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SUMMARY OF THE PHD THESIS

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"Particularities of the Criminal Investigation in the field of Economic Offences"

Keywords: economic crime, economic offence, investigation plan, prosecution strategies, evidence, means of evidence, opportunity and utility, legal persons, shell companies, precautionary measures, seizure, technical surveillance mandate, bank account, financial transactions, financial statements, monitoring, judicial cooperation, inter-institutional collaboration

Chosen topic. Motivation

The topic chosen is of high actuality considering, on the one part, the phenomenon of economic criminality, its dynamics and evolution and, on the other part, the legal issues raised in the judicial practice in the process of relevantly applying and interpreting the law, quite often normative acts being confusing, they lack clarity and sometimes they are inadequate to the social reality.

From the practitioner's perspective, specialization in a determined field of activity in the criminal investigation and continuous training are mandatory desiderata for the investigating magistrate, so that knowledge enhancement and improvement are absolutely necessary.

Equally, we note that the phenomenon of economic crime is a vast, complex field on which, although opinions were punctually expressed in the doctrine and specialty literature on specific components, especially in the criminal business law, a sub-branch of criminal law that has crystallized over the past few years, we have not identified, following the research, a comprehensive study, analysis, or overall approach. Therefore, we considered that the topic, although possibly extremely wide and vast, deserves special attention.

Moreover, economic crime is a highly controversial field, both in terms of incident legislation, characterised by with many shortcomings, quite often unclear, which consequently leads to a non-unitary judicial practice, with different, sometimes antagonistic solutions on the same legal issue.

Indisputably, the investigation of economic crimes involves a higher level of difficulty compared to other criminal fields, a level resulting both from the mostly purely technical nature of the economic-financial mechanisms we operate with, as well as from the complex and laborious way we administer evidence in a criminal case of this kind.

Last but not least, it is a unique field, with particular, interesting and exciting features at the same time.

Purpose of research

This paper aims at highlighting the particularities and specific features of the criminal investigation in the field of economic crime investigation, considering that in this criminal field, the administration of evidence entails certain specific coordinates that we do not find in the activity of investigation of other offences. Several components have been analysed for this purpose.

First of all, it was necessary to **establish the notion**, the concept, the meaning and the definition of the economic offence, as, ultimately, the starting point is even the offence itself.

Furthermore, we have established the **scope of coverage** of economic offences, in which regard we have delimited the facts that can be classified in economic offences category, both those stipulated in the Criminal Code, as well as those stipulated in special criminal laws or non-criminal laws containing criminal provisions.

Due to the fact that any criminal investigation is initiated following a **referral**, regardless of whether it is a denunciation, a complaint or an *ex officio* referral, a chapter was dedicated to this important procedural moment of initiating the criminal investigation. The **investigation strategy** that the criminal investigation body has to establish was debated and analysed based on the **investigation plan.**

The central interest of the thesis is the **administration of evidence**, in which respect all the means of evidence have been analysed in detail, all the evidentiary procedures being presented, according to the order stipulated in the Criminal Procedure Code, while underlying and highlighting the procedures that are used to a greater extent or which contain specific elements in investigating economic offences.

As these offences are usually committed through **legal persons**, we have paid special attention to the criminal liability of the legal person, thus analysing not precisely the theoretical elements, but mostly the practical aspects revealed by the case law.

A part of the research was allocated to the **precautionary measures and confiscation ,**in a distinct chapter, given that economic crime generates damages and the role of the judicial body, beyond gathering evidence and holding criminally liable the guilty persons, is to take the necessary measures for the purpose of recovering damages and confiscation of the proceeds of the offence.

Last but not least, considering the complexity of the phenomenon under analysis and often the cross-border nature of illicit activities, there were presented theoretical and mostly practical elements regarding **judicial and extrajudicial collaboration and cooperation**, both at domestic and international level in the investigation of crimes as absolutely necessary elements in the criminal investigation.

Strategy and methods of research

With regard to the **research strategy**, it was focused, on the one part, on the **analysis of the legal framework** in the matter, in this aspect considering not only the legislation in criminal law and criminal procedure law, but also other branches of the legal sciences (fiscal, commercial, administrative law, forensic, criminology or judicial psychology) as well as the legislation specific to sectors that go beyond legal sciences, namely economics, taxation, accounting or the capital market. Equally, the research has focused on **judicial practice**, considering first of all, the practice of judicial bodies and the courts, as well as to the case law of the Constitutional Court, the European Court of Human Rights (given that evidence administration methods often involve intrusive measures affecting rights and fundamental freedoms), the European Court of Justice as well as the jurisprudence of the Supreme Court, both with regard to the decisions in the case-law and in the decisions which are binding delivered by the courts specialized in settling the appeal in the interest of the law or for the resolution of a legal issue in criminal matters.

Regarding the **methods of research** used, we have used the **logical method** (using logical processes, arguments and operations, as the law is eminently a deductive science), the **comparative method** (revealing the similarities and differences between different institutions corresponding to different legal systems), the **historical method** (in this regard we proceeded to the evolutionary research of law by analysing the evolution of some criminal law and criminal procedure law

institutions in the Romanian legal system), the **sociological method** (revealing the causes and effects of the facts in the economic field on the background of the phenomena that generated them and which also determined the subsequent dynamics in the context of other social phenomena such as morality, ethics, politics and economics) and the **quantitative** method (with recourse to the structural and functional analysis of legal institutions with an incidence in the field under research, including by legal informatics or judicial statistics).

Structure of the thesis

The work paper pursued the purpose of the research activity, according to the research strategy, by a balanced distribution of the topics approached and in a logical chronology, being thus structured in ten chapters, conclusions and *lege ferenda* proposals and an annex including specialty terms.

In the first chapter, entitled **"Economic Crime and Criminal Justice**", were presented, in its five sections, considerations regarding the **phenomenon of economic crime**, its actuality and the way in which it affects the contemporary society, the continuous evolution and the improvement of the methods for committing the offences, the consequences damaging the patrimony of public or private entities, in which regard were presented some statistical data related to the nominal values of the damages caused. In this context, we considered that criminal investigation tactics and techniques in cases involving this type of crimes require special importance and attention to eradicate the phenomenon. Starting from the complexity of the economic crime phenomenon, with all the difficulties related to the understanding of the economic and financial mechanisms used in the criminal activity, there were presented some elements on the inherent **difficulties** encountered by the criminal investigation body in the handling of such cases and the need for them to find the best methods and strategies for the resolution thereof, further highlighting the fact that, without knowing and clearly understanding the specific terms and instruments in the specialty field (economic, fiscal etc.) to demonstrate the criminal activity is a highly difficult mission, sometimes almost impossible. Closely related to the phenomenon of economic crime, were presented important aspects regarding the **typology of the offender** acting in this field, in which regard were presented the features of the offender's profile related to the level of education and training, the intelligence coefficient, persuasion, simulation and dissimulation capacity, the socio-professional component, the material and financial aspect or organizational capacity. At the end of the chapter, the **criminal matrices** are briefly

presented as patterns, schemes or models in which the criminal activity is carried out, and they are exemplified (an attempt to make an exhaustive presentation being obviously doomed to failure) namely: frauds of commercial, fiscal, customs nature, related to the capital market, banking, insurance, intellectual property and financial interests of the European Union.

Chapter II entitled "**Economic crime. Concept, features and classification. Offences stipulated in the Criminal Code**" is dedicated to establishing the notion of economic crime and briefly presenting the concept, its features and classification. Furthermore, were nominally presented the offences stipulated in the Criminal Code, which in our opinion represent economic offences. With regard to conceptualization, within the section entitled **"Conceptualization and features"**, by analysing the opinions expressed in the literature and the specialized doctrine, where we observed that different phrases are used, namely economic and financial offences, financial-banking offences, business offences, economic offences, we have opted for the term economic offence, given that the term "economic" is the most comprehensive one and, consequently, we defined economic offences as facts provided for by criminal law, the Criminal Code or special laws, intentionally committed, which prejudice, harm the social relations that are born, developed and carried out within the economy, used to unfairly obtain material or financial benefits, and which usually cause damage. Furthermore we presented the **features** of economic offence, broken down into each constituent element, namely object, subject, subjective side, objective side, forms, modalities, variants and sanctions. For each component, we highlighted the specific features of economic offences. For example, as regards the passive subject, we pointed out that it may be a natural or legal person, the State or even the European Union with regard to the offences provided for by Law no. 78/2000 on fraud affecting the budget of the European Union. With regard to the classification of economic offences, as set out in Section II, beyond the use of classical criteria, namely the headquarters of the regulation, the passive subject and so on, we tried to establish some other criteria such as their **nature**, depending on which we considered that economic offences can be classified as **pure or intrinsic economic offences**, in which case they appear to be illicit manifestations within economic legal relationships by their nature such as tax evasion, smuggling, offenses stipulated by the Law on Companies, **assimilated economic offences**, deeds provided for by criminal law that can be committed both in fields that go beyond the economic area, but also in fields related to the economic environment, such as trust abuse, deceit, simple or fraudulent bankruptcy and **related economic offences** as representing acts which regularly accompany the first two categories thus creating a relationship of

etiological or consensual connection, facilitating goal achievement, ensuring the removal of the traces of the offence or preserving the criminal proceeds, such as forgery, money concealing or money laundering. Depending on the **field** in which they are committed (domestic, intra-Community or international trade, taxation, capital market, intellectual or industrial property), we have distinguished tax fraud, bank fraud, customs fraud, commercial fraud, fraud related to European Union funds, fraud in regulated stock markets. In terms of regulations, in Section III entitled **"Legislative Evolution. Historical Comparative Analysis"**, we made a review of the rules of incrimination, starting with the first modern Criminal Code (Criminal Code of 1864 also called "Cuza" code) to the current regulation. We have thus noted new aspects, for example the fact that the bankruptcy offences and the misappropriation of auctions have been provided for by the criminal law since the mid-nineteenth century. Furthermore, the offence of fraud was extensively regulated in the Criminal Code of 1938 in several variants, including the circumstantiation of the active subject, servant, lawyer or trustee. The offence also provided for a special form of emigration, in fact representing the current migrants smuggling offence. In **Section IV** we presented the offences provided for by the current Criminal Code, which in our opinion, starting from the definition of economic offence we have established and considering the features of each one of them, fall into this category, presenting in each particular case the arguments of belonging to economic offences area, as well as specifications on its pure, assimilated or related nature. Thus, we considered that can be classified in the category of economic offences: the **abuse of trust** provided for by art. 238, **trust abuse by defrauding creditors** provided for by art. 239, **fraudulent management** provided for by art. 242, **simple bankruptcy** provided for by art. 240, **fraudulent bankruptcy** provided for. by art. 241, **misrepresentation** provided for by art. 244 Criminal Code (the situation in which we criticized the removal of the variants provided for in paragraphs 3 and 4, the misrepresentation in conventions and the misrepresentation in the issue of cheque files, especially since the old regulation provided for not only misleading, but also maintaining, and particularly removing the variant with particular serious consequences, a variant on which the legislator later returned on), **insurance fraud** provided for by art. 245 (we have ruled on the uselessness of the regulation of this offence, which essentially represents a form of misrepresentation and also on the fact that the text of law does not cover all types of insurance, in which case the question arises as to the reason for incrimination of this act while referring only to assets insurance and human insurance, although there are other types of insurance, civil liability, malpractice, credit, financial loss etc. in which regard the specialized

doctrine expressed in the sense of retaining the misrepresentation offence), **concealment** provided for by art. 270, **embezzlement** provided for by art. 295, the **abuse in office** provided for by art. 297 Criminal Code, the **conflict of interests** provided for by art. 301, **illegal monetary gain** provided for by art. 306 (incrimination similar to that provided for by art. 18^1 of Law No. 78/2000 regarding the incrimination of similar facts but with regard to funds from the European Union budgets and not public funds), **diversion of funds** provided for by art. 307 (the same considerations as in the case of the previous offence), the **offenses of counterfeiting** provided for in Title VI (both with regard to currency and documents) **usury** provided for by art. 351, the **unlawful practice of a profession** provided for by art. 348, **sale of spoiled products** provided for by art. 358, **fraudulent or substitution food or other products** provided for by art. 357, **making fraudulent financial operations** provided for by art. 250 and **accepting transactions made fraudulently** provided for by art. 251.

In **Chapter III**, entitled "**Economic Offenses provided for under Special Laws**" we presented and analysed the economic offences provided for in special laws, both in special criminal laws as well as special laws regulating other fields of activity but which include criminal provisions, stipulating the scope of illicit acts that constitute offences. The chapter is structured into **nine** sections, each relating to a specific area of committing offences. Thus, we have divided the **offences related to the field of competition** (the offences provided for by the Competition Law no. 21/1996 and the Law on fighting against unfair competition no. 11/1991), offences **concerning the companies** (the offences provided for by articles 271-281 of the Law on trading companies no. 31/1990 by analysing the offence of uses, in bad faith, of company's assets or prestige for a purpose contrary to its interests or to its own benefit or in order to favour another company he is directly or indirectly interested in, provided for by art. 272 point 2 and the relations with the offences of embezzlement provided for by art. 295 of the Criminal Code and tax evasion provided for in art. 9 par. 1 letter c) of Law 241/2005), offences in the **banking field and instruments of payment** (the offences provided for by the Law on cheques no. 59/1934, the Law on the bill of exchange and promissory note no. 58/1934, the Emergency Ordinance no. 99/2006 on the credit institutions and capital adequacy), **offences related to the tax regime** (category in which we included the Law on prevention and combating tax evasion no. 241/2005, where we criticized the lack of regulation of the conduct of the person who does not retain and pay to the State budget taxes or contribution withheld at source within the legal term, according to the Decision of the Constitutional Court, Law no. 86/2006 on the Customs Code, considering mainly the simple or qualified

smuggling offences provided for by art. 270 and art. 271 and the Law on the Tax Code no. 227/2015 which mainly targets excisable products, **money laundering** (an autonomous offence area, which is extremely important given the concern of offenders who operate within the sphere of economic crime to create the appearance of the licit nature of the financial assets or resources obtained through the criminal activity, thus of the offence proceeds and inherently the measures of preserving them), **offences related to intellectual and industrial property** (a category in which we included the criminal deeds provided for by the Law on copyright no. 8/1996, the Law on trademarks and geographical indications no. 84/1998 and the Law on the protection of designs and models no. 129/1992, considering that, beyond the non-patrimonial value, there is also a patrimonial component resulting from the exercise and exploitation of the rights deriving from creation, which is achieved within commercial relations, namely economic relations in a broad sense), offences **related to European funds** (a category in which we included some of the offences provided for by the Law on preventing, discovering and sanctioning of corruption acts no. 78/2000, mainly those relating to the financial interests of the European Union, 18^1 and art. 18^3), offences **related to the capital market** (provided for by the Law on capital market no. 297/2004, mainly considering the offence of manipulation of the capital market as provided for in art. 279, but also other offenses, such as the offences provided for in art. 273^1 and art. 279) and **other criminal areas** (by analysing several normative acts and the possibility of the offenses provided for by them to be part of the field of economic offences, we have concluded that can be classified in the category of economic offences the facts provided for by art. 128^1 of the Law on the Court of Accounts no. 94/1992, the Government Emergency Ordinance no. 77/2009 on the organization and operation of gambling games or those provided for by the Law on the distribution of insurance no. 236/2018).

Chapter IV, entitled "**Referral, investigation strategies and investigator profile**", contains four sections, namely: "**Means of referral**" in which we reviewed the ways of referral of the judicial bodies, insisting on the particularities in case of economic offences (with an in-depth discussion on the referrals received from the intelligence services and ANAF structures, especially the General Fiscal Antifraud Directorate, the issues raised by this kind of notifications and the solutions we considered appropriate), "**General strategies for addressing the cases of economic offences**" in which were presented the coordinates of the strategies in addressing the cases related to the offences in the field, „**Investigation plan. Structure**" de facto institution, unregulated, but used in the judicial practice and extremely important and useful, presenting the measures necessary to be gradually implemented at each stage

of the investigation and the steps the investigator should punctually follow and the "**Investigator Profile**" in which were presented elements related to standards (in connexion with tact, attitude, ethics and professional deontology) that should be complied with by the criminal prosecution body in the investigation of such cases, standards that have to be adapted to the typology of the persons they come into contact with during the criminal investigation, and the typologies of the investigator being as well presented.

Chapter V, entitled "**Evidence management. Theoretical and comparative law aspects** "synthesizes rather theoretical elements, general considerations related to the management of evidence, general principles governing this area (the right to defence, the principle of loyalty and legality, the assessment of evidence), the concepts used (evidence, means of evidence, evidentiary procedure, notion and classification) and a comparative analysis of the criminal procedure law from an evolutionary and historical perspective. In **Section I** are set out elements to highlight the particularities of the management of evidence in the field under investigation, as well as outlying the legislative evolution starting with the Criminal Procedure Code of 1864 to the current legislation (emphasizing the novelties in terms of evidence management brought along by the new Criminal Procedure Code). **Section II** continues with presenting the means of evidence, including some considerations regarding the notion, classification, the object of evidence and the burden of proof. **The last section** is reserved for the principle of loyalty and legality and consideration of evidence. Although apparently strictly theoretical, the elements presented and analysed in this chapter are of particular importance with regard to the criminal investigation, since the judicial body has to know the principles and procedural rules of evidence management, to place itself within the coordinates established by them so that they do not remain simple desiderata stated by the criminal procedure law, but becoming the realities of any criminal investigation.

Within **Chapter VI** are presented in detail the **means of evidence** we called **classical or traditional**, namely those which, in our opinion, do not present any special particularities and are not indispensable in the handling of a case dealing with economic crimes, compared to a common law case. However, this does not mean that such means of evidence should not be adapted to the specific features of economic crime in the activity of evidence management (for example, the hearing tactics are naturally different from an investigation having as object the offence of theft considering the author's profile). The chapter is structured in **eight sections**, mainly focused on the succession of regulations in the Criminal Procedure Code, namely: the **statements** by the suspect, the defendant, the injured person and the witness

(where we insisted on the hearing tactics), **the identification of persons and objects, the search** (a matter treated in detail, both for the bodily search, of the vehicle, the home, but also the computer search, for each particular situation, being analysed and exposed both the elements regarding the appropriateness of the taking of the evidence, the tactical rules to be observed and last but not least, its usefulness and evidence value), **seizure of objects and documents**, **crime scene investigation and reconstruction, taking pictures and fingerprinting, means of material evidence and documents** (insisting on documents that are of particular importance in the field of economic crimes, the documents are searched for, their possible evidence relevance, a reason why we presented all categories of documents that can be obtained within the criminal, legal, banking, tax and accounting investigation, along with the presentation of theoretical considerations and especially practical considerations regarding counterfeiting offences) and **letterrogatory and delegation**. Regarding the documents, we analysed the issues raised in judicial practice in considering as means of evidence certain documents issued by State bodies such as General Fiscal Antifraud Directorate, namely the inspection reports and tax inspection, on which courts do not have a unitary practice in giving those documents the character of evidence, a reason why we exposed the arguments for which we considered that such documents have the evidentiary value of a document, art. 198 par. 2 second thesis of the Criminal Procedure Code excluding them in terms of evidence only as a specialized finding.

Chapter VII, entitled "**Evidence Management. Special means of evidence** "as it results from the marginal name itself, deals with those means of evidence that acquire special valences in the criminal investigation having as object economic crimes, in the sense that, beyond their predominantly technical nature, are almost indispensable in solving such cases, with a view to elucidate them in all aspects and to find out the legal truth. These means of evidence were considered special and treated in a separate chapter given that criminal investigation in the field of economic crime cannot be performed without their use. Therefore, it would be unimaginable the documentation in the criminal investigation of certain economic entities and commercial and financial activities without obtaining data, documents and information from credit institutions regarding the existence of bank accounts and the operations carried out through them. In addition, criminal investigation in complex cases of economic crime, where criminal activity takes organized forms, would be highly difficult to carry out for establishing objective, but more particularly subjective connections between the members of the criminal association without the use of the special surveillance method consisting of wiretapping of communications

or any kind of remote communication. The chapter is structured in three sections, the first one being focused on special methods of **surveillance and investigation**, treated in an extensive manner both from a theoretical and mostly practical point of view, thus highlighting certain contradictory, confusing or unclear regulatory issues that give rise to different interpretations of law enforcement, which in our opinion require the intervention of the legislator, while the second section deals with **the preservation of computer data** and the last one, **the expertise and the facts finding**. Therefore, the **first section** discusses the special methods of surveillance and investigation, starting with the notion, classification and legal framework, continuing and presenting each method, comparative analyses between surveillance methods and investigation methods, in particular situations when these methods are in close connection (as an example, we have presented a parallel between the institution of obtaining data on a person's financial situation and the special method of surveillance of obtaining data on a person's financial transactions).We expressed critical opinions on the legislator's initial option to place the financial transactions carried out by a person in the category of technical surveillance measures and the lack of distinction regarding those undergoing performance. Given the fact that the legislator subsequently reconsidered its position on this aspect by separately regulating the procurement of a person's financial transaction data, we carried out a detailed analysis, both from theoretical and practical perspective, pointing out the elements that keep raise questions of interpretation. We have also analysed the manner in which the legislator understood to delimit the surveillance methods from research methods by exposing the deficiencies of the legal text, as well as the confusing and interpretable nature of some standards requiring the legislator's intervention. **Section II** aims at preserving computer data, a means of evidence of a strong technical nature, but which can be successfully used in the field covered by our research, given that we live in the era of the Internet, a digital era, all activities related to the economic field are conducted more and more often and to an increasingly larger extent through applications involving the use of the Internet. Last but not least, **Section III** aiming at expertise and finding of facts, is of particular importance because economic frauds bring prejudice, so that the opinion of specialists or experts in determining the amount of the damage or the production mechanism is absolutely necessary. Consequently, the judicial body must know when to administer this piece of evidence, set objectives and not fall into the trap of accepting certain objectives from parties that go beyond the competences of specialists and experts and tend to establish elements that fall within the competence of the criminal prosecution body. Moreover, we noted the inconsistency of the

legislator in the regulation of the institutions for facts finding and expertise in establishing the relation between the two means of evidence, since the adoption of the Criminal Procedure Code up to this moment, considering as well the draft for the amendment of the Criminal Procedure Code recently adopted by the legislative authority.

Considering that the company, in its various forms, is the central subject in the economic relations, in **Chapter VIII**, entitled "**Particularities regarding the criminal liability of the legal person**", we presented, in the three sections, several minimal theoretical considerations regarding the conditions of criminal liability of the legal person, followed by the particular aspects in the investigation of economic offences and finally a synthesis of the characteristics of the "shell" company, taking into account the fact that in the criminal field that is the object of the research, the use of such entities is a frequent practice, whether we are talking about tax evasion (usually dozens of shell companies are used in criminal mechanisms for the achievement of the criminal goals and ensuring the criminal proceeds), bank frauds (the judicial practice reveals cases in which financial and accounting documentation for companies was forged and thus very high value financing was obtained) or customs frauds (import operations of undervalued products, by interposing of shell companies with a view to reduce tax liabilities to the State budget, customs duties and VAT). Therefore, we considered that, given the frequency of use of these criminal instruments in as various as possible economic crimes, it is necessary to analyse the conduct of these entities in order to extract the features, the characteristics that should be followed by the judicial body in the criminal investigation activity. Following such an analysis, the judicial body will be able to draw a conclusion at the highest level possible of likelihood on the conduct of an economic entity, in the sense that it is a real legal entity founded for the purpose of carrying out economic activities or it is merely an instrument, one piece within a complex crime gear.

"**Precautionary measures and seizure**" constitute the subject of **Chapter IX** and was intended, in its six sections, to focus primarily on a number of essential aspects regarding their importance in the investigation of economic offences, legal framework, classification and related distinctions, followed by the establishment of measures, rules and tactical steps in **determining the patrimonial situation** of a natural or legal person and in conducting financial investigations. We considered these aspects of particular importance because economic offences are harmful and in the criminal investigation the criminal investigation body does not have to put in a secondary place the taking of precautionary measures in order to cover the damages or taking the measure of special or extended seizure. For the achievement of these

objectives, it is essential for the judicial body not to remain passive, focusing only on aspects aiming at proving the criminal activity, but on the contrary, to play an active role in identifying all assets of suspects and defendants, in establishing patrimonial situations for taking precautionary measures. Considering that the precautionary measures shall not be taken at any time and in any manner whatsoever, as they contain limits and interdictions, both by procedural criminal provisions and other normative acts, we presented in Section 5 the legal provisions that stipulate exceptions, limitations and interdictions in the field of precautionary measures. Last but not least, in view of the desideratum of deprivation of offenders from the proceeds of the offence, in the last section we exposed several theoretical and practical considerations regarding the measure of the special and extensive seizure.

Chapter X entitled "**Judicial and Extrajudicial both Internal and International Collaboration and Cooperation in Investigating Economic Offences**" concludes the thesis, and elaborates an analysis in terms of concrete manners in which the judicial body, in its criminal investigation activity, requests or benefits from the support of other judicial or extrajudicial entities, either domestic or international, in the administration of evidence and carrying out other acts of criminal prosecution. As it can be observed, even from the marginal name given to the chapter under analysis, we took into consideration the activities that cover the two phrases used, collaboration and cooperation and, on the other part, entities placed in the sphere of the judicial bodies but also outside them, from the structure of the Romanian State or from the structure of other States. Therefore, the section analyses the components that go beyond the notion of international judicial cooperation in criminal matters, it has a broader scope and refers to any element through which criminal prosecution can be facilitated. Consequently, in the first two sections we presented a synthesis of the concepts used, followed by the presentation of the forms and the classification. Section 3 deals with the inter-institutional collaboration, namely the mechanisms used by the judicial bodies to obtain data, documents or information from other public or private institutions or bodies (O.N.R.C., O.N.P.C.S.B., Aliens Authority, Agency for Cadastre and Real Estate Publicity, the National Health Insurance Fund, the Romanian Banking Association, the National Credit Guarantee Fund for Small and Medium-sized Enterprises, the National Bank of Romania, etc.) or benefit of specialized support (the Fight against Fraud Department, ANAF through Fiscal Anti-Fraud General Directorate, National Agency for Seized Assets). So, as we can see, this type of collaboration or cooperation concerns the relationships that the judicial body can have in the criminal investigation with different public or private entities, all having the same purpose: the

administration of evidence in order to find out the legal truth. Section 4 deals with international judicial cooperation in criminal matters, being presented, in a distributed manner, within the subsections the legal arrangements and instruments corresponding to judicial cooperation in the intra-Community area and with countries outside the European Union. It has naturally been insisted on the cooperation within the intra-community area, while presenting the new ways of cooperation (the European investigation order, the joint investigation teams), the Community documents adopted over time with relevance in the field (framework decisions, regulations and directives) and the manner in which they have been transposed into national law as well as the existing bodies at European level (Eurojust, Europol), whose tasks are to facilitate the cooperation between Member States in the conduct of criminal investigations. Last but not least, we presented as well other forms of cooperation, which can be used in investigation actions such as administrative inquiries, simultaneous controls or customs cooperation. The chapter closes by presenting some controversial aspects of the judicial practice and the solutions we considered appropriate.

Conclusions and lege ferenda proposals

At the end of the paper work we presented the conclusions from the research activity that concerns **regulatory issues** and elements related to the **judicial system** and correlatively some *lege ferenda* proposals. Thus, there were pointed out elements connected to the unclear and confusing nature of some legal provisions that may give rise to different interpretations in the judicial practice, inconsistencies between different normative acts or articles within the same law, normative acts falling into disuse, inconsistency of the legislator in the regulation of certain criminal law and criminal procedure institutions, successive modifications with a certain rhythm of some legal texts, extensive and even useless legislation in certain fields or the reluctance of the legislator to include in the Criminal Code certain offences still regulated under special laws.

With regard to the **substantive criminal law component**, we noted and consequently we have proposed: an extensive regulation, lacking resilience, a legislative over-agglomeration (for example, offences covering the same field are included in two different normative acts, as the competition law, a situation where two laws become incident, namely Law 11/1991 on unfair competition and Competition Law 21/1996, although they could be regulated in the same normative

act), the fact that pure **economic crimes could have been included in the Criminal Code** in a distinct category, given the frequency of these crimes in the criminal phenomenon, the number of cases brought before the court, the importance of protected social relations and the damaging effects on the economy, the fact that **tax frauds, regardless the regulation headquarters, could be taken over in the Criminal Code** in a distinct chapter, which could bear the generic title of tax offences, since, in essence in some form or another, they are ways of avoiding the payment of taxes and duties to the State budget (VAT, corporation tax, respectively social contributions in the case of offences provided for by Law 241/2005, excise duty in the case of the offence provided for in art. 452 of the Tax Code or customs duties for the smuggling of goods stipulated in the Customs Code), the fact that although **a certain type of crime was sought by a single regulation in the Criminal Code, this process was incomplete** (for example, with regard to the crime of insurance fraud provided for by art. 245 of the Criminal Code, it is noted that incrimination is incomplete, because, through the material element, it cannot include all possible forms for committing deeds, having a rigid and limited character), the fact that **offences concerning the same type of illicit conduct**, with the provision of the same material elements of the objective side, the only distinction being given by the object, **are regulated in different texts**, Criminal Code or special laws, although the legislator could have included them in the same incrimination rule, (frauds involving funds from EU budgets incriminated under art. 18^1 and the following of Law No. 78/2000 and those of the same type having as object public funds incriminated under the Criminal Code, illegal monetary gain provided for by art. 306, could be regulated in the same normative act, namely the same article, the only notable difference between the two offences being the source of financing, European funds or State budget funds), the fact that in the case of **crimes with important weight in the area of crime, the legislator did not give them due importance, while showing inconsistency regarding the forms and the sanctions** (for example, in the case of the offence of misrepresentation provided for in art. 244 of the Criminal Code, important versions were eliminated, namely misrepresentation in conventions as well as the misrepresentation for the issuance of unsecured cheques; at the same time, limits on the penalty were drastically reduced and , given the lack of regulation of the version aiming at the production of very serious consequences, the statute of limitation has been substantially reduced, even if the legislator subsequently reconsidered it , the principle of applying the more favourable criminal law is incident; related to the offences covered by Law on Cheques no. 59/1934 and considering the age of the normative act we consider it preferably to maintain the

qualified variant in the manner regulated by the Criminal Code of 1968 and the repeal of the offence provided for by the special law), the fact that, with regard to the **tax evasion offence**, on the framework law several amendments have been operated over time, especially with regard to the causes of reduction of punishment or non-punishment, and currently the legislator considering new variants for amendments (the legislator's **inconsistency** in such an important field, both in terms of the frequency of these facts as well as through their effects, can be criticized; the legislator should harmoniously combine the three components, preventing, combating and recovering damages, but at the same time, it should ensure a certain stability of legislation; the **legislative void** created with regard to the offence provided for in **art. 6**, once it was declared as unconstitutional, the avoidance of payment social security, health and unemployment contributions still remaining an illicit conduct of high actuality, which should be criminally sanctioned), **the regulation of the money laundering offence** in the Criminal Code in view of its frequency and the similarities with the offence of concealment as provided for by art. 270 of the Criminal Code, or at least eliminating regulatory confusions in the version provided for by art. 29 letter c of Law no. 656/2002 by drafting similar or identical incrimination variants between the two offences giving rise to contradictory solutions, represents in our opinion legislative correlation needs (to be noted that crimes with insignificant weight in criminal case law, such as patrimonial exploitation of a vulnerable person as provided for by art. 247 of the Criminal Code were incorporated into the Criminal Code), **the lack of clarity and predictability** of some legal texts resulting from the use in the law-making activity of terms that rather fall into strictly technical and less legal categories or the use of vague, general phrases with a larger scope, in order to give rise to extensive interpretations, which require terminological clarifications (we should give as an example Law 241/2005 where the terms of compensation, repayment or restitution are not defined either in the content of the law or by reference to another normative act, the term "credit of the company" provided for by art. 272 point 2 of Law No. 31/1990 which received both in the doctrine and in judicial practice different senses and meanings, in the case of the offence of concealment provided for by Article 270 of the Criminal Code the phrase "even without awareness of its nature" lacks unpredictable for the addressee of the criminal norm which, in our opinion, should be removed) the **non-revaluation of certain normative acts**, especially considering that since 2014, a new criminal and procedural-criminal legislation was adopted (maintaining special laws on payment instruments, Law no. 58/1934 on the bill of exchange and promissory note and Law no. 59/1934 on cheque, normative acts for over eight decades uncorrelated and

unadapted to the economic and social realities, and not including these offences in the new Criminal Code, the banking operations currently embodying modern, predominantly electronic forms and, to a small extent, a mail form).

With regard to **criminal procedure provisions** we noted and consequently we suggested: **in terms of competence, successive and regular legislative changes** for certain structures of the Public Ministry in respect of major offences (in the case of D.I.I.C.O.T.(the Directorate for Investigating Organized Crime and Terrorism) the offence of tax evasion was removed from its competence, although this type of offence in the forms of organized crime represents a consistent part of the activity of the structure), **attribution of the competence to conduct criminal prosecution** to different judicial bodies based on certain criteria (usually the threshold of the prejudice created) without taking into account the economic and criminal realities, either without the inclusion of additional criteria, so that the actual organized crime groups remain within the competence of the specialized structures within the Public Ministry (we consider that the threshold of Lei 2,000,000 set for D.I.I.C.O.T. competence is small and it should be reconsidered in the sense of increasing it to at least EUR 1,000,000),the fact that there are **situations** in which, during the administration of evidence, **the law is silent regarding simple issues** that should be regulated (in the case of identification of persons or objects, the law does not provide the possibility of taking photos of the activities carried out, although the text refers to the possibility of audio-video recording), **unitary and uniform non-regulation of some criminal procedure law institutions** in the matter of evidence (with regard to special methods of investigation and surveillance, although it was sought to create a single procedural regime, finally it came to the situation where there are different procedures for groups of methods, both for surveillance and investigation, such as obtaining data on financial transactions of a person, when, following the entry into force of the new Criminal Procedure Code, the legislator changed its mind and provided for a special procedure under art. 146^1 of the Criminal Procedure Code, distinct from technical surveillance measures ; as regards the period for which such measures can be regulated, we can note distinctions for which there is no reasonable justification, a general period of 6 months covering technical surveillance measures concerning the same person, the same case and the same deed, therefore with triple identity, and a maximum period of 6 months for obtaining data on financial transactions of a person who only concerns the same case and the same person, being, obviously, more restrictive, as in the case of audio-video surveillance the maximum period is of 120 days, with the provision of the same triple identity: case, person and deed, but it is not possible to point out the reason why the legislator opted, only for

this method of technical surveillance, for the solution to limit the period to a maximum of 4 months, although the level of intrusion into the human rights and freedoms is the same as in the case of wiretapping phone conversations or the access to a computer system, thus considering that the deadline should be unique, namely of 6 months and to be applied under the same conditions for all surveillance or investigation methods), **the legislator's inconsistency in clearly defining the meaning and scope** of each type of surveillance or investigation method (there were initially included within the scope of notion of technical surveillance certain measures which obviously were in contradiction with the meaning of the phrase surveillance, as it was the case of financial transactions carried out), **the distinct regulation and the modification of the legal basis of an institution to the point where it becomes unnecessary** (obtaining data on the financial situation of a person provided for by art. 153 of the Criminal Procedure Code where the legislator showed inconsistency being initially placed under the judge's filter, and then to pass it under the prosecutor's, in which case the request may be made under art. 170 of the Criminal Procedure Code, the conditions imposed by the law being identical), with reference to the **institution provided for by art. 146[1] of the Criminal Procedure Code** even after the amendment, the regulation is unclear (because of the combination of aspects from the technical surveillance warrant, components connected to surveillance and those regarding accomplished facts, that is why we consider that the two hypotheses should have been dissociated within the regulation, by keeping transactions that are to be carried out under the power of the technical surveillance warrant, as a special surveillance method and for the transactions already performed to provide for a simplified procedure, while preserving the judge's filter), with reference to the **investigation method provided for by art. 152 of the Criminal Procedure Code of lege ferenda**, we consider that data storage is also mandatory for pre-pay cards users, and the legislator shall have the obligation to identify the regulatory formula that meets the criteria established by the Constitutional Court (considering the criminal realities revealing the fact that in criminal activities the offenders highly use mobile terminals associated to a prepaid calling phone line and not a subscription in order to secure their clandestinity), **inconsistency in the regulation of essential means of evidence** (in the case of the finding report and the situations in which it can be challenged, namely the cases in which it is ordered to carry out the expertise, the legislator showed inconsistency, establishing a regime through the new Criminal Procedure Code and after two years to modify it to the contrary, and finally, at this moment, to consider a new modification on the same issue), **inadvertency and different optics for similar**

situations (in the matter of the search, where according to art. 158 par. (3) of the Criminal Procedure Code the search may also be extended to "neighbouring places" as approved by the prosecutor, beyond the fact that an intrusive measure into the human rights and fundamental freedoms is given under the prosecutor's competence, we consider that the text should be eliminated considering that in art. 158 par. 2 letter a) of the Criminal Procedure Code it is expressly provided that the description of the place where the search is to be conducted should also include the description of the neighbouring places and the criminal investigation body shall have the obligation to carry out in advance thorough verifications and provide an accurate description of the locations for which he requests the judge's approval or the search; at the same time, for a similar hypothesis, in the case of computer search provided for by art. 168 par. (8) of the Criminal Procedure Code, the legislator presents another optic, although a similar situation is provided for the neighbouring places from the home search, in which case the solution chosen is different, the authorization being the attribute of the judge for rights and liberties, not of the prosecutor), with regard to the **participants in the criminal proceedings**, considering the category of parties and the main procedural subjects, we consider that the category of main procedural subjects should have included the **perpetrator** (by adopting the new codes, the preliminary acts, as provided for in the Criminal Procedure Code of 1968, have not been taken over, but the quality of perpetrator, although not included in art. 29-34 of the Criminal Procedure Code, is mentioned in other institutions, for example art. 158 par. (2) letter i of the Criminal Procedure Code on the home search or art. 310 of the Criminal Procedure Code on the procedure in the case of an offence ”in the act”;as there are also in the Criminal Code offences referring to this quality such as aiding and abetting of the perpetrator provided for by art. 269 of the Criminal Code, we consider that the legislator should explicitly provide and regulate the quality; otherwise, criminal prosecution actions will be carried out by the use or diversion of some institutions, for example, in the case of the hearing, the perpetrator will be heard as a witness, although the data of the case clearly place it in the category of the perpetrator with all consequences arising thereof, the impossibility of using the statement made against him after the prosecution in the same case), in the **matter of precautionary measures it is not regulated the procedure for solving the requests for lifting the measure of the distraint** in the hypothesis when, for example, during the criminal prosecution the damages are paid and the suspect or the defendant wants to lift the seizure on the building, in this respect there are different practices: the applications shall be submitted to the prosecutor and they shall be settled by the prosecutor or the judge for rights and liberties, either by settling them

or by sending them to the prosecutor; consequently, it should be expressly stipulated that under such assumptions the competence shall lie with to the prosecutor, especially since the obligation to pronounce on the precautionary measures is foreseen under his charge when he delivers the solution of closing the case, is the holder of the criminal prosecution and the hypothesis cannot fall within the challenge of the measure, within the competence of the judge for rights and liberties, in which case it is considered the lawfulness of taking the measure and no other aspects).

The second component of the conclusions drawn following the research activity takes into account the **system of judicial bodies**, the judicial police officer, the prosecutor and the judge, the subjects who, during *lato sensu* criminal trial, are called upon to apply and interpret the law, and in this regard we proposed the **performance of a real specialization at the level of the judicial bodies** which should not be a possibility but an express legal obligation (we do not consider only the specialization of the judicial police officer, the prosecutor or the judge in the activity of continuous training and development, but also the existence of a legal framework allowing the establishment of compartments, offices or specialized sections based on material competence). It is equally noted the lack of a legal framework for regulating the activity of **a body of specialists organized within an institution or body independent of the judicial bodies** in which should operate (such an organization would eliminate the suspicions related to the lack of independence and the potential subordination of the specialist toward the prosecutor, aspects which are often invoked by the defenders upon the challenged against the findings reports drawn up in the criminal cases following the prosecutor's order; at present time the specialists operate within the various structures of the Public Ministry, they are paid by the Prosecutor's Office, they carry out their activity in the same location with prosecutors, elements which represent the reasons for the defendants to invoke their lack of independence and impartiality and the breach of their rights of defence; taking into consideration that the practice of courts is not unitary, in most cases, in the trial phase, it is ordered to carry out an expert examination as it is considered that the finding report drawn up during the criminal investigation does not meet the aforementioned requirements, we consider that establishing a legal framework and a procedure for the specialists to carry out their activity within an independent institution, with clear designation rules, preferably random rules, would be a gain for the judicial activity, would eliminate any suspicions and would encourage the prompt settlement of cases).

Annex

At the end of the thesis we also included an **annex** containing the specialty terms used in the field of the research, terms that were exposed by a synthetic definition, distributed into five main categories, namely: companies, accounting, taxation, banking instruments and capital market. We have therefore considered that such an annex is absolutely necessary, as many of the areas where economic crimes can be committed are of a technical nature, involving specialized knowledge, specific instruments and mechanisms, and thus, understanding basic notions and phrases is absolutely necessary. Therefore, without being exhaustive, the list includes the main terms used in the main sectors of activity in the economic field, as presented above.