is completely irrelevant, but which provides various public services

carefully, regularly, without taking into account the legal-political status of the various applicants for public service benefits.

The public function will thus transform into a place where most of the attractiveness will be represented by job stability, and perhaps the desire to "serve the community". In any situation, however, states will be constrained by budgetary calculations to promote digitalization and everything it develops, restricting the effective presence of people in administration, transforming officials into something increasingly neutral and more "mechanized" in their daily activity.

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THE IMPACT OF ARTIFICIAL INTELLIGENCE ON FUNDAMENTAL HUMAN RIGHTS

Andreea CORSEI
ORCID[ID] : 0000-0001-5688-3701
E-mail: office.corsei@yahoo.co.uk
Affiliation: "Petre Andrei" University in Iasi
Vice-Dean of the "College of Legal Advisers Suceava" Association
General secretary of the "Order of Legal Advisers from Romania" Federation
Associate Researcher - Romanian Academy - Family Sociology Laboratory

Abstract: *The accelerated development of artificial intelligence (AI) poses significant challenges to the protection of fundamental human rights, enshrined in key documents such as the Charter of Fundamental Rights of the European Union, the European Convention on Human Rights and the Universal Declaration of Human Rights. While AI technologies can improve administrative efficiency and access to justice, their uncontrolled or non-transparent use can pose major risks to rights such as privacy, equality, freedom of expression or the right to a fair trial.*

Moreover, facial recognition and intelligent surveillance systems can lead to an erosion of privacy and excessive monitoring of citizens, with the potential for abuse by authorities. At the same time, the use of AI in justice or in the automated selection of beneficiaries of public services can affect the right to a fair trial and equal access to resources, in the absence of clear human control and an effective challenge mechanism.

From a legal perspective, a clear and predictable regulation of AI is necessary, which respects the principles of the rule of law, includes democratic control mechanisms and ensures the accountability of the actors involved (developers, authorities, users). In this regard, the AI Act proposed by the European Commission in 2021 represents an important step, attempting to introduce a risk-based approach and prohibit systems that clearly violate fundamental rights.

In conclusion, for technological development to remain compatible with democratic values, it is essential that AI is developed, implemented and overseen within a solid legal framework, centered on the respect and promotion of human rights.

Keywords: *artificial intelligence; technological development; risk; fundamental rights.*

Introduction

In recent decades, artificial intelligence (AI) has become a major transformative factor in contemporary society, profoundly influencing areas as diverse as the economy, health, justice, education and security. This technological evolution promises significant benefits, but at the same time generates unprecedented challenges in relation to fundamental human rights. AI advances cannot be separated from the legal and social context in which they operate; therefore, the analysis of its impact must be carried out not only from a technological but also from a normative perspective, focusing on the compatibility of innovation with the fundamental values of democracy and the rule of law.

International and European legal instruments – such as the Universal Declaration of Human Rights (1948), the European Convention on Human Rights (1950) and the Charter of Fundamental Rights of the European Union (2000) – enshrine a set of inalienable rights, such as the right to privacy, non-discrimination, freedom of expression, protection of personal data and access to justice. The use of machine learning algorithms, facial recognition or automated decisions in administration, justice and the private sector generates direct and indirect risks to these rights. The lack of algorithmic transparency ("black box algorithms"), the existence of algorithmic bias, as well as the difficulty of attributing legal responsibility for AI decisions create a regulatory vacuum that needs to be urgently addressed.

In parallel, the European Union has initiated a series of legislative initiatives – in particular the General Data Protection Regulation (GDPR) and the proposed AI Act (2021) – to create a legal framework that ensures the use of AI in an ethical, fair and human rights-compliant manner. These initiatives highlight the need for a risk-based approach and robust democratic control over the development and implementation of intelligent technologies.

This paper aims to analyze, from a legal and interdisciplinary perspective, how AI affects the exercise and protection of fundamental rights. The main objective is to highlight the tensions between technological progress and the demands of human rights protection, as well as to assess the effectiveness of current regulatory mechanisms in managing these challenges. Through this analysis, the aim is to substantiate appropriate legal solutions, capable of balancing technological innovation with the imperative of respecting human dignity.

1. Right to privacy and protection of personal data

The right to privacy is a fundamental pillar of any democratic society and is enshrined in multiple international and European legal instruments. In the context of the accelerated development of artificial intelligence (AI), this right takes on new dimensions, as intelligent technologies operate by collecting, analyzing and correlating massive volumes of data, often sensitive, from various sources.

1.1. The legal basis of the right to privacy

At the international level, Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights guarantee the right to a person's private life, family, home and correspondence. In the European space, Article 8 of the European Convention on Human Rights (ECHR) enshrines the same right and imposes on states the positive obligation to ensure the protection of privacy not only in relations with public authorities, but also in the context of interference by private actors[1].

Within the European Union, Articles 7 and 8 of the EU Charter of Fundamental Rights provide a dual protection: privacy (Art. 7) and the

[1] European Convention on Human Rights, Art. 8 – "Everyone has the right to respect for his private and family life, his home and his correspondence."

protection of personal data (Art. 8), supported by the General Data Protection Regulation (GDPR), which entered into force in May 2018[1].

1.2. The challenges posed by artificial intelligence

Artificial intelligence involves the automated processing of data, sometimes in an opaque manner and impossible to understand even for developers ("black box algorithms"). For example, facial recognition systems used in public spaces or for security purposes can identify, track and analyse the behaviour of individuals without their consent, thus violating the principles of legality, transparency and proportionality set out in the GDPR[2].

In addition, AI allows for behavioural profiling for commercial or administrative purposes, which can lead to indirect discrimination or algorithmic exclusion. According to Article 22 of the GDPR, individuals have the right not to be subject to a decision based solely on automated processing, including profiling, if it produces significant legal effects concerning them[3]. However, many AI applications ignore this right, and affected individuals do not always have effective remedies.

1.3. Legal obligations on data protection in the AI era

GDPR introduces a set of obligations that directly target the functioning of AI:

- Data protection impact assessment (DPIA – art. 35), mandatory for systems involving large-scale profiling or systematic monitoring of individuals.

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[1] Charter of Fundamental Rights of the European Union, Art. 8 – "Everyone has the right to the protection of personal data concerning him."

[2] European Union Agency for Fundamental Rights (FRA), Facial recognition technology: fundamental rights considerations in the context of law enforcement, 2019.

[3] Regulation (EU) 2016/679 (GDPR), Art. 22 – "Right not to be subject to automated individual decision-making."

- Data minimization, i.e. processing only the data strictly necessary for the intended purpose (art. 5 para. 1 lit. c).
- Responsibility of the controller (art. 24), who must demonstrate compliance with the regulation through appropriate technical and organizational measures.

There is also an increasingly clear need for additional regulations, adapted to new forms of processing. In this regard, the proposal for the Regulation on Artificial Intelligence (AI Act) of the European Commission (2021) introduces prohibitions on certain AI-based surveillance practices and imposes transparency and algorithmic audit requirements[1].

The use of AI in the processing of personal data raises complex and urgent privacy issues. The right to privacy should not be seen as an obstacle to technological progress, but as an essential framework for the development of ethical, safe and democratic AI. In the absence of effective safeguards, AI can become a tool for intrusive surveillance and social exclusion. It is therefore essential that European states and institutions develop effective mechanisms of monitoring, transparency and democratic control that protect the individual in the face of autonomous technologies.

2. Non-discrimination and algorithmic bias: legal risks in the age of artificial intelligence

The principle of equality and non-discrimination is a fundamental value enshrined in all international human rights instruments. However, in the context of the use of artificial intelligence (AI) in automated decision-making, this principle is under pressure from the increasing phenomenon of algorithmic bias (prejudices embedded in automated

[1] European Commission, Proposal for a Regulation laying down harmonised rules on artificial intelligence (Artificial Intelligence Act), COM(2021) 206 final.

models). AI systems trained on historical data often reflect existing social inequalities and can reproduce or even amplify them.

This analysis aims to highlight the legal implications of algorithmic bias, the risks for the right to non-discrimination and the normative solutions proposed at European level to prevent these technological abuses.

2.1. The right to non-discrimination in the European legal order

At international level, the right to equality and protection against discrimination is enshrined in Article 26 of the International Covenant on Civil and Political Rights, as well as in Article 14 of the European Convention on Human Rights (ECHR), which prohibits any form of discrimination in the exercise of the rights set out in the Convention[1].

In the European Union, Article 21 of the Charter of Fundamental Rights prohibits "any form of discrimination such as that based on sex, race, colour, ethnic or social origin, genetic features, language, religion, political or other opinion, membership of a national minority, property, birth, disability, age or sexual orientation"[2]. In addition, Directive 2000/43/EC and Directive 2000/78/EC regulate in detail equal treatment in employment and services.

2.2. Algorithmic bias: causes and consequences

Algorithmic bias refers to the tendency of an AI system to produce distorted or unfair results for certain social groups, usually minorities. This phenomenon usually arises from:

- Biased historical data (e.g. databases with past discriminatory decisions);
- Underrepresentation of certain groups in training datasets;

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[1] ECHR, art. 14 – "The exercise of rights and freedoms [...] must be secured without any discrimination."

[2] Charter of Fundamental Rights of the European Union, art. 21.

- Opaque mathematical models, which optimize efficiency at the expense of fairness.

A telling example is the COMPAS system used in the US to assess the risk of recidivism, which showed a higher probability of incorrect classification as “high risk” for black defendants compared to white ones (Angwin et al., 2016, https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing).

The legal consequences are major: individuals can be excluded from recruitment processes, receive lower credit scores or be subjected to disproportionate supervision, without objective and reasonable justification. This contradicts the principle of equal and fair treatment, guaranteed in the case law of the European Court of Human Rights (ECHR, D.H. and Others v. Czech Republic, 2007, indirect discrimination through automated educational policies).

2.3. Legal liability and access to justice

One of the most difficult legal aspects of algorithmic bias is identifying liability. If a discriminatory decision is generated by an autonomous system, who is liable: the programmer, the institution using it or the technology provider?

Currently, neither the ECHR nor EU law provides a comprehensive framework on discriminatory automated decisions. However, the GDPR offers some support, in particular through:

- Art. 22: Right not to be subject to significant automated decisions;
- Art. 5 and 24: Principle of accountability and fair processing;
- Art. 35: Obligation to assess the impact on data protection.

These provisions need, however, to be complemented by explicit measures against algorithmic discrimination in the future AI Act, currently being adopted at EU level.

2.4. Legal and ethical solutions to combat bias

To prevent and correct algorithmic bias, the legal and technical literature recommends several tools:

- Independent algorithmic audits: regular testing and evaluation of AI systems to identify discriminatory effects:

- Explainability of decisions: development of mechanisms for interpreting AI decisions, essential for the right to defense;
- Inclusion of diversity in development teams and in data selection;
- Accessible complaint mechanisms and remedies for affected individuals.

The European Commission proposed in 2021 through the AI Act the introduction of a risk-level classification, in which "high-risk" systems (such as those used for employment, credit or education) would be subject to strict transparency and monitoring requirements[1].

Algorithmic bias represents one of the most subtle but dangerous forms of violation of the right to non-discrimination in the digital age. If not detected and regulated effectively, it can lead to the systematic and invisible exclusion of vulnerable groups, undermining public trust in AI and democratic values. It is therefore essential that the European legal architecture firmly integrates principles of fairness, accountability and access to justice, to ensure that artificial intelligence works for people, not against them.

3. The need for democratic and transparent regulation of artificial intelligence

Artificial intelligence (AI) is profoundly transforming modern societies, with applications in justice, health, security, education and the economy. However, the rapid development and ever-increasing use of AI technologies raise fundamental questions of democratic legitimacy, transparency and social control. For AI to be compatible with the rule of law and democratic values, a clear, predictable and participatory legal framework is necessary. Without it, there is a risk that automated

[1] European Commission, Proposal for a Regulation laying down harmonised rules on artificial intelligence (Artificial Intelligence Act), COM(2021) 206 final.

decisions will be inaccessible, arbitrary or infringe fundamental human rights.

3.1. The legal basis for democratic regulation

In the European legal order, the principle of the rule of law requires that any interference with fundamental rights and freedoms must be provided for by law, pursue a legitimate aim and be proportionate (ECtHR, Malone v. United Kingdom, 1984), para. 67 – the need for a "sufficiently foreseeable law" to allow the individual to regulate his or her conduct). Article 10 of the Treaty on European Union (TEU) also enshrines the principle of representative democracy, requiring citizens to participate in the decision-making process.

In the context of AI, these principles imply:

- Transparent and auditable regulation of algorithmic technologies;
- Subjecting AI systems to a form of democratic and jurisdictional accountability;
- Including the public in the debate on the rules governing the use of AI.

In the absence of a solid legal basis and democratic control, autonomous systems can be used for mass surveillance, behavioral manipulation or discriminatory decision-making – all incompatible with European standards on human rights and good governance[1].

3.2. Current regulatory gaps

Currently, AI regulation is fragmented and reactive. There are sectoral rules, such as the GDPR for data protection or national cybersecurity regulations, but there is still no general and coherent framework for AI.

Moreover, many algorithmic systems operate in a "black box" mode, meaning that the internal logic of their decisions cannot be

[1] European Parliament, Artificial Intelligence and Civil Liberties, Study PE 656.297, 2020.

understood even by the developers. This runs counter to the principle of decision-making transparency guaranteed by the case law of the Court of Justice of the European Union (CJEU, Case C-619/18, Commission v. Poland, 2019 – reaffirmation of the principle of transparency and independence of the judiciary).

At the same time, existing regulations do not provide a clear mechanism for challenging automated decisions, leaving individuals without an effective remedy – contrary to Articles 6 and 13 of the ECHR, which provide for the right to a fair trial and an effective remedy.

3.3. AI Act – a step towards transparent and democratic regulation

To address these challenges, the European Commission proposed in 2021 a Regulation on the use of Artificial Intelligence (AI Act), which aims to establish harmonised rules for the development, commercialisation and use of AI in the European Union[1].

Key points of the proposal include:

- Classification of AI systems by risk levels (unacceptable, high, limited and minimal);
- Prohibition of cognitive manipulation or social surveillance practices;
- Strict transparency, documentation and audit requirements for "high-risk" systems;
- Democratic oversight through a European AI Council and through the participation of civil society in assessment processes.

This approach is based on the concept of "democratic governance of technology", which implies transparency, participation, accountability and procedural rights for all affected actors.

[1] European Commission, Proposal for a Regulation establishing harmonised rules on artificial intelligence (AI Act), COM(2021) 206 final.

3.4. Justification for democratic regulation

There are several legal and social reasons why AI should be subject to democratic and transparent regulation:

- Preventing the concentration of technological power in the hands of private or state actors without electoral legitimacy;
- Protecting fundamental rights, such as the right to privacy, freedom of expression and the right to equality;
- Avoiding systemic errors and diffuse responsibility in the event of erroneous automated decisions;
- Strengthening public trust in technology and the institutions that use it.

Without these guarantees, AI risks becoming an instrument of opacity and arbitrariness, contrary to the values on which European democracies are founded.

Artificial intelligence is not only a technological challenge, but above all a normative and democratic one. For its use to be legitimate, it must be regulated by clear, accessible and transparent rules, developed with the participation of society and subject to public and judicial control. The AI Act proposal is a promising start, but it is necessary for Member States, non-governmental organisations, courts and citizens to constantly monitor how these technologies are integrated into social life. After all, technology must serve people, not the other way around.

Conclusions

Artificial intelligence fundamentally redefines the way in which decisions with an impact on citizens' rights and freedoms are conceived, adopted and implemented. Beyond technological innovation, AI poses essential structural challenges for the democratic legal order, in particular with regard to transparency, accountability and public scrutiny of algorithmic processes.

In this context, the regulation of AI should not be seen simply as a technical-legal measure, but as a democratic imperative. Subjecting automated systems to a clear, accessible and predictable regulatory framework is a necessary condition for respecting the rule of law and

preventing technological arbitrariness. Only through democratic and transparent regulation can modern societies guarantee that the use of AI is carried out in accordance with the principles of equality, fairness and procedural justice.

From a legal perspective, the obligation of states to regulate AI derives not only from international human rights commitments (such as the European Convention on Human Rights or the EU Charter), but also from domestic constitutional requirements regarding administrative legality, data protection and access to justice. Equally, the democratization of AI also involves the creation of participatory control mechanisms, public audit, as well as the real possibility for citizens to understand, challenge and correct algorithmic decisions that affect them.

In conclusion, the regulation of artificial intelligence is not just a matter of administrative efficiency, but a true test of the legal and democratic maturity of a digital society. Only through a robust legal framework, built on democratic foundations, can AI become an instrument of social emancipation and not of exclusion or algorithmic domination.

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THE EFFECTS OF THE DECISIONS OF THE CONSTITUTIONAL COURT RULING ON THE EXCEPTION OF UNCONSTITUTIONALITY

Florina MITROFAN
ORCID ID: 0009-0007-0701-3129
E-mail: florina.mitrofan@upb.ro
Affiliation: National University of Science and Technology POLITEHNICA Bucharest, Pitesti University Centre

Abstract: *Starting from the role of the Constitutional Court as guarantor of the supremacy of the Constitution, this study analyzes the effects of decisions issued by the Constitutional Court in the exercise of subsequent constitutionality control, identifying both general and specific procedural aspects retained in its vast jurisprudence on the matter.*

Keywords: *constitutionality review; decisions; general effects; procedural effects.*

Introduction

The provisions of art. 147 para. (1) and (4) of the Constitution constitute the base of the matter regarding the general effects produced by the decisions of the Constitutional Court in resolving the exception of unconstitutionality, these regulating, on the one hand, specific aspects, and on the other hand, regulations of principle, based on which the constitutional court, through its decisions, has developed and enriched through jurisprudence the values of the principle of the supremacy of the Constitution, while ensuring a high degree of protection of fundamental rights and freedoms.

”The role of the Constitutional Court is that of a defender of respect for the Constitution, and its strength derives precisely from the fact that

its very provisions consecrate its role and place distinct from that of the other state authorities. [...] Consequently, the control of constitutionality represents even a way of ‹‹tempering›› parliamentary and governmental legislative initiatives that would contravene the Constitution. Combined with the prerogative to judge the exceptions of unconstitutionality raised by litigants, in defense of their rights and freedoms, the picture of the importance of this body is complete; they reveal and justify in contemporary constitutional law the major value of the principle of the supremacy of the Constitution and its application in fact" (Constantinescu, Muraru, Deleanu, Vasilescu, Iorgovan, & Vida, 1992, p. 305).

The exception of unconstitutionality is an efficient and defensive procedure, in which you wait for the law to be applied to you to appeal on. By itself, the exception of unconstitutionality concerns a process or a litigation of a civil, administrative, criminal, or commercial nature, initiated in which, by challenging the act of concrete application of the law, the interested party requests that the legal provision on which the application act is based be found to be unconstitutional and, as such, must be removed. Naturally, the procedure for invoking and resolving the exception of unconstitutionality is regulated in detail by law, being at the disposal of the litigants (Muraru, & Tănăsescu, 2009, p. 268).

In another opinion, the exception of unconstitutionality represents an incident arising in the course of a trial before a court, consisting in the determination of the constitutional legitimacy of a legal provision in a law or ordinance on which the trial of the case depends on (Deaconu, 2025, page 292).

In the Romanian system of concrete control of the constitutionality of laws, the triggering of the control *a posteriori* operates only incidentally, through the exception of unconstitutionality raised before the courts or commercial arbitration, and not through direct notification to the Constitutional Court by any person.

It is significant to mention that, through the solutions issued, the Constitutional Court does not resolve the case on the merits, the latter attribute being left to the courts.

General and Procedural Effects of the Decisions of the Constitutional Court

Similar to the effects produced by a court decision, the effects of Constitutional Court decisions, in exercising constitutionality control through the exception of unconstitutionality, present similarities but also elements that differentiate them both in terms of substantial and procedural effects.

Obligation. According to the provisions of Article 147 paragraph (4) of the Constitution: "The decisions of the Constitutional Court are published in the Official Gazette of Romania. From the date of publication, the decisions are generally compulsory and have power only for the future."

To clearly establish the legal force of the decisions of the Constitutional Court and to eliminate intolerable practices of some courts in the future, the new constitutional text establishes that they "are generally compulsory." (Constantinescu, Iorgovan, Muraru, & Tănăsescu, 2004, p. 325; Muraru, & Tănăsescu, 2009, p. 274; Muraru, &Tănăsescu, 2008, p. 1420).

In accordance with these constitutional aspects, the provisions of Law No. 47/1992 regulate in art. 11 paragraph (3): “The decisions, rulings and notices of the Constitutional Court shall be published in the Official Gazette of Romania, Part I. The decisions and rulings of the Constitutional Court are generally compulsory and have power only for the future.”

Underlining the nature of the decisions rendered in resolving the exceptions of unconstitutionality, the provisions of the Art. 31 of Law no. 47/1992 states in paragraph (1): "The decision by which the unconstitutionality of a law or ordinance or of a provision of a law or ordinance in force is found to be final and compulsory", and in paragraph (3) the constitutional norm contained in Art. 147 Paragraph (1) is taken over.

Therefore, the decisions of the Constitutional Court are not subject to appeal, not being the subject to any form of control.

The presented points converge towards the conclusion that the decisions pronounced by the Constitutional Court in exercising its control *a posteori*, produce effects generally binding without being limited only to the parties to the dispute in which the exception of unconstitutionality was invoked. In other words, the admission decision is binding and applies to all legal subjects covered by the text declared unconstitutional.

In the aforementioned sense, it is necessary to highlight the fact that, by admitting an exception of unconstitutionality, the legislator cannot adopt a solution contrary to that adopted by the decision finding unconstitutionality, nor can it maintain in the active fund of the legislation the provision found to be contrary to certain provisions of the fundamental law.

The effects of decisions issued as a result of the constitutional review of laws or Government ordinances are established by Art. 147 Para. (1) of the Constitution, which provides that "The provisions of the laws and ordinances in force, as well as those of the regulations, found to be unconstitutional, cease to have legal effects 45 days after the publication of the decision of the Constitutional Court, if, within this period, the Parliament or the Government, as the case may be, do not reconcile the unconstitutional provisions with those of the Constitution. During this period, the ones found to be unconstitutional are suspended by law".

From the above-mentioned provisions it follows that although they are no longer in force, during the period of the suspension of law, they no longer produce legal effects, the Parliament or the Government, as the case may be, having the obligation to bring the provisions declared unconstitutional into line with the provisions of the Constitution, either by repealing or amending them in the sense indicated above.

Opposability. Concerning this effect, the Constitutional Court has issued numerous decisions rejecting as inadmissible exceptions of unconstitutionality, in situations where it had previously ruled in the sense of admitting the exception and the decision had not yet been published in the Official Gazette, which implies that the decision is enforceable, from the moment of its pronouncement and not from the moment of its publication in the Official Gazette, both against the

constitutional court and against any other authority with powers in the field of legislation.

In this sense, the provisions of Art. 23 Paragraph (3) second sentence of Law no. 47/1992 provides that: "The provisions found to be unconstitutional by a previous decision of the Constitutional Court cannot be the subject of the exception [...]". The inadmissibility of the exception, being a defining element of the competence of the constitutional court, is exclusively after the previous pronouncement by the Constitutional Court of a decision admitting the exception with the same object and the finding of the unconstitutionality of the provisions referred, again, to the constitutionality review.

The authority of res judicata. By Decision no. 479 of 20 October 2025[1] the Court held that the binding force accompanying the Court's jurisdictional acts – and therefore also the decisions – attaches not only to the operative part, but also to the considerations on which it is based (see, in this regard, Decision no. 414 of 14 April 2010, published in the Official Gazette of Romania, Part I, no. 291 of 4 May 2010, Decision no. 903 of 6 July 2010, published in the Official Gazette of Romania, Part I, no. 584 of 17 August 2010, and Decision no. 1,039 of 5 December 2012, published in the Official Gazette of Romania, Part I, no. 61 of 29 January 2013). The Court also held that no other public authority may challenge the considerations of principle resulting from the jurisprudence of the Constitutional Court, which is obliged to apply them accordingly, compliance with the Court's decisions is an essential component of the rule of law.

By Decision no. 895 of December 17, 2015[2] the Constitutional Court established that: "the legislator, violating the authority of res judicata and the *erga omnes* effects of the decision to establish unconstitutionality, acted in a manner contrary to the constitutionally

[1] Published in the Official Gazette of Romania, Part I, no. 1036 of November 10, 2025
[2] Published in the Official Gazette of Romania, Part I, no. 84 of February 4, 2016

loyal conduct that it must demonstrate towards the constitutional court and its case law. Since compliance with the case law of the Constitutional Court constitutes one of the values that characterize the rule of law, the Court finds that the constitutional obligations resulting from its case law circumscribe the framework of future legislative activity; [...], by adopting a legislative solution similar to the one found, in the precedent, to be contrary to the provisions of the Constitution, the legislator acted *ultra vires*, violating its constitutional obligation resulting from Art. 147 Para. (4).

Analyzing the effects in connection with the activity period of the provisions declared unconstitutional and the moment at which the exception was resolved. The legal effects that the norm produces must be analyzed both for the period of activity of the legal norm, and for the period following it if the legal effects produced have not yet expired. Such a finding is supported by the fact that a legal norm that had a limited application in time can only be applied about legal relationships born and extinguished during its period of activity or to those that were born during this period, but which have not yet expired for various reasons; only in the latter case does the idea of continuity concerning the production of the aforementioned legal effects concern the effects produced during the period of activity of the norm that are still reflected on the personal situation of the author of the exception, proof of the fact that the respective legal relationship has not expired.

The Court, by Decision no. 766 of 15 June 2011[1], regarding the unconstitutionality of provisions that are no longer in force, established that "they do not produce retroactive effects, but exclusively for the future. The unconstitutional provisions will no longer apply in cases in which the exception of unconstitutionality was invoked, nor in the cases pending before the courts in which the respective provisions are applicable. As such, the effects of the admission decision are limited exclusively to the application in time of the sanctioned provision, which

[1] Published in the Official Gazette of Romania, Part I, no. 549 of August 3, 2011

is denied by the ultraactivity based on the principle of «*tempus regit actum*», and not on the existence of the norm in positive law, which, following the abrogation or reaching the deadline occurring before the moment when the constitutionality review is carried out, has passed into a passive state. In other words, the decision of the Court by which the exception of unconstitutionality is admitted is generally binding and has power only for the future in all legal situations in which the norm that is no longer in force continues to produce its unconstitutional legal effects, by virtue of the principle «*tempus regit actum*»".

Therefore, the decision will apply in all cases in which the exception was raised, regardless of whether it was finally resolved or not, as well as in cases finally resolved in which the same exception was invoked but in which it was rejected as inadmissible in relation to the provisions of art. 29, paragraph (3) of Law no. 47/1992.

By Decision no. 1422 of 20 October 2011[1], the Court held that the repeal of the measure of suspension of rights is accompanied by the regulation of new causes of review in civil and criminal matters, respectively, such as to ensure the parties the specific guarantees of the right to a fair trial. Thus, if the exception of unconstitutionality is admitted and the law, ordinance or provision of a law or ordinance or other provisions of the contested act, which, necessarily and obviously, cannot be dissociated from the provisions mentioned in the notification, have been declared unconstitutional, and, until the publication in the Official Gazette of Romania, Part I, of the decision of the Constitutional Court, the decision by which the case in which the exception was invoked was resolved has become final, the persons provided for by law may request the review of this decision. [...] Different from what was shown in the aforementioned decision, the Court notes that, indeed, in practice, situations difficult to resolve may arise as a result of the elimination of the legal stay of the case during the resolution of the exception of unconstitutionality. However, this does not amount *ab initio*

[1] Published in the Official Gazette of Romania, Part I, no. 880 of December 13, 2011

with the unconstitutionality of the criticized legislative solution, so that the courts, through their practice, as well as the legislator, as the case may be, must find solutions that accompany the relationship between the courts and the constitutional court and that do not affect in any way the authority of the decisions of the Constitutional Court or the interests of the parties to the process when the Court is notified of an exception of unconstitutionality.

Currently, new cases of review of court decisions are regulated, as follows:

- in civil matters, Art. 509 Para. (1) point 11 of the Code of Civil Procedure, according to which: “Revision of a decision pronounced on the merits or which evokes the merits may be requested if: [...] 11. After the decision became final, the Constitutional Court ruled on the exception invoked in that case, declaring the provision that was the subject of that unconstitutional exception”;

- in criminal matters, Art. 453 Para. (1) letter f) of the Code of Criminal Procedure according to which: "the review of final court decisions, about the criminal aspect, may be requested when: [...] f) the decision was based on a legal provision which, after the decision became final, was declared unconstitutional as a result of the admission of an exception of unconstitutionality raised in that case, in the situation where the consequences of the violation of the constitutional provision continue to occur and can only be remedied by reviewing the decision rendered".

The decision finding the unconstitutionality of a law constitutes the basis for the retrial of the case in favor of the party that invoked the exception of unconstitutionality in a civil trial, and in a criminal trial, for the retrial of the case in all trials in which the conviction was pronounced based on the legal provision declared unconstitutional (Duculescu, Călinoiu, & Duculescu, 1997, p. 433).

Regarding the effects of decisions rejecting the exception of unconstitutionality, there are no regulations in this regard, so that, by referring to the case in which the exception was invoked, it can be stated that the effects occur only with respect to the case in which it was invoked.

According to the provisions of art. 518 and art. 521 paragraph (4)

of the Code of Civil Procedure, as well as the provisions of art. 4741and art. 4771 of the Code of Criminal Procedure, the decision resolving the appeal in the interest of the law and the prior decision to resolve legal issues ceases to be applicable on the date of the unconstitutionality of the legal provision that was the subject of the interpretation.

Conclusions

The unconstitutional finding decisions are part of the normative legal order, as a result of which the provisions declared unconstitutional cease to apply for the future.

The effects of the decisions of the Constitutional Court represent a fundamental guarantee of constitutional rights that ensure legal certainty and citizens' trust in the legal system, a prerequisite for respecting the separation of powers in the state, thus contributing to the consolidation of the rule of law.

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EXPRESS VOLUNTARY ACCEPTANCE OF INHERITANCE THROUGH A DOCUMENT UNDER PRIVATE SIGNATURE: A THEORETICAL AND CASE-LAW ANALYSIS

Viorica POPESCU
ORCID[ID]: 0000-0003-4120-5419
E- mail: viorica.popescu@upb.ro
Affiliation: National University of Science and Technology POLITEHNICA Bucharest

Abstract: *In Romanian inheritance law, the acceptance of an inheritance constitutes an essential act with multiple legal implications, such as the consolidation of the heir's title, the transfer of the estate, which is finalised through the acceptance of the inheritance, and the liability of the heirs for the debts and encumbrances of the estate only with the assets forming part of the estate (intra vires hereditatis), in proportion to each one's share.*

The Civil Code regulates two main forms of acceptance of an inheritance: express and tacit, express acceptance itself being possible either by authentic instrument or by a document under private signature.

However, the choice of this latter form raises a series of questions regarding its efficiency, legal certainty and, not least, its practical consequences.

The present study aims to analyse this form of acceptance of a succession not only from a theoretical, but also from a practical perspective, identifying its advantages and disadvantages and highlighting the impact of this option on heirs and third parties.

Keywords: *inheritance, acceptance, document under private siganture, opposability, case law, Civil Code.*

Introduction

Acceptance of an inheritance can be a bittersweet experience for someone who is grieving the loss of a loved one—referring, on the one hand, to the emotional suffering endured by the potential heir, and on the other hand, to the fact that, once the legal conditions for inheritance are fulfilled and the succession procedure is completed, the heir will acquire the assets that make up the estate.

The death of a person generates a series of patrimonial consequences that must be regulated and resolved, since every human being, at the moment of death, possesses—whether to a greater or lesser extent—a number of assets, rights and obligations whose ownership must be transferred. The transfer of the estate is necessary in order to ensure legal certainty, the conservation and preservation of these assets, rights and obligations and the value they embody, as well as the continuation of the activities and legal relationships arising from them, which contribute to the wealth and functioning of society.

For the exercise of the right of succession option, Romanian law grants successors a period of one year, according to Article 1103 paragraph (1) of the Civil Code, during which they may analyse the situation and, with full understanding of its consequences, choose between the two possible alternatives: acceptance or renunciation of the inheritance of the deceased.

The acceptance of an inheritance constitutes a unilateral and irrevocable legal act, meaning it is the manifestation of will of the successor, generally voluntary, and one which cannot be withdrawn. In this context, the successor is not required to justify their choice, yet must be fully aware of the legal consequences arising from it, since in certain situations the acceptance of an inheritance may be financially disadvantageous. It may give rise to various legal obligations that must be fulfilled, and of which heirs are often unaware.

Acceptance of an inheritance represents an act of disposition, therefore "for the validity of the option, the successor must have full capacity to exercise, and persons lacking limited capacity to exercise must exercise the option through the legal guardian, respectively with his

approval and with the authorization of the guardianship court".

The acceptance of an inheritance constitutes an act of disposition[1]; therefore, *"*for the validity of the option, the successor must possess full legal capacity, whereas persons with limited capacity must exercise the option through their legal guardian, with the guardian's approval and with authorization from the guardianship court.".

The express voluntary acceptance of an inheritance must fully meet the general validity requirements that are absolutely mandatory for any civil legal act, requirements expressly stipulated by the legislator in Article 1,179 of the Civil Code[2].

The Legal Framework Governing the Forms of Express Acceptance of an Inheritance

In Romanian inheritance law, the forms of acceptance of an inheritance are regulated by the provisions of art. 1108 paragraph 1 of the Civil Code which provides that "acceptance may be express or tacit".

According to paragraph (2) of the same legal provision, "acceptance is express when the successor explicitly assumes the title or status of heir through an authentic instrument or a document under private signature." It must be noted that the Romanian legislator chose to maintain the regulatory framework established by the Civil Code of

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[1] See in this regard Decision no. 58/2024 on the examination of the notification made by the Neamţ Court - Section I of civil and administrative disputes, in File no. 5.367/291/2023, with a view to issuing a preliminary ruling, published in the Official Gazette, Part I no. 1128 of 12 November 2024.

[2] (1) The essential conditions for the validity of a contract are:
1. capacity to contract;;
2. consent of the parties;
3. a determined and lawful object;
4. a lawful and moral cause.

1864, where Article 689 provided that "acceptance may be either express or tacit. It is express when the title or status of heir is assumed in an authentic or private act".

Starting from the definition given in the specialized literature to the form of the civil legal act as being "the manner in which the will of the parties to conclude it is expressed" (Chelaru, & Duminică, 2024), from the analysis of the legal text cited above it results that the intention (*negotium*) to accept the inheritance must be present, being expressed through a written instrument (*instrumentum*) (Kocsis, & Vasilescu, 2016). In this context, it follows that express voluntary acceptance may be carried out in two ways, namely either by an authentic instrument or by a a document under private signature, in both cases requiring the explicit assumption of the title/status of heir.

In the specialized literature, there is a controversy regarding whether express voluntary acceptance constitutes a formal act (Deak, & Popescu, 2019, vol. III; Boroi, & Stănciulescu, 2012) or a solemn act (Chirică, 2017; Veress, & Szekely, 2020).

In our view, the written form required for express voluntary acceptance is demanded ad validitatem, and failure to observe this form results in the absolute nullity of the legal act.

Express acceptance of inheritance through a document under private signature

By "written instrument" is meant "any declaration regarding a legal act or legal fact stricto sensu, made by handwriting, typing, lithography, printing on paper or on any other material" (Cercel, 2006).

A a document under private signature is that instrument "drawn up by the parties, without the participation of any state authority, signed by the person from whom it emanates" (Tăbârcă, 2005).

In relation to these aspects, it follows that in matters of inheritance such a written instrument through which a succession is accepted may be executed in any language and by any means, handwritten or typed, the essential requirement being that its content clearly shows the explicit assumption of the title or status of heir.

In the legal doctrine, numerous examples have been provided regarding the forms that express acceptance through a a document under private signature may take: a simple letter addressed to another heir or to a creditor of the estate, even if the document was not drafted specifically for the purpose of accepting the inheritance, as long as it clearly reveals the successor's unequivocal intention to accept the inheritance (Stănciulescu, 2012); documents addressed to the court for resolving issues related to the inheritance in question, or a request submitted to a notarial office (Deak, & Popescu, 2019, vol. III); opposition to the forced sale of an immovable asset belonging to the estate; a declaration made to the tax authorities in which the successor indicates the composition of the estate and his or her status as heir; or even a declaration made for this purpose in a simple letter (Baias, Chelaru, Constantinovici, & Macovei, 2011).

The evidentiary force of a private-signature document in relation to third parties

With regard to the content of a private-signature document, it may be invoked against third parties as a simple juridical fact, until proven otherwise (which may be established through any means of evidence). Given that the successor must explicitly express the intention to accept the inheritance within the statutory option period of one year from the opening of the succession — namely from the date of death of the decedent, as a general rule — in the event of disputes arising between successors concerning the recognition of the heir status, the issue of the date of the document becomes relevant.

In such situations, the requirement of opposability must be fulfilled. "The condition of opposability is deemed satisfied when the juridical act is subjected to a certain formal procedure, a procedure known as publicity. By way of exception, opposability is considered achieved even without publicity when the juridical act bears a certain date" (Țiția–Nicolescu, 2018).

The exception to the rule according to which a private-signature document is proven until the contrary evidence is admitted is explained by "the legislator's concern to protect third parties against the danger posed by entering a false date in writing, in the form of antedating the document" (Boroi, & Stancu, 2015).

1. According to the provisions of Article 278 paragraph 1 of the Civil Procedure Code, "The date of private-signature documents is opposable to persons other than those who drafted them only from the day on which it became certain, by one of the methods provided by law, namely:
2. from the day on which they were presented to obtain a certified date from the notary public, the bailiff, or any other competent official;
3. from the day on which they were submitted before a public authority or institution, with this mention being made on the document;
4. from the day on which they were registered in a register or another public document;
5. from the day of the death or from the day on which the physical inability to write of the person who drafted it, or of one of the signatories, as the case may be, occurred;
6. from the day on which their content is reproduced, even briefly, in authentic documents drawn up under the conditions of Article 269, such as minutes, official records for sealing or for drawing up inventories;
7. from the day on which another fact of the same nature occurred, which proves beyond any doubt the anteriority of the document."

Jurisprudential/Case law analysis

Although successors generally prefer to accept an inheritance either by an authentic instrument or, most commonly, tacitly, the Romanian courts have also been called upon to resolve disputes in which the issue concerned the acceptance of an inheritance by a document under private signature.

By way of example, we briefly present below the reasoning of the courts regarding this form of express voluntary acceptance of an inheritance, as reflected in recent case law:

- "By Civil Decision no. 541/2025 delivered on 30 April 2025 by the

Brașov Tribunal[1], the court held that the defendant's requests, formulated in the statement of defence and seeking the dismissal of the claimant's request for the allocation of the entire undivided share, amount to an act of express acceptance, as the appellant's intention to assume the status of heir was clearly and unequivocally manifested.

➢ by Civil Decision no. 1712/2025 of 14.11.2025, delivered by the Iași Tribunal, the court held that *'in accordance with Article 12 of* Law no. 18/1991 in its initial version: "The status of heir shall be established

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[1] Civil Decision no. 541/2025 delivered on 30 April 2025 by the Brașov Tribunal, available at https://www.rejust.ro/juris/726298793, accessed on 18.11.2025.

"With regard to the acceptance of the inheritance by a private signature document—specifically, the statement of defence filed in the case at first instance on 09.11.2023—the Tribunal finds that this document produces the legal effects of an express acceptance made by a private signature instrument.

According to Article 1108 paragraph (2) of the Civil Code, acceptance is express when the successor explicitly assumes the title or status of heir through an authentic document or a private signature document."

"Upon examining the statement of defence filed in the case at first instance on 09.11.2023 (p. 41 of the case file), it is observed that this document does not constitute an authentic instrument, but rather a private signature document within the meaning of the law. According to the specialised literature, with regard to express acceptance, the successor's intention to accept the inheritance must be manifested in written form, express acceptance being 'a formal act, but not a solemn one', meaning that 'for the document to constitute an express acceptance, its content must show that the successor has unequivocally assumed the status of heir' (######## ####, ##### ####### – 'Treatise on Inheritance Law', 3rd updated and supplemented edition, Vol. III. Transmission of Inheritance, p. 72 and p. 74).

In the present case, agreeing with the criticisms raised by the appellant, the Tribunal finds that the statements made by him in the statement of defence filed on 09.11.2023—where he asserts that he contests the claimant's statements alleging that he had not performed acts of acceptance of the inheritance and that he supposedly declared before the notary public that he wanted his share, as well as his request to dismiss the claimant's claim for the allocation of the entire co-owned share to the latter—amount to an act of express acceptance, since the appellant has manifestly and unequivocally expressed his intention to assume the status of heir."

on the basis of the certificate of inheritance or of a final court judgment or, in their absence, by any evidence demonstrating the acceptance of the inheritance. Heirs who cannot prove this status, given that the land was not in civil circulation, shall be deemed by operation of law to have been reinstated in the term of acceptance with regard to the share to which they are entitled of the land that belonged to their author. They are considered to have accepted the inheritance through the application they submit to the commission."

- by Civil Judgment no. 1138/2025 of 12.11.2025 delivered by the Filiași Court, the court held that 'Even if the defendant did not prove his status as heir of the deceased through a certificate of inheritance, he is nevertheless the beneficiary of the will authenticated under no. 21 of 24 January 1967, and according to Article 13 paragraph 2 of Law no. #######, heirs who cannot prove this status, since the land was not in civil circulation, shall be deemed by operation of law to have been reinstated in the term of acceptance with regard to the share to which they are entitled of the land that belonged to their author. They are considered to have accepted the inheritance through the application they submit to the commission – the filing of the reconstitution application constitutes proof of acceptance of the inheritance."
- by Civil Judgment no. 9165/2024 of 17.06.2024 delivered by the 2nd District Court of Bucharest, the court of first instance held that the defendant accepted the succession through a private signature document, namely through the settlement agreement by which he undertook to obtain the certificate of inheritance and to conclude with the claimant the sale contract concerning the apartment that was the object of the bilateral promise.

From the analysis of the judicial decisions indicated as examples, it results that the express voluntary acceptance of an inheritance necessarily requires the existence of three elements:

- the manifestation of will must be made through a written document,
- the content of the document must show the explicit assumption of the title/quality of heir,
- the document must have a certain date, so that the court may verify

whether the acceptance of the succession was made within the legal term of the inheritance option, thus avoiding the possibility of pre-constituted documents.

Conclusions

From the analysis of the legal provisions and case law, it follows that the express voluntary acceptance of an inheritance through a a document under private signature constitutes an efficient legal solution, as it ensures a clear and unequivocal manifestation of the successor's will. Among its benefits, we may also include the fact that this form stands out through a high degree of accessibility and reduced costs, eliminating the need for notarization before a public notary and thus facilitating the exercise of the right of succession option within the legal term.

Furthermore, the flexibility of this form must be highlighted, as it allows the successor to draw up such an instrument in any situation in which physical presence before the notary public is difficult.

However, the acceptance of an inheritance by means of a document under private signature also presents a number of significant limitations. The most important limitation is the lack of publicity and opposability to third parties, which can generate difficulties in proving the acceptance of the inheritance. Vulnerabilities regarding the authenticity or the certain date of the a document under private signature may lead to the possibility for the other successors to contest the a document under private signature more easily. In this context, in conflictual situations, the heir will be compelled to resort to the courts for the validation of the instrument, which involves additional time and costs, thereby diminishing the initial advantages of this form of acceptance.

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DIGITAL CRIME. ANALYSIS OF THE PHENOMENON AND ITS IMPACT

Cătălin Ionuț BUCUR
ORCID [ID]: https://orcid.org/0000-0003-1606-1978
E-mail: bucurc2000@yahoo.com
Affiliation: Faculty of Economic Sciences and Law, National University of Science and Technology Politehnica Bucharest, Pitesti University Center

Abstract: *This article provides an in-depth analysis of digital crime, a complex and constantly evolving phenomenon that is redefining the global criminal landscape. It explores its origins and historical development, detailing the types and methods of attack, with a particular focus on social engineering as the predominant vector.*

Keywords: *digital crime; typologies; attack methods; social engineering; digital criminals; organized crime groups.*

Introduction

In an era marked by accelerated digitization, digital crime has transcended traditional boundaries of criminality, becoming a major global concern. This complex phenomenon, often referred to interchangeably as "computer crime", "cybercrime", "electronic crime", or "online crime" initially covered all crimes involving computers or other similar devices, including networks and other means of access. However, despite the widespread use of these terms, a universally accepted definition of "cybercrime" remains elusive, complicating its study and legal examination worldwide. This lack of standardization contributes to a wide range of forms and types of acts included under this umbrella.

The semantic ambiguity and legal challenges associated with

defining digital crime are not simply matters of terminology; they have direct implications for legislative harmonization across jurisdictions.

When different countries define the same crime differently, it creates legal loopholes that criminals can exploit, making it harder to cooperate effectively in investigations and prosecutions. This conceptual fluidity underscores the need for continued efforts to harmonize legal frameworks and develop clear and consistent operational guidelines for law enforcement agencies globally.

It also highlights the importance of robust academic discourse in refining conceptual boundaries and informing public policy.

1. The fundaments of cybercrime

1.1. Key Definitions and Concepts

Defining cybercrime is inherently challenging, given the broad spectrum of offenses it encompasses. For a better understanding of the phenomenon, it is essential to make the critical and widely accepted distinction between "cyber-dependent crimes" (also known as "pure cybercrime") and "cyber-facilitated crimes", which provides a clearer framework for understanding the phenomenon (Mungiu-Pippidi, 2017, p. 25).

Dependent cybercrimes are those acts which, by their nature, can only be committed through the use of a computer, computer networks, or other forms of information and communications technology (ICT).

Examples include the spread of viruses or other malware, unauthorized access (hacking) to systems, and Distributed Denial-of-Service (DDoS) attacks. These activities are primarily directed against the integrity or availability of computer or network resources, although they may have various secondary results, such as the use of data obtained through hacking to subsequently commit fraud (Ruse, 2018, p. 40).

On the other hand, facilitated cybercrime refers to traditional crimes whose scope, coverage, or efficiency are significantly enhanced by the use of computers, computer networks, or other ICT. Unlike

dependent cybercrime, the underlying criminal act could theoretically be committed without the use of ICT.

Prominent examples include various forms of fraud and theft, often facilitated by email scams (Bucur, 2020, p. 55).

Although the terms "cybersecurity" and "cybercrime" are interdependent and their interests often overlap, their meanings are not identical. The scope of "cybersecurity" and "cybercrime" varies significantly depending on technical, legal, and political perspectives.

An important observation is that, despite the technical nature of threats, the human element remains the most common vulnerability. Most breaches involve some form of human interaction, often unintentional, as we are all susceptible to manipulation through increasingly sophisticated criminal techniques (Manolescu, 2019, p. 110).

This persistent vulnerability of the human factor, even in the context of highly technical threats, underscores that purely technological solutions are insufficient. Human factors, such as susceptibility to manipulation, remain central. Therefore, any truly effective cybersecurity strategy must allocate substantial resources to human education, ongoing awareness programs, and the cultivation of a resilient security culture. This recognizes that technological solutions, while indispensable, are ultimately incomplete without addressing the human factor (Popescu, & Neagu, 2020, pp. 88-105).

1.2. Brief History and Evolution

The history of digital crime mirrors technological progress, a symbiotic evolution between innovation and exploitation. What could technically be considered the first "cyberattack" took place in France in 1834, involving the hacking of the French telegraph system to steal information from the financial market. Over the years, other early "hackers" have emerged who disrupted telephone services and wireless telegraphy, preceding modern computers.

The 1940s were, in digital terms, "the time before crime" characterized by limited access to the first digital computers and a lack of interconnection between them.

However, in 1949, computer pioneer John von Neumann first

speculated on the theory underlying the ability of computer programs to reproduce themselves, thus foreshadowing the emergence of viruses. In the late 1950s, the phenomenon of "phone phreaking" emerged, in which individuals passionate about telephone systems hijacked protocols to make free calls, representing a significant technological and subcultural root of hacking. In 1962, MIT implemented the first passwords for computers, mainly to limit student usage time and ensure data confidentiality. The year 1969 marked the appearance of what is considered to be the first computer virus, the "RABBITS Virus" at the University of Washington Computer Center, which replicated itself until the system was overloaded.

The actual birth of "cybersecurity" took place in 1972, with a research project on ARPANET, the precursor to the internet, which developed protocols for remote computer networks and explored the security of operating systems. Kevin Mitnick, often cited as the "first cybercriminal" was active between 1970 and 1995, managing to access some of the world's most secure networks, including those of Motorola and Nokia (Dicu, & Rădulescu, 2021, pp. 45-60).

The 1980s and 1990s brought transformative change with the popularity and widespread use of personal computers, leading to an explosion in the number of new viruses and malware programs. A significant increase in data breaches has been observed since 2005, correlating directly with the widespread migration of businesses and governments from paper to digital records.

This historical timeline illustrates a continuous and parallel evolution: as technological capabilities expanded, new vulnerabilities inevitably emerged, giving rise to innovative forms of criminal activity. In direct response, cybersecurity measures and concepts such as passwords, antivirus software, and research into operating system security have also developed[1].

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[1] European Union, European Union Agency for Cybersecurity (ENISA), Report on the cyber threat landscape. Published annually.

2. Typologies and Means of Attack

2.1. Classification of cybercrime

The fundamental framework for classifying digital crime distinguishes between dependent and facilitated cybercrimes, a distinction recognized by major cybersecurity agencies such as Interpol and Europol. Beyond this basic classification, digital crime manifests itself through a multitude of specific types of crimes and attack vectors, each with its own particularities.

Hacking and **cracking** refer to unauthorized access to computer systems or networks, often with malicious intent. These activities can range from exploring systems for vulnerabilities to compromising them for the purpose of data theft or sabotage.

Malware is a generic term for malicious software designed to disrupt, damage, or gain unauthorized access to computer systems. This includes viruses, worms, Trojan horses, and spyware.

One particularly widespread type is **ransomware**, which encrypts a victim's personal or organizational data and demands payment, often in hard-to-trace cryptocurrencies, for the decryption keys or to restore access. Ransomware attacks have become a major global threat, affecting both individuals and companies.

Distributed Denial-of-Service (DDoS) attacks are malicious attempts to disrupt the normal traffic of a targeted server, service, or network by overloading it with a massive flow of internet traffic from multiple compromised computer systems, known as botnets. These attacks may target critical infrastructure, such as hospitals or public authorities, sometimes without financial gain, but rather for ideological or political reasons.

Online fraud is a broad category that encompasses various deceptive practices carried out through digital means.

Computer fraud involves using a computer to illegally alter electronic data or gain unauthorized access to a system. Specific types of online fraud include scams related to online shopping, internet auctions, and credit card fraud.

Romance and online dating scams are deceptive schemes in which criminals fake romantic interest to extract money or personal information from victims.

Business Email Compromise (BEC) is a form of fraud with a particularly high impact, in which criminals pose as directors or trusted partners to trick employees into diverting payments to fraudulent accounts, often generating losses of millions of euros.

Fraud can also involve virtual currencies, including cryptojacking (the unauthorized use of computing power to mine cryptocurrencies) and exit scams (where sellers on darknet markets collect buyers' money and close accounts without delivering the products).

There is also advertising fraud, classified into identity fraud (audience simulation through bots), attribution fraud (imitating real activities through click farms) and ad fraud services (creating spam sites or fraudulent pages) (Bucur, 2020, p.70).

Online identity theft involves the illegal acquisition and use of another person's identifying information (e.g., name, email address, password) to commit fraud, open accounts, or make unauthorized purchases.

Phishing is one of the most common and dangerous methods of cyber fraud, involving deceptive attempts (via email, SMS, phone calls) to trick users into disclosing sensitive personal or financial information by impersonating legitimate and trusted organizations. Variations include spear phishing (highly targeted attacks), vishing (voice phishing), smishing (SMS phishing), and whaling (targeting high-profile individuals) (Ionescu, 2022, pp. 112-128).

Sexual abuse and exploitation of children via the Internet is a serious category that includes online sexual abuse of children, exploitation, live abuse, grooming (criminals pretending to be children to lure minors), and distribution of child sexual abuse material.

Cyberbullying, cyberstalking, and other forms of online aggression include various forms of harassment, threats, and aggression committed in digital human interactions.

Cyberterrorism consists of terrorist acts carried out through cyberspace, which may include the widespread dissemination of viruses, worms, phishing campaigns, and malware attacks.

Cyberextortion occurs when websites, servers, or computer systems are threatened with attacks (e.g., denial-of-service attacks) by hackers who demand money to stop the attack.

Skimming involves organized crime groups compromising and defrauding electronic payment instruments, often planning their illicit activities domestically but executing them abroad.

2.2. Social engineering as a vector of attack

Social engineering is defined as a wide range of activities designed to exploit human error or behavior, using various forms of manipulation to trick victims into making mistakes or divulging sensitive information or granting access to services. The human element remains the most common vulnerability, with a 2023 Verizon Data Breach Investigations Report (DBIR) indicating that 82% of breaches involve some form of human interaction (Manolescu, 2019, p. 75).

Among the most common and effective social engineering techniques are:

- **Phishing**: This is a fundamental method of social engineering. Attackers send fraudulent emails, messages, or links that appear to come from legitimate sources (e.g., banks, coworkers, well-known websites). The goal is to obtain login credentials, banking information, or to convince the victim to download infected files. These messages are designed to look extremely realistic, often incorporating legitimate logos, names, and addresses similar to the official ones. This type of scam is not limited to emails, but also occurs via text messages (smishing), phone calls (vishing), or social media.
- **Pretexting**: The hacker creates a credible, often elaborate, fictional scenario to trick the victim into divulging private information. For example, the attacker may pose as an IT employee requesting login details for "routine checks" or claim to represent a well-known institution such as a bank or telephone company. The victim, believing they are interacting with a trustworthy person, provides the information without

suspicion. Pretexting requires patience and convincing communication on the part of the attacker, who often constructs a detailed scenario, sometimes based on information previously obtained about the victim from social networks or public data.

- **Baiting**: The victim is lured with a "bait" such as an apparently lost USB stick containing malware or an attractive downloadable file. Curiosity or the desire to obtain something for free motivates the user to connect the device to the computer or download the file, thereby granting access to the attacker. Baiting can also occur in digital form, for example through websites that promise free access to movies or applications, but which actually infect the device with Trojans or spyware.
- **Quid Pro Quo**: The attacker promises something in exchange for information or access, such as free technical support, an important software update, or a fictitious prize. The victim, attracted by the proposed benefits, willingly provides personal data or performs actions that compromise the security of the device or network. This method is common via telephone or email, especially in office environments, where attackers claim to be providing technical support and request passwords or authentication codes.
- **Tailgating**: This technique involves gaining unauthorized physical access to a restricted area by closely following an authorized employee or by inventing a reason for entry, such as claiming to have forgotten one's access badge (Mungiu-Pippidi, 2017, p. 50).

Social engineering is particularly effective because it exploits fundamental human traits such as trust, curiosity, and the natural inclination to act in certain ways to establish strong social structures. Criminals understand human behavior and how to manipulate individuals by feigning trust or building relationships (Popescu, & Neagu, 2020, pp. 88-105).

Conclusions

Digital crime has evolved from a marginal phenomenon to a systemic threat, deeply integrated into the fabric of modern society. In-

depth analysis has shown that its nature is multifaceted, blurring the boundaries between traditional and purely cybercrimes, and that it is fuelled by diverse motivations, ranging from financial gain to ideological and geopolitical objectives. The professionalization and democratization of cyber capabilities, through crime-as-a-service platforms and accessible tools, have significantly broadened the pool of potential offenders, transforming cybercrime into a macroeconomic force with estimated annual losses in the trillions of dollars.

The impact of this phenomenon goes far beyond the economic dimension, generating profound social consequences by eroding public trust and facilitating the spread of illegal content, and leaving invisible psychological scars on victims, who face anxiety, loss of control, and, in severe cases, mental health disorders.

The vulnerability of critical infrastructure to cyber-attacks also highlights direct risks to public safety and national security.

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THEORETICAL AND APPLICATIVE ISSUES REGARDING CHANGES IN THE LEGAL CLASSIFICATION

Patric Daniel GHEBARU
ORCID ID: 0009-0003-1168-1438
E-mail: patricdanielghebaru@gmail.com
Afiliation: Ecological University of Bucharest – Doctoral School of Law

Abstract: *The legal classification against which the criminal prosecution in rem or in personam is stage, regardless of the procedural phase, constitute genuine problems of application of criminal procedural law with major implications on the legal situation of the accused person. Therefore, considering that it is not exaggerated to dedicate a praxiological analysis to the change of the legal classification of the act, the present study aims to address in detail certain legal issues arising in judicial practice regarding the applicability of this institution. carried out (with suspect and defendant in the case) and the subsequent notification to the court by issuing the indictment, in relation to which the object and limits of the trial are established, as well as the possibility of changing the legal classification during the trial*

In the specialized literature, it is argued that the legal classification involves establishing the legal text that provides for the offense in the standard version or, if applicable, in an aggravated or qualified version or in a less serious version compared to the standard version. If the act constitutes an attempt, the legal classification involves establishing both the legal text that provides for the offense and the applicable punishment, as well as the text that provides for the punishment of the attempt of that offense. In the case of participation, the legal classification involves, in addition to establishing the incriminating text of the act, also determining the contribution of each participant to the commission of the offense, as well as establishing the legal text that provides for and sanctions that contribution. Finally, in the case of a plurality of offenses or enforcement acts, the legal classification involves additionally establishing whether this plurality constitutes a contest of offenses, a recidivism or a continued

offense. The legal classification also involves establishing the legal provisions that also affect the outcome of the criminal trial. The finding that another legal text provides for and sanctions the act for which the court was notified, therefore establishing a different legal basis for criminal liability than that shown by the notification act (indictment)
Keywords: *notification; the case; problems; classification; contribution.*

Introduction

The legal classification under which criminal prosecution is conducted *in rem* or *in personam* (with a suspect and defendant in the case) and subsequently the notice to the court through the issuing of an indictment, in relation to which the subject matter and limits of the trial are established, as well as the possibility of changing the legal classification during the trial, regardless of the procedural stage, constitute real problems in the application of criminal procedural law with major implications for the legal situation of the accused. Therefore, considering that it is not excessive to devote a praxiological analysis to the change in the legal classification of the offence, this study aims to address specific legal issues that have arisen in judicial practice regarding the applicability of this institution.

The specialized literature (Dongoroz and collaborators, 2003, p. 188) argues that legal classification involves establishing the legal text that defines the offence in its *typical* form or, if applicable, in an *aggravated* or *qualified* form, or in a *less serious* form compared to the typical form. If the offence constitutes an *attempt*, legal classification involves establishing both the legal text that defines the crime and the applicable punishment, as well as the text that provides for the punishment of the attempt to commit that crime. In the case of *participation*, the legal classification involves, in addition to establishing the incriminating text of the offence, determining the contribution of each participant in the perpetration of the offence, as well as establishing the legal text that provides for and punishes that contribution. Finally, in the case of *plurality of offences or acts of execution*, the legal classification

also involves establishing whether this plurality constitutes a concurrence of several offences in one action, repeated commission, or a continuing offense. Legal classification also involves *establishing the incidental legal provision applicable* and the outcome of the penal case; Finding out that another legal text provides for and punishes the offence that has been brought before the court, thus establishing a legal ground for criminal liability other than that indicated in the writ of summons (indictment).

However, as established by praetorian law, legal classification involves maintaining the same material facts entrusted to the court to be judged (Supreme Court, 1981, p. 67).

Theoretical and applicative issues regarding changes in the legal classification

In relation to the "legal reclassification of the charge", the European Court of Human Rights has ruled that "the accused must be duly and fully informed of any change in the charge, including changes relating to its «cause» and must be given the time and facilities necessary to respond to these changes and to organize their defence on the basis of any new information or allegations. Any change in the charges brought against a person, whether it concerns the nature of the acts alleged or their legal classification, must be brought to their attention under the same conditions of promptness by means of the provisions of art. 6, align. 3, lit. a of the European Convention on Human Rights, so that they are able to have the facilities necessary to organize their defence under the new conditions that have arisen.[1]

As regards the conceptual scope of the legal classification, i.e. its legal extent or, more specifically, the elements that determine the change

[1] Judgement of 25 July 2000, Mattocia v. Italy, para. 61; and Decision of 5 September 2006 on the admissibility of the application in Bäckström and Andersson v. Sweden.

in legal classification, the determination of it must take into account the legal definition of the term *commission of the offence*.

In this regard, according to art. 174 of the Criminal Code, "the commission or perpetration of a crime means the commission of any of the acts that the law punishes as a completed offence or as an attempt, as well as participation in its commission as a co-author, instigator, or accomplice."

Therefore, based on the explanation of the legal relationship of criminal conflict that gives rise to the initiation of criminal case, the legal classification should only regulate the situations that strictly refer to the *stricto sensu* notion of legal classification, and not when analysing the retention or removal of legal circumstances (extenuating or aggravating) or aggravating states mentioned in the general part of the Criminal Code, which produce legal consequences only in terms of determining the penalty.

This is also the common orientation of judicial practice, with the mention that there are also opposing jurisprudential orientations, whose fairness we do not deny.

Thus, practice shows that if the court finds that provocation or other extenuating or aggravating circumstances exist, which are not mentioned in the indictment or in the decision subject to appeal, or if it removes their application, the court does not apply the provisions relating to the change in legal classification, because in such cases the application or removal of the circumstances does not change the legal classification, which remains as provided for in the Special Part of the Criminal Code or in the laws[1].

If it finds that the provocation referred to in art. 75, align. 1, lit. a of the Criminal Code or other extenuating or aggravating circumstances not mentioned in the indictment or in the judgment under appeal exist, or if it excludes their application, the court shall not apply art. 386 of the Criminal Procedure Code because extenuating circumstances, whether

[1] High Court of Cassation and Justice, Criminal Section, Decision no. 3679/2003.

legal or judicial, are circumstances external to the constituent elements of the offence and are therefore related to the individualization of the penalty and not to the legal classification of the facts.[1]

In the following, we will outline the way change in the legal classification depends on the procedural cycle in which the criminal case is, as well as the theoretical and practical difficulties involved in carrying out such a procedural operation.

Thus, according to the provisions of art. 311 of the Code of Criminal Procedure, provided that after the start of the criminal prosecution, the prosecution body discovers new facts, data regarding the participation of other persons or circumstances that may lead to a change in the legal classification of the act, it shall order the extension of the criminal prosecution or the change in the legal classification.

Therefore, the prosecution body (prosecutor and criminal investigation bodies of the judicial police) has the original competence to order a change in the legal classification, which will be carried out by means of a procedural order, in accordance with art. 286, align. 4 of the Code of Criminal Procedure. From the perspective of extending criminal prosecution, some authors (Voicu, Uzlau, Tudor, & Vaduva, 2014, p. 354) have pointed out that although the text does not provide for a distinction regarding the type of extension of criminal prosecution that may be ordered by the criminal investigation body, from the teleological interpretation of the provisions of art. 311, align. 1 in relation to the provisions of art. 305, align. 1 and 3 of the New Code of Criminal Procedure, the criminal investigation body may order the extension of the prosecution only with regard to new facts, and not with regard to other persons.

For similar reasons, we consider that changing the legal classification after the criminal case has been initiated is the exclusive prerogative of the prosecutor, and that the criminal investigation bodies of the judicial police are not permitted to order such a measure, which

[1] Bacău C.A., criminal decision no. 746/19 June 2019

would amount to changing the legal basis for criminal liability. However, according to the provisions of art. 14 of the Code of Criminal Procedure, criminal case is aimed at holding persons who have committed offences criminally liable and are initiated by the indictment act provided for by law, and in accordance with art. 309 of the Code of Criminal Procedure, the measure is initiated by the prosecutor by order, during the criminal prosecution, and communicated to the defendant, it follows that the modification of the criminal charge, after the indictment has been issued, falls within the exclusive competence of the prosecutor. Only in this interpretation can the prosecutor's status as the "holder" of the criminal prosecution be preserved, as the only entity that can refer the criminal case to the criminal court for resolution, the initiation of the criminal case together with the issuance of the indictment and the referral order being the focal points of the criminal investigation. The opposite scenario, in which the indictment would contain the charges brought against the defendant, as finally amended by the criminal investigation body of the judicial police, would be equivalent to the criminal court being vested with the power to judge a criminal charge formulated and consolidated by the judicial police, in the absence of the prosecutor's filter, given that the provisions of art. 311, align. 2 of the Code of Criminal Procedure require the prosecutor to confirm, with reasons, only the extension order issued by the criminal investigation body, but not the order changing the legal classification. Finally, by analogy for similar reasons, after the initiation of the criminal case the only judicial body competent to order the extension of the criminal prosecution is also exclusively the representative of the Public Ministry.

That is why, according to another expert opinion (Udroiu and collaborators, 2017, p.1346), in order to change the legal classification of an offence for which the criminal case has already been initiated, it is not necessary to issue a new indictment referring to the new classification of the offence, an aspect also based on the fact that the last classification was made by the "depositary" of the criminal case, namely the prosecutor.

During the preliminary chamber proceedings governed by the provisions of art. 342-348 of the Code of Criminal Procedure, the only

responsibility of the preliminary chamber judge in relation to the legal classification is to verify the jurisdiction of the court. Thus, pursuant to art. 346, align. 6 of the Code of Criminal Procedure, if the preliminary chamber judge considers that the court does not have jurisdiction, he or she shall proceed in accordance with Articles 50 and 51, respectively, raise the objection of lack of jurisdiction, and decline jurisdiction in favor of the competent preliminary chamber judge. Therefore, from the combined interpretation of the legal provisions, it follows that the verification of the jurisdiction of the preliminary chamber judge will be carried out by reference to the legal classification adopted by the prosecutor and mentioned in the court referral document, as the preliminary chamber judge is not allowed to re-evaluate the evidence in order to correctly determine the legal classification and possibly order a change in the legal classification. The structure of the legal texts also supports the argument that the legal classification of the act brought to trial cannot be changed during the preliminary chamber phase by the preliminary investigating judge. In this guideline for legal interpretation, art. 386 of the Code of Criminal Procedure, which will be examined below and which regulates the change of legal classification by the court, it should be noted that it is included in "Chapter II. Trial in the first instance, Section 1. Conduct of the trial," and refers only to the possibility of the court, i.e., the judicial body exercising the procedural function of judgment, but not to the verification of the legality of the referral or non-referral to trial, a procedural function assigned by the legislator to the competence of the preliminary chamber judge.

As the separation of judicial functions is a general principle of criminal procedure, resulting from art. 3 of the Code of Criminal Procedure, we consider that a premise complementary to the opinion expressed above, which lies in the impossibility of changing the legal classification during the preliminary chamber phase, is also generated by the grammatical, restricted interpretation of the procedural provisions.

Last but not least, the provisions of art. 377, align. 4 of the Code of Criminal Procedure also support and reinforce the above. According to it, if the court finds, ex officio, at the request of the prosecutor or the

parties, that the legal classification of the act given in the indictment must be changed, it is obliged to discuss the new classification and to draw the defendant's attention to the fact that he has the right to request that the case be left until later[...]". Therefore, even in the case of a judicial inquiry within the abbreviated procedure of admission of guilt, the procedural law allows, and even requires, a change in the legal classification of the act given in the indictment. From the coherent wording of the legislator (i.e., the legal classification given to the act in the indictment must be changed), it is clear beyond doubt that the change in classification only affects the modification of the classification given in the indictment issued prior to the preliminary chamber proceedings. Since the provisions relating to the regulation of the preliminary chamber precede the trial stage, we conclude without doubt that at no point did the legislator envisage that the change in legal classification could be carried out in the preliminary chamber. The legal classification attributed to the material acts described in the referral document is the prerogative of the court, and the decision on changing the legal classification cannot depend on the potential assumption of the defendant of the offences described in the indictment.

Assuming the above, judicial practice reveals an exceptional situation, consisting in the fact that when, although criminal prosecution was conducted for a specific material act, it has been given a manifestly erroneous legal classification, the correct legal classification determining the competence to conduct the prosecution in favor of a higher criminal prosecution body, for reasons of material competence. Of course, if the preliminary chamber judge notes a lack of territorial or personal jurisdiction, without it being necessary to change the legal classification, he will proceed to invoke and resolve the exception of lack of jurisdiction.

In such a practical scenario, apart from the possibility of sanctioning the criminal prosecution as a whole or in part, it must be analysed whether the preliminary chamber judge, unlawfully appointed in relation to the obvious and defective change in legal classification, could analyse the criminal case in the filter of the preliminary chamber.

In such a situation, the two procedural solutions are either to

change the legal classification and decline jurisdiction, only at the trial stage, or to raise the plea of lack of jurisdiction, setting out in the reasoning the grounds for which the court declares itself incompetent, followed by the transfer of jurisdiction to the preliminary chamber judge who is deemed competent.

Although both practical solutions are easily criticisable, we consider that the one that is closest to guaranteeing the right to defence and the right to a fair trial would be the second one, namely the preliminary chamber judge raising the objection of lack of jurisdiction, setting out in the reasoning the grounds for which it declares itself incompetent, followed by the transfer of jurisdiction to the preliminary chamber judge who is deemed competent. As it has been pointed out, such a working hypothesis constitutes a genuine exception in judicial practice based on the establishment of an obvious and striking legal misclassification (for example, the situation where a defendant was ordered to stand trial for the offence of bodily harm, under art. 194 of the Criminal Code, although all the actual and personal circumstances associated with the case show that in this case an offence of attempted murder was committed, under the provisions of art. 32 in conjunction with art. 33 of the Criminal Code in relation to art. 188 of the Criminal Code).

Examining further the institution of changing the legal classification, depending on the procedural moment in which it can be carried out, the general framework in this matter, in the trial phase, is constituted by the provisions of art. 386 of the Code of Criminal Procedure, according to which, if during the trial it is considered that the legal classification of the act given in the indictment is to be changed, the court is obliged to discuss the new classification and to draw the defendant's attention to the fact that he has the right to request that the case be left until later or that the trial be postponed in order to prepare his defence.

The legal provision above must be interpreted in accordance with Decision No. 250/2019 of the Constitutional Court[1], namely that it is constitutional only to the extent that the court rules on the change in the legal classification of the act referred to in the referral by means of a court decision that does not resolve the merits of the case. Conversely, the court does not have the possibility to change the legal classification by the decision ruling on the merits of the case (judgment/decision), thus violating the provisions of art. 21, align. 3 and art. 24, align. 1 of the Basic Law, as well as the provisions of art. 6, align.1 and 3, lit. a of the Convention for the Protection of Human Rights and Fundamental Freedoms.

In essence, the constitutional court ruled in accordance with the above, based on ensuring the fairness of the criminal case and with a view to the effective exercise of the defendant's right of defence, given that only in relation to a legal classification that has been definitively established during the criminal case, and not at the end of the trial, can the defendant make concrete defences.

With regard to changing the legal classification during judicial inquiry, a situation that requires in-depth analysis is that which arises when a request is made to change the legal classification from one offence to another, exceeding the limits of the court's initial jurisdiction, as established by the act of referral to the court. Such a situation is found in judicial practice, for example, when, in the case of a traffic offence under art. 336 of the Criminal Code, the defendant agrees to a blood sample being taken but refuses a second one. Thus, without entering into legal arguments, as this is a separate legal issue, the Public Prosecutor's Office orders the defendant to be brought to trial for the offence of refusing to provide biological samples, as provided for in art. 337 of the Criminal Code, and during the trial, the defendant, the prosecutor, or even the court ex officio, brings up the change in the legal classification from the offence of refusing to provide biological samples, as provided

[1] Published in the Official Gazette, Part I, no.500 of June 20, 2019.

for in art.337 of the Criminal Code, to the offence of driving a vehicle under the influence of alcohol, as provided for in art. 336 of the Criminal Code, in relation to the evidence in the case file. Although the case file contains sufficient evidence to establish criminal liability, such a request to change the legal classification is inadmissible because the charge, as reconfigured, would fall outside the limits of the trial.

In this regard, the criminal investigation focused on pursuing a specific material act, socially dangerous conduct, objective and determined, attributed to the defendant, which triggered the criminal liability process, an act which the court was tasked with judging. Only within these material and procedural limits could the court reclassify the legal classification, namely only if the material act brought to trial gives rise to a different legal classification.

In all other situations, changing the criminal charge without it having been formulated during the criminal investigation constitutes a genuine extension of the criminal action, which, in the current architecture of criminal procedure law, is not permitted during the judicial inquiry, but only during the criminal investigation. Therefore, changing the legal classification implies the mandatory maintenance of the same material facts with which the court was invested, and it is the judge's obligation to verify whether such a procedural operation exceeds the legal framework of the court's jurisdiction.

Addressing a new issue that has arisen in judicial practice, resulting from the lack of material jurisdiction of the court of first instance, which is attracted by the change in the legal classification during the trial, for example, in that situation, when the act brought to trial was incorrectly classified, and the preliminary chamber judge, as explained above, cannot change the legal classification. And then, either at the first hearing on the merits of the case, the court discusses and changes the legal classification, and subsequently declines jurisdiction for the new classification, or later, possibly after the conclusion of the judicial inquiry.

In the event that the judge notices from the moment of his appointment that the legal classification is erroneous, we consider that

the judicious interpretation of the procedural rules in the light of Decision No. 250/2019 of the Constitutional Court obliges the court, as soon as possible, i.e. at the first hearing, in order to guarantee the right to defence, to discuss the new classification, to change it, and to refer the criminal case to the court with jurisdiction over the subject matter.

From practice, critics of this approach argue that the trial court would not be able to evaluate and interpret the evidence on which the indictment is based in the absence of evidence that should result from the judicial inquiry and, thus, the court could not change the legal classification until the end of the judicial inquiry, after it has been finally clarified. However, we consider that such a view is erroneous, because the considerations on which Decision No. 250/2019 of the Constitutional Court is based converge towards the idea that the judicial body is called upon to change the legal classification as soon as possible after it finds such a need, if possible, at an early stage of the criminal case or trial, precisely so that the defendant can prepare a thorough defence in relation to the new charge brought against them. In this context, changing the legal classification at the first opportunity available to the court does nothing more than guarantee the right to a fair trial and to a defence and does not imply a presumption of the defendant's guilt, especially since the criminal case will be transferred to the court that will decline jurisdiction to hear the case. Moreover, no criminal procedural rule requires a change in the legal classification at the end of the judicial inquiry, as the provisions of art. 386 of the Code of Criminal Procedure use the phrase "during the trial", meaning all throughout the trial phase. Of course, this does not exclude changing the legal classification at the end of the judicial inquiry when the evidence presented shows that the material act needs to be reclassified, but it does not mean that in all cases the legal classification can only be changed at the end of the evidence presentation.

Another distinct issue regarding the change in legal classification, which draws its substance from the content of Decision No. 250/2019 of the Constitutional Court, raises the question for the judicial authorities of the procedural act by which it should be carried out during the appeal phase of the proceedings. This is because, in interpreting the

Constitutional Court's decision, the court should rule by conclusion regardless of whether or not it changes the legal classification of the act in the referral document, so that the conclusions on the merits of the case take into account a "definitive" legal classification established for that stage of the proceedings, regardless of whether it is the one given in the referral document or the one given by the court, following the application of the provisions of art. 386 of the Criminal Procedure Code.

On the other hand, according to art. 421 of the Criminal Procedure Code, the appeal shall be settled by issuing a decision. The legitimate question arises as to how the appeal will be resolved, regardless of who brought it, when this appealing is used to challenge the unlawful legal classification of the act on which the court of first instance ruled. In other words, how will the court of appeal discuss and resolve the change in legal classification invoked in the appeal, i.e., will it rule by means of a decision during the trial or even by means of the decision resolving the appeal? Therefore, by issuing a separate ruling on the change in legal classification, the court may issue an unlawful decision, because any grounds for the unlawfulness or unfounded nature of the trial court's decision, including that concerning legal classification, cannot be resolved other than by a decision issued in accordance with art. 421 of the Criminal Procedure Code. On the other hand, if it were to rule by decision, it would risk circumventing Decision No. 250/2019 issued by the Constitutional Court.

In doctrine, a point of view has been formulated according to which it must be taken into account that the court of appeal cannot change the legal classification except as a result of the annulment of the first instance decision, which necessarily implies the admission of the appeal, a solution that cannot be ordered by conclusion (Udroiu, 2019, pp.497-498).

Similarly, in a final decision[1], the supreme court stated that, with regard to the issue of changing the legal classification and the court's preliminary ruling, the High Court finds that these issues are included in the grounds for appeal and are limited to such legal debates, in which sense they will be developed when the merits of the case are discussed.

Therefore, to the extent that the appeal is upheld and the legal classification is changed, it is considered that, taking into account the fact that the incidental issue was developed in the grounds for appeal and put to debate by the parties, their right to defence being guaranteed, it cannot be argued that Decision No. 250/2019 of the Constitutional Court has been violated, as the fairness of the criminal case has been ensured which results in the effective exercise of the defendant's right of defence, under the new legal classification of the offense included.

Also, the third solution we see, which is equally questionable, could be to admit the appeal, overturn the first instance judgment, and send the case back for retrial, for the first instance court to change the legal classification accordingly, by means of art. 421, lit.b, second paragraph, of the Code of Criminal Procedure, by broadly interpreting the case of annulment consisting of the failure to judge an offence alleged against the defendant in the indictment, to which it could be subsumed, and the situation in which the court of first instance ruled on an offence retained against the defendant in the indictment but with an erroneous determination of the legal classification, a premise that could be equivalent to a failure to rule on the offence, given that, according to the provisions of art. 396 of the Code of Criminal Procedure, the resolution of the criminal case implicitly requires the court to rule on the legal classification of the fact brought before it.

[1] High Court of Cassation and Justice, The Panel of 5 Judges, criminal decision no. 380 of November 28, 2019

Conclusions

In conclusion, considering the above, we deduce that the institution of changing the legal classification raises questions about the application of substantive and procedural legal rules and crystallizes simultaneously with the evolution of judicial practice.

In light of Decision No. 250/2019 issued by the Constitutional Court, legal classification during judicial inquiry can only be achieved through a decision that excludes the examination of the criminal action on its merits, which has subsequently generated other doctrinal and jurisprudential debates, some of which being highlighted in this article, which, without claiming to be exhaustive, aims to bring to the attention of criminal law theorists and practitioners the interpretation of certain legal provisions intrinsically related to the exhaustion of the criminal action.

Similar to the trial phase, both in the prosecution phase and in the preliminary chamber phase, the change in legal classification gives rise to legal issues that are susceptible to inconsistent resolutions. This study aims to offer a specific solution, which can be supplemented with equally sustainable arguments or, of course, contradicted by presenting critical and different logical-legal reasoning. In any case, the study aims to focus on criminal procedural law, both established and emerging, in formation, in crystallization, but also in its aspirational structure, which, from the perspective of the legal practitioner and equally of the litigant, should consist of the standardization of judicial interpretations and the pronouncement of predictable and uniform solutions.

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