

DOI 10.32782/2786-9156.108.4.46-54

UDC 343.98

Glavan Boris, PhD in Law, University Lecturer, Scientific Secretary of the Senate of the Academy "Stefan cel Mare" of MAI (Chisinau municipality, Republic of Moldova)

e-mail: boris.glavan@mai.gov.md

ORCID ID: <http://orcid.org/0000-0002-3838-4308>

Cicala Alexandru, PhD in Law, University Lecturer, Head of the Department "Special Investigative and Anti-corruption Activity" of the Academy "Stefan cel Mare" of MAI (Chisinau municipality, Republic of Moldova)

e-mail: alexandru.cicala@mai.gov.md

ORCID ID: <http://orcid.org/0000-0001-5900-0679>

APPROACHES REGARDING THE LEGAL REGIME OF SPECIAL INVESTIGATIVE MEASURES IN THE LEGAL SYSTEM OF THE REPUBLIC OF MOLDOVA

The article addresses a subject of topicality and particular importance both for the matter of special investigative activity and the criminal process: special investigative measures. They remain vital tools for preventing and fighting crime, ensuring national security, and performing other tasks relevant to a democratic society. Due to their intrusive nature, these measures require strict regulation to prevent potential abuses by the authorities. The legislation of the Republic of Moldova has undergone essential changes in this context, changes that require adequate interpretations and explanations that would contribute to the further improvement of legal regulations. The study highlights the current development trend of the national legislation in the field of special investigative activities oriented towards the separation of the legal regimes for the application of these measures in different normative acts, depending on the specific tasks to be carried out. The continuous evolution of security threats, including cyber, hybrid and economic threats, requires a permanent update of the actors involved in ensuring security. For example, the inclusion of new specialized authorities in areas such as cyber security or the protection of critical infrastructures would be justified, given their importance for the protection of the state.

A clear distinction between "national security" and "state security" helps separate the protection of national sovereignty and integrity from domestic threats affecting public order, the economy or other sensitive areas. Hybrid threats are those that affect state resilience and include hostile propaganda and disinformation campaigns. These types of threats are critical in today's security landscape, and to combat them effectively, legislation that provides specific details on prevention and countermeasures is needed. Disinformation and information manipulation, propaganda and disinformation campaigns carried out through digital platforms, represent a significant threat to national security, affecting the social, political and economic stability of the state. Although the law mentions them in a general way, the inclusion of clearer and more detailed provisions on combating disinformation would make a valuable contribution to national security, therefore it is very important to carry out an in-depth study of the legal regime of special investigative measures in the legal system of the Republic Moldova.

Key words: special investigative activity, special investigative measures, criminal process, criminal prosecution, conditions, investigative officer.

Introduction. The importance and actuality of the analysis of the legal regime of special investigative measures derives from the need for the understanding and unified application of the legal rules intended to regulate the legal relationships that arise in connection with the performance of different special investigative measures to achieve different tasks. The legal regime of special investigative measures refers to the set of rules, procedures, and legal principles that govern the use and application of these measures within the framework of special investigative activities for the performance of various tasks.

The legal regulation of special investigative measures is one of the most complex problems of special investigative activity in the Republic of Moldova. The actuality of this topic is

determined by the continuous legal reform that extends for more than a decade and directly targets this very effective legal instrument for protecting common social values, being changed over time the development vector of the respective regulations in a diametrically opposite direction. The analysis of the explanatory comments attached to the draft laws [1], that sought to amend the legislation in the field of special investigations suggests that there is no very clear model or concept under which the legal framework would be perfected. The vagueness of the law generates different interpretations and, as a consequence, non-uniform application of the legislation. The purpose of this research does not consist in perfecting the law, but in establishing the current direction of development of the legal framework in the matter of special investigations and formulating the appropriate explanations that would clarify a multitude of questions related to the differentiated treatment of carrying out special investigative measures.

The difficulty of solving the problem of legal regulation of special investigative activity, in general, and special investigative measures, in particular, is determined by the complex nature of this type of activity as well as its intrusive nature in the rights and freedoms of the person. Seen through the prism of specific tasks, the special investigative activity is more than an effective means of preventing and combating crimes, its usefulness is also being noted through the lens of achieving some strategic objectives, such as collecting information on possible facts or events that could endanger public order or safety in places of detention, ensuring the protection of witnesses, other participants in the criminal process and the subjects of the special investigative activity, the search for persons who have disappeared without a trace and those who are evading prosecution or the court or from the execution of the criminal sentence, identification of unknown persons and bodies, verification of persons claiming to obtain certain rights.

The problem of legal regulation of the special investigative activity also derives from the lack of express legal provisions that would establish the nomenclature of normative acts intended to regulate the actions, including the special investigative measures carried out within this type of activity. It is also worth noting that the previous law, Law No. 45/1994 [17], unlike the current one, Law No. 59/2012 [18], contained provisions that expressly indicated the normative framework of this matter (art. 4) [2]. The failure to include such provisions in the current law can be understood as a matter left to the doctrine.

Analysis of recent research. Special investigative measures have the noble purpose of contributing through its specific forces, means and methods to combating crime as the most serious form of threat to democratic values, as well as to removing threats likely to compromise the security of the rights and freedoms of the person, public order and other common values. By its very nature the rule of law cannot exist without clear laws and rules to be followed, so legislation plays a special role in this equation.

Crime has become a major problem not only at the national level, but also at the international level, with concerns to improve the situation increasingly focusing on finding effective solutions to prevent and combat crime. The researchers: V. Cuşnir, I. Dolea, V. Moraru, D. Roman, V. Mîrzac, N. Vasilişin, I. Covalciuc, I. Botnari, S. Copeţchi, V. Sîli, D. Obada, (R. Moldova); M. Udriou, R. Slăvoiu, O. Predescu, M. Suian, M. Tudoran (Romania); Yu. Groshevoy, O. Kaplina, E. Novikov, S. Shumilin (Ukraine); A. Ghinzburg (Kazakhstan Republic); N. Kovalev, (Kyrgyz Republic); Paul de Hert (Belgium); Veljko Turanjanin (Serbia) and others.

Through the analysis of specialized literature and national legislation, as well as laws from abroad, the most essential characteristic signs of the special investigation activity were identified, which allowed the realization of the legal notion (essence) and its content. It was shown that the special investigation activity it is not identified either with a totality of special investigation measures or with that of criminal prosecution actions, its content comprising a totality of organizational, informational, analytical, executive and other actions carried out to fulfill the goals and tasks established by law. its nut. By approaching the concept of

special investigative measures, it was argued that its purpose consists in protecting certain social values and cannot be reduced to gathering information, being only one of the tools applied to accomplish the tasks assigned to this type of activity.

Goal statement. At the present moment, the importance and the purpose of the elaboration of this scientific approach, appears from the author's intention to reveal in the foreground some doctrinal and legislative landmarks in the field of approach regarding the legal regime of special investigative measures in the legal system of the Republic of Moldova. At the same time, there is also the urgent need to carry out an extensive analysis regarding the essence of the research subject.

In the process of elaborating this research, we identified the following as primary objectives of the research: first of all, the investigation of the origin and evolution of the concept of special investigative activity; at the same time, an important aspect was also given to the process of appreciating the notion, content and legal regime of special investigative measures; and obviously we cannot overlook the objective of examining the procedure and methodology applied within the special investigative measures. These three research objectives, looking at them as a whole, will facilitate the process of approaching and analyzing the legal regime of special investigative measures in the entire legal system.

Results obtained and discussions. The concept of special investigative activity, in the current regulation of art. 1 of Law no. 59/2012 of the Republic of Moldova, implies, "an activity of a secret and/or public nature, carried out by the competent public authorities, with or without the use of special technical means, to collect the necessary information for crime prevention, ensuring public order and safety in places of detention". The same law also provides an exhaustive list of special investigative measures intended to contribute to the achievement of the stated goal, namely: locating or tracking by technical means; interception and recording of communications and/or images; detaining, searching, delivering or picking up mail; collecting information from providers of electronic communications services; accessing, intercepting and recording computer data; identification of the subscriber or user of an electronic communications network; access to financial information; acquisition of control; undercover investigation; collecting samples for comparative research; research of objects and documents; visual tracking; gathering information (art. 27).

Through the amendments of 2023 introduced in the mentioned law, the legislator decreed that this law regulates the special activity of investigations outside the criminal process (par. (2) art. 1 of Law no. 59/2012), which means that the special measures of investigations regulated by this law will apply only outside the criminal process. These provisions are novel and reveal the fact that this law only partially regulates the concept of special investigative activity, including that of special investigative measures.

In turn, the Code of Criminal Procedure regulates in a separate section a list of special investigative measures almost identical to that regulated by Law no. 59/2012: home search, use and/or installation of devices that provide photography or surveillance and audio and video recording; technical supervision; interception and recording of communications and/or images; detaining, searching, delivering or picking up mail; monitoring or controlling financial transactions and/or access to financial information; collecting information from providers of electronic communications services; accessing, intercepting and recording computer data; identification of the subscriber or user of an electronic communications network; controlling the transmission or receipt of money, services or other material or non-material values claimed, accepted, extorted or offered; supervised delivery; acquisition of control; undercover investigation; visual tracking; gathering information.

The comparative analysis of the two lists of measures allows the finding of the fact that in Law no. 59/2012, 13 measures are regulated, and in the Code of Criminal Procedure 14 measures, which could suggest that the special investigative activity as a whole includes 27 special investigative measures [3, p. 43-54]. On the other hand, this mathematical

calculation does not correspond to reality, because many of the measures are repeated, i.e. they are duplicated in both lists (eg: Interception and recording of communications and/or images; Detention, search, delivery, or collection of mail; Collection of Information from electronic communications providers; Accessing and recording of electronic communications; Surveillance; Acquisition of information).

Between the two lists of measures, certain differences create certain uncertainties and difficulties in understanding the spirit of the law. Thus, there are measures, such as "Location or tracking by technical means" and "Access to financial information", which are only found in Law no. 59/2012, in reality, they are also provided for in the Criminal Procedure Code, but not as independent measures, but as elements of other more comprehensive measures. For example, from the content of the measure "Technical supervision" provided in art. 138 CPP we note that, in addition to other actions, this also includes "Location or tracking by technical means" (art. 28 of Law no. 59/2012). Similarly, the "Monitoring or control of financial transactions and/or access to financial information" measure provided for in art. 138³ CPP, even from its name it can be seen that it also includes "Access to financial information" (art. 31 of Law no. 59/2012).

The comparative analysis also reveals the presence of some measures in only one list. For example, "Research of the home, the use and/or installation in it of devices that ensure photography or surveillance and audio and video recording" and "Supervised delivery" are measures provided for only in the Code of Criminal Procedure. Similarly, "Collection of samples for comparative research" and "Research of objects and documents" are measures provided only in Law no. 59/2012.

In the context of approaching this subject, it is worth reminding ourselves that until the legal reform of 2012, special investigation measures were regulated in a single normative act (Law no. 45/1994 [17]), comprising a total of 21 measures. Depending on the degree of interference in the rights of the person, they were divided into two categories: 1) measures that involved interference in the rights of the person (5 measures), these could only be carried out with the authorization of the investigating judge; and 2) measures considered not to violate the rights of the person (all other measures) [4, p. 299–302], during the operative control they were carried out with the authorization and under the supervision of the head of the investigative-operative body. However, one of the measures (the control of the transmission of money or other extorted material values) could be carried out based on the reasoned decision of the head of the body that exercises special investigative activity, approved by the prosecutor who led or carried out the criminal investigation in the given case (art. 8 paragraph (4) of Law no. 45/1994 [17]). Under the terms and conditions of this law, special investigative measures could be carried out to achieve all the tasks included in Art. 2, both those of a criminal procedural nature (detection, prevention, prosecution, discovery of crimes, and the persons involved in their commission) and those of an administrative nature (search for missing persons, identification of corpses, ensuring security).

The 2012 reform produced essential changes in the legal regulation of special investigative measures, the entire list consisting of 20 special investigative measures was regulated in Law No. 59/2012, and 15 of them were also provided for in the Criminal Procedure Code. Otherwise, in the matter of the regulation of special investigative measures, Law no. 59/2012 fulfilled the function of general law, and the Criminal Procedure Code that of special law [5, p. 67]. The priority of the Code of Criminal Procedure in the matter of regulating the legal regime of special investigative measures intervened in the segment of the criminal process [6, p. 110]. The entire list of special investigative measures was divided into three categories: 1) measures authorized by the investigating judge (8 measures) [7, p. 56–69]; 2) measures authorized by the prosecutor (9 measures); and 3) measures authorized by the head of the specialized subdivision (3 measures). The first category of measures and three other measures authorized by the prosecutor could only be carried out within the framework of the criminal investigation and only in the case of the investigation of serious,

particularly serious, and exceptionally serious crimes. Four other measures authorized by the prosecutor were admissible both within and outside the criminal process. The other measures could only be carried out outside the criminal process. As an exception, three of the special investigative measures in the first category and all those in the second category were admitted outside the criminal process, within the professional integrity test [8, p. 56–69]. Such a legal regime for carrying out special investigative measures, focused on more formal aspects, proved to be less effective, many of the tasks of the special investigative activity had become practically declarative [9, p. 17–20], which ultimately led to a new legal reform.

Starting from January 1, 2024, special investigative measures are regulated by the same two basic normative acts, only that Law no. 59/2012 about the procedural law no longer fulfills the function of a general law or a special law, it being the normative act that regulates the special investigative activity, including the performance of special investigative measures, outside the criminal process. Thus, we find that the matter of special investigative activity is currently regulated by two basic laws, each of which provides its nomenclature of special investigative measures. The question that arises is the ratio between them. Would it follow that these measures should be approached distinctly from each other, belonging to different subjects, or would it be necessary to analyze them as complex as being elements of the same concept?

Following the deliberations, we conclude that the subject of the special investigative activity involves different approaches. As a science, it does not have a very distant past. Having its origin in forensics, it initially went through a joint ascent, later being divided and developed separately, from which point it continued to develop as a didactic discipline. As a practical activity, this activity is distinguished by the efforts of specialized state bodies to perform operatively certain specific tasks. The elements and techniques of this activity can be traced back to the most remote historical periods. The official recognition of this activity occurred relatively recently, with the proclamation of our country as a state of law. The enactment of the first law (Law no. 45/1994 [17]), dedicated to the regulation of special investigations, marked the beginning of the approach to special investigations as a legal field that includes all the rules, intended to regulate various types of social relations that appear in connection with special investigations to accomplish certain tasks.

At the same time, it is worth noting the complex nature of this type of activity, including several types such as **Special criminal investigations**, with the fundamental purpose of revealing, preventing, solving, discovering crimes, and identifying the people who organize and/or commit them; **Special search and identification investigations**, involving the search for missing persons without a trace and the identification of bodies, those who evade prosecution or trial, as well as those who evade the execution of punishment or have escaped from places of detention (art. 2 letter c) of Law no. 59/2012) [10, p. 192–201]; **Administrative verification investigations**, constituting the type of special investigative activity intended to facilitate various legal-administrative regimes by using forces, means, and special investigative methods to collect the necessary information about certain persons, to take specific decisions (such as access to classified information, issuing permits for detective and private security activities, authorizing access to workplaces related to life, human health, and environment risks, etc. (art. 7 paragraph (3) of Law no. 59/2012 [18]) **Security investigations**, being the type of special investigative activity that refers to ensuring the security of public order and safety in places of detention, of witnesses and other participants in the criminal process, as well as of the subjects of the special investigative activity (art. 2 letters d) – f) from Law no. 59/2012 [18]).

By the will of the legislator, the legal regulations concerning the first type of investigations – **Special criminal investigations** – were included in the Code of Criminal Procedure, being at the same time removed from Law no. 59/2012 [18]. These changes, in our view, should not be treated as a restriction of the scope of the concept of special investigative activity, but rather as a new systematization of the legal regulations of this matter. The special investigative activity is not identified with the regulatory limits of Law No. 59/2012 [18].

Although devoted to the special activity of investigations, it does not include all the rules regulating this complex type of activity.

Therefore, we find that **the current direction of development** of the level of legislative regulation of the special investigation activity is oriented towards decentralization, while still maintaining unity through the prism of the scientific, didactic, and tactical-applicative aspects.

These explanations clarify the differences between the two lists of special investigative measures provided for in the Code of Criminal Procedure and Law No. 59/2012 [18].

Thus, the presence of the measures "Research of the home, the use and/or installation in it of devices that ensure photography or surveillance and audio and video recording" and "Supervised delivery" only in the Code of Criminal Procedure can be explained by their increased degree of interference in the rights of the person, the legislator considering that they can only be carried out within the limits of the criminal process, respectively the regulatory seat of their legal regime would be the Code of Criminal Procedure. Similarly "Collection of samples for comparative research" and "Research of objects and documents" are measures provided only in Law no. 59/2012 [18], their necessity in the criminal process expires by the existence of appropriate criminal prosecution actions, being about "Collection of samples for comparative research" (art. 154-156 CPP), "Technical-scientific finding" (art. 139-141 CPP) and "Judicial expertise" (art. 142-153 CPP).

Such a systematization of the rules regulating the legal regime of special investigative measures, in our view, should be understood in the sense that the legislator accepted the proposals of the authors of the draft law which amended the legislation in the field of special investigative activity [11, p. 43], aiming the purpose of separating investigative activities specific to the criminal process from those carried out outside it. We believe that both the special investigative activity and the special investigative measures as elements of this activity should be approached as a whole, as a single matter, but with distinct legal regimes depending on the field concerned: within and outside the criminal process [12, p. 34-38].

Analyzing the set of special investigation measures from the perspective of the competence of the body that authorizes them, we distinguish five types of measures: 1) measures authorized by the investigating judge; 2) measures authorized by the prosecutor; 3) measures authorized by the head of the specialized subdivision; 4) measures authorized by the investigating judge (within the criminal process) and the prosecutor (outside the criminal process) [13, p. 353-358], e.g.: "Location or tracking by technical means"; and 5) measures authorized by the prosecutor (within the criminal process) and the head of the specialized subdivision (outside the criminal process), e.g.: "Visual surveillance" and "Information gathering". We therefore note that no special investigative measure can be carried out without authorization. The assignment of the authority to authorize measures depends on the strict will of the legislator and cannot be transferred from one body to another except by amending the legislation.

As an exception, the measures authorized by the investigating judge could be authorized by reasoned order of the prosecutor in the case of a flagrant offense or when not delayed if the judge's conclusion could not be obtained without the existence of a substantial risk of delay that may lead to the loss of evidentiary information or could imminently endanger the life, health or safety of persons. In such situations, within 24 hours, the investigating judge must be presented with an action to control the legality of the disposition and authorization of the special investigative measures, presenting the order authorizing the measure, as well as all the materials in which it is argued the need to carry out special investigative measures. If it is established that there was a basis for carrying out special investigative measures, the investigating judge, employing a reasoned conclusion, is to confirm immediately, or at the latest within 24 hours the legality of carrying out that measure. Otherwise, the investigating judge will reject, with a reasoned conclusion, the prosecutor's approach, will declare null and void both the order authorizing the measure and the results of its implementation (art. 135 para. (6) CPP) [14, p. 113-118].

Analyzed from the perspective of the competence of the authorities with the right to carry out special investigative measures, we can distinguish two types of measures [15, p. 250–256]: 1) measures that can be carried out by the investigative officers of the specialized subdivisions of all the special investigative activity authorities (Gathering of information; Acquisition of control; Research of objects and documents; Collection of samples for comparative research); and 2) measures that can only be carried out by the investigative officers of the specialized subdivisions of certain authorities that carry out special investigative activity (The control of the transmission of money or other extorted material values can only be carried out by the investigative officers of the specialized subdivisions of the Ministry of Internal Affairs and of the National Anticorruption Center (art. 138⁷ para. (2) CPP), and the “undercover investigation” measure can only be carried out by employees, specially designated for this purpose, within the Ministry of Internal Affairs, the National Anticorruption Center, the Customs Service, the State Fiscal Service, the National Administration of Penitentiaries (art. 36 par. (4) of Law no. 59/2012 [18])).

From the perspective of restricting the performance of MSI within and outside the criminal process, we distinguish three types of measures: 1) Measures that are carried out only within the criminal process (Research of the residence, use and/or installation in it of devices that provide photography or surveillance and audio recording and video; Control of the transmission or receipt of money, services or other material or immaterial values claimed, accepted, extorted or offered; 2) Measures that are carried out both within the criminal process and outside it (Collection of information; Control acquisition; Undercover investigation; Visual surveillance, etc.); and 3) Measures that take place only outside the criminal process (Research of objects and documents; Collection of samples for comparative research).

Unlike the previous version of the regulations of the Code of Criminal Procedure, which did not allow the performance of special investigative measures only within the limits of the criminal prosecution, the current provisions allow the performance of two special investigative measures from the moment the criminal trial starts and until the criminal prosecution starts, during and to verify notifications regarding the commission of crimes, these being the identification of the subscriber or user of an electronic communications network and the collection of information (art. 134 para. (2) CPP).

In this context, we note that the start of the criminal process in the Moldovan legal regulation corresponds to the moment of notification or self-notification to the competent body about the preparation or commission of a crime (art. 1 CPP) [16, p. 92–106], and the start of the criminal investigation is marked by the order issued based on the notification, which results in at least a reasonable suspicion that a crime has been committed and there are no circumstances that exclude criminal prosecution (art. 274 CPP).

In this context, we also note the fact that through the latest legislative amendments, it was decided that only the results of special investigative measures carried out in the framework of the criminal prosecution can be recognized as evidence (art. 94 para. (4) CPP), which means that the results the measures carried out until the start of the criminal investigation will not be able to be capitalized as such.

Conclusions. The subject matter of special investigative activity generally includes various special investigative measures, the legal regime of application of which is different depending on the purposes and tasks of this matter. Thus, the legal regime of special investigative measures applied within the criminal process differs from that applied outside the criminal process. Therefore, the phrase “special investigative measures within and outside the criminal process” emphasizes the existence of a wide spectrum of special investigative measures that can be applied in various contexts, each with its specific legal regime.

The current development trend of national legislation in the matter of special investigative activity is directed towards the separation of different normative acts of the different legal regimes for the application of special investigative measures according to the types of special investigative activity: judicial criminal investigations (in the Code of Criminal Procedure);

extrajudicial investigations (in Law no. 59/2012 [18]). The current legal regulations indicate that both the special investigative activity and the special investigative measures as elements of this activity should be approached as a whole, as a single matter, but with distinct legal regimes depending on the field concerned: within and outside the criminal process.

Bibliography:

1. The draft law for the modification of some normative acts (regarding activity special investigation). [cited 11.10.2022]. Available: https://cancelaria.gov.md/sites/default/files/document/attachments/nu_438_mj.pdf.

2. According to the provisions of Art. 4 of Law no. 45/1994, the legal basis of operative investigative activity includes the Constitution, this law, and other normative acts adopted by them. At the same time, it was mentioned that the bodies that carry out operative investigative activity are entitled to issue, within the limits of their competence, following the legislation and in agreement with the Supreme Court of Justice and the General Prosecutor's Office, departmental normative acts that regulate the organization, methods, and tactics carrying out investigative operative measures;

3. Cicala, Al. *The content of the special investigation measure, „Research of the residence and/or the installation in it of devices that ensure surveillance and audio and video recording, of those to be photographed and filmed”*, In Scientific Annals of the “Ștefan cel Mare” Academy of MAI of the Republic of Moldova, no. 12, 2020, p. 43–54.

4. Didac, V., (2009), etc. *Forensic tactics. Operative investigative activity*. Chisinau: Elan polygraf, 344 p. ISBN 978-9975-66-093-8.

5. Gherman, M., Blîndu, E., Botnari, I. (2023), *The grounds and conditions for carrying out special investigative measures: Monographic study*. Chisinau. Polygraphic editorial department of the “Ștefan the Great Academy”. 192 p. ISBN 978-9975-135-70-2.

6. Glavan, B. (2022), *The special investigative activity and the criminal process. Common aspects and delimitations*. Chisinau: Sn, (Print-Caro). 475 p. ISBN 978-9975-135-63-4.

7. Cicala, Al. (2021), *Special Investigative Activity. Schematic representations and definitions*. Chișinău. Ed. Polygraphic department of the Academy “Ștefan cel Mare”, Chișinău. ISBN 978-9975-135-43-6.

8. Glavan B., *Reflections on the classification of special investigative measures*. In: *Law and Life*. 2022, no. 1–2, p. 56–69.

9. Harunjen E. *The new concept of criminal investigation was promoted by the prosecutor's office*. In: Magazine of the Prosecutor's Office of the Republic of Moldova. No. 1/2019. P. 17–20. P. 18.

10. Roman D., Popa S. Identification of the person through special investigative measures and methods. In: *Studia Universitatis Moldaviae*, 2017, no. 3, pp. 192–201. ISSN 1814-3199.

11. Informative note to the Draft Law for the amendment of some normative acts (regarding the special investigative activity), p. 43. [cited: 20.10.2023]. DOI: <https://gov.md/sites/default/files/document/attachments/subiect-03-nu.pdf>.

12. Soroceanu Ig. Content of special investigative measures in the field of electronic communications networks. Part I. In: European Vector Magazine, no. 1 of 2022. P. 34–38. ISSN 2345-1106/ISSNe 2587-358X.

13. Soroceanu Ig. Content of special investigative measures in the field of electronic communications networks. Part II. In: Materials of the International Scientific-Practical Conference “Theory and Practice of Public Administration”, 26th edition, dated May 20, 2022. P. 353–358, total number of pages: 585. ISBN 978-9975-3542-3-3.

14. Soroceanu Ig. Criminal prosecution – remarkable phase of the examination of the case in order to establish the truth. In: *National Law Review*, no. 10–12 of 2020. P. 113–118. ISSN 1811-0770.

15. Soroceanu Ig. Content of special investigative measures in the field of electronic communications networks. Part III. In: Materials of the international scientific conference “European integration by strengthening education, research and innovation in the countries of the Eastern Partnership”, from 16–17 May 2022. P. 250–256, total number of pages: 260. ISBN 978-9975-165-23-5.

16. Glavan B. *The initiation of the criminal process in the legal regulation of the Republic of Moldova – an essential criterion from the perspective of the special investigation activity*. In the: *National Law Review*. No. 2. P. 92–106.

17. Law on operative investigative activity no.45 of April 12, 1994 // Official Gazette of the Republic of Moldova, no. 11–13 of 1994, repealed in 2012.

18. Law on special investigative activity no.59 of March 29, 2012 // Official Gazette of the Republic of Moldova, no. 113–118 of 2012.

Стаття надійшла до редколегії 28.10.2024

Главан Борис, кандидат юридичних наук, викладач університету, вчений секретар Сенату Академії «Штефан чел Маре» МВС Республіки Молдова (муніципалітет Кишинів, Республіка Молдова)

Чікала Александру, кандидат юридичних наук, викладач університету, завідувач кафедри «Спеціальна слідча та антикорупційна діяльність» Академії «Штефан чел Маре» МВС Республіки Молдова (муніципалітет Кишинів, Республіка Молдова)

ПІДХОДИ ДО ПРАВОВОГО РЕЖИМУ СПЕЦІАЛЬНИХ РОЗШУКОВИХ ЗАХОДІВ У ПРАВОВІЙ СИСТЕМІ РЕСПУБЛІКИ МОЛДОВА

У статті розглядається актуальна та важлива тема як для оперативно-розшукової діяльності, так і для кримінального процесу: спеціальні розшукові заходи. Вони залишаються життєво важливими інструментами для запобігання злочинності та боротьби з нею, забезпечення національної безпеки й виконання інших завдань, істотних для демократичного суспільства. Через свій інтрузивний характер ці заходи потребують суворого регулювання, щоб запобігти можливим зловживанням з боку влади. Законодавство Республіки Молдова у цьому контексті зазнало суттєвих змін, котрі вимагають відповідних тлумачень і пояснень, які б сприяли подальшому вдосконаленню правового регулювання. Дослідження висвітлює сучасну тенденцію розвитку національного законодавства у сфері спеціальних розшукових дій, орієнтоване на відокремлення правових режимів застосування цих заходів у різних нормативних актах залежно від конкретних завдань, які мають виконуватися. Безперервна еволюція загроз безпеці, включно з кібернетичними, гібридними та економічними загрозами, вимагає постійного оновлення переліку учасників, залучених до забезпечення безпеки. Наприклад, включення нових спеціалізованих органів у такі сфери, як кібербезпека чи захист критичної інфраструктури, було б виправданим, з огляду на їхню важливість для захисту держави.

Чітке розмежування між національною безпекою та безпекою держави допомагає відокремити захист національного суверенітету та цілісності від внутрішніх загроз, що впливають на громадський порядок, економіку чи інші чутливі сфери. Гібридні загрози – це ті, які впливають на стійкість держави та включають ворожу пропаганду та кампанії з дезінформації. Ці види загроз є критично важливими в сучасному ландшафті безпеки, і для ефективної боротьби з ними потрібне законодавство, яке містить конкретні деталі щодо запобігання та протидії такому впливу. Дезінформація та інформаційні маніпуляції, пропагандистські та дезінформаційні кампанії, які здійснюються через цифрові платформи, становлять значну загрозу національній безпеці, впливаючи на соціальну, політичну та економічну стабільність держави. Хоча закон згадує їх у загальному вигляді, включення більш чітких і детальних положень щодо боротьби з дезінформацією зробило б цінний внесок у національну безпеку, тому дуже важливо провести глибоке дослідження правового режиму спеціальних розшукових заходів у правовій системі Республіки Молдова.

Ключові слова: оперативно-розшукова діяльність, спеціальні розшукові заходи, кримінальний процес, кримінальне переслідування, умови, слідчий.