THE MAJOR MODIFICATIONS OF LEGAL PROVISIONS OF THE CYBERCRIME OFFENCES MADE BY THE LEGISLATOR IN THE PROCESS OF IMPLEMENTATION OF THE NEW CRIMINAL CODE

Gheorghe-Iulian IONIŢĂ*, PhD.
Post-doctoral Researcher, ,,Alexandru Ioan Cuza” University of Iaşi
Associate Researcher, Institute of Juridical Research
,,Acad. Andrei Rădulescu” of the Romanian Academy
Lecturer, Romanian-American University of Bucharest

Abstract
The implementation of the new Criminal Code caused a true work of revising the incriminations norms under special laws. Regarding cybercrime offences, through the implementation of the new Criminal Code, the legislator made some changes of legal provisions. The author highlights these changes, and presents some point of views for easier understanding of controversial issues.

Keywords: the implementation of the new Criminal Code, cybercrime offences, controversial issues.

1. General considerations
It is undisputed that the implementation of the new Criminal Code, through the Law no. 286/20091 for the implementation of the Criminal Code and amending and completing some certain normative acts containing criminal provisions caused a true work of revising the incriminations norms under special laws.

In the Explanatory memorandum to the Draft Law for the implementation of the Criminal Code and amending and completing some certain normative acts containing criminal provisions2, was specified the fact that has been found that there were (at the time) about 300 special criminal laws or extra-criminal containing criminal provisions with numerous overlapping texts, implied repeal of which there is uncertainty, the legal penalties between which flagrant differences existed despite the similar nature of the incriminated facts3.

* E-mail: ionita.gheorghe.iulian@profesor.rau.ro.
2 The Explanatory memorandum to the draft Law for the implementation of the Criminal Code and amending and completing some certain normative acts containing criminal provisions, p. 2.
2. The main changes of the norms of incrimination texts contained in special laws on cybercrime

Also in the explanatory memorandum to this normative act it was claimed\(^4\) that were analyzed all the provisions contained in special laws, aiming\(^5\):

- the repeal of some texts of special legislation of incrimination (due to their inclusion in the Special Part of the new Criminal Code or to eliminate any unnecessary duplication of texts that protect the same social values);
- the adapting of punishments for offences that remain in the specific legislation (according to the logic of sanctioning in the new Criminal Code);
- the updating of references to the norms of the Special Part of the Criminal Code (made by the texts of special legislation);
- desincrimination of some offenses under special laws and making them contraventional (where necessary).

Regarding norms of incrimination texts of cybercrime facts under special laws, in the explanatory memorandum to this normative act, were highlighted several changes, which we present below:

a) examples of texts of incrimination from special legislation in the field, repealed (due to their inclusion in the Special Part of the new Criminal Code or to eliminate any unnecessary duplication of text that protect the same social values)\(^6\):

- Article 42-51 of Law no. 161/2003 (2003 on certain measures to ensure transparency in the exercise of public dignity, of public office and in the business environment, and to prevent and punish corruption);
- Article 143 alin. (2) lit. b) of Law no. 8/1996 (on copyright);

b) examples of adaptation of punishments for offences that remains in the specific legislation in this area (according to the logic of sanctioning of the new Criminal Code)\(^7\):

- Article 139\(^6\), 139\(^8\), 140, 141, 141\(^1\), 143 paragraph (2) of Law no. 8/1996 (on copyright);

c) examples of desincrimination of certain offenses under special legislation in the field and making them contraventional (where necessary)\(^8\):

- Article 139\(^7\) of Law no. 8/1996 (on copyright).

3. Norms of incrimination texts contained in Title III of the Law no. 161/2003 on certain measures to ensure transparency in the exercise of public dignity, of public office and in the business environment, and to prevent and punish corruption

Regarding norms of incrimination texts contained in Title III of the Law no. 161/2003 on certain measures to ensure transparency in the exercise of public

\(^4\) The Explanatory memorandum ..., op. cit., p. 2.
\(^5\) Ionită G.-L, Incrimination of acts ..., op. cit., p. 684.
\(^6\) The Explanatory memorandum ..., op. cit., p. 6-7.
\(^7\) Idem, p. 10.
\(^8\) Idem, p. 12.
dignity, of public office and in the business environment, and to prevent and punish corruption⁹, in the Explanatory memorandum to the Draft Law for the implementation of the Criminal Code and amending and completing some certain normative acts containing criminal provisions, was mentioned that they were repealed due to their inclusion in the Special Part of the new Criminal Code.

Indeed, according to article 130 point 1-4 of Law no. 187/2012, Law no. 161/2003, chapter III of title III „Preventing and fighting cybercrime” of book I, section 1 „Offences against the confidentiality and integrity of data and computer systems”, containing articles 42-47, section 2 „Cybercrimes”, containing articles 48-50, section 3 „Child pornography through computer systems”, containing article 51 are abrogated; article 59 of chapter IV „Procedural provisions” of the same title is also abrogated¹⁰.

In other words, the provisions of material and procedural law stipulated in this regulation on the prevention and fight of cybercrime have been repealed, and the incrimination provisions of the new Criminal Code apply¹¹.

3.1. Regarding illegal access to a computer system

According to (former) Article 42 of Law no. 161/2003,

“(1) Access, without right, to a computer system is a offence and is punished with imprisonment from 3 months to 3 years or with fine.

(2) The fact mentioned at item (1), committed for the purpose of obtaining computer data, is punished with imprisonment from 6 months to 5 years.

(3) If the fact mentioned at item (1) or (2) is committed by infringing the security measures, the punishment is imprisonment from 3 to 12 years”.

According to Article 360 of Criminal Code,

“(1) Access, without right, to a computer system is punished with imprisonment from 3 months to 3 years or with fine.

(2) The fact mentioned at item (1), committed for the purpose of obtaining computer data, is punished with imprisonment from 6 months to 5 years.

(3) If the fact mentioned at item (1) was committed on a computer system that, through certain procedures, devices or programs, the access is restricted or prohibited for certain categories of users, the punishment is imprisonment from 2 to 7 years”.

By analyzing the texts we can observe¹² that the final paragraph of Article 360 from Criminal Code no longer uses the term „security measures” (whose meaning

---

¹¹ Idem.
is not clear either in the title X „Meaning of words or phrases in criminal law“), but take (largely) the meaning of this from Article 35 paragraph (1) letter h) of Law no.161/2003. Likewise, penalty limits provided (in Article 360) for this way of committing offence (imprisonment from 2 to 7 years) are lower than those stipulated in the special law (former Article 42) for similar way of committing offence (imprisonment from 3 to 12 years).

3.2. Regarding illegal interception of a transmission of computer data

According to (former) Article 43 of Law no. 161/2003,

“(1) The interception, without right, of any transmission of computer data which is not public and is meant to a computer system, comes from such a system or is performed in a computer system is a offence and is punished from 2 to 7 years.

(2) With similar punishment is sanctioned the interception, without right, of any electromagnetic emission from a computer system, which contains non-public data”.

According to Article 361 of Criminal Code,

“(1) The interception, without right, of any transmission of computer data which is not public and is meant to a computer system, comes from such a system or is performed in a computer system is punished from one to 5 years.

(2) With similar punishment is sanctioned the interception, without right, of any electromagnetic emission from a computer system, which contains non-public data”.

We can note\textsuperscript{13} that for this offence, penalty limits provided in Article 361 of the Criminal Code, (imprisonment from 2 to 7 years), are lower than those provided in special law (former Article 43) for similar offence (imprisonment from 3 to 12 years).

3.3. Regarding alteration of computer data integrity and unauthorized computer data transfer

According to (former) Article 44 of Law no. 161/2003,

“(1) The illegal alteration, deletion or deterioration of computer data of the access restriction to such data is considered a offence and is punished with imprisonment from 2 to 7 years.

(2) The unauthorized data transfer from a computer system is punished with imprisonment from 3 to 12 years.

(3) The unauthorized data transfer by means of an information data storing mean is also punished as in paragraph (2)”.

According to Article 362 („Alteration of computer data integrity“) of Criminal Code,

„The illegal alteration, deletion or deterioration of computer data of the access restriction to such data is punished with imprisonment from one to 5 years”.

\textsuperscript{13} Idem.
According to Article 364 („The unauthorized computer data transfer”) of Criminal Code,

„The unauthorized data transfer from a computer system or from any means of an information data storing is punish with imprisonment from one to 5 years”.

By analyzing the texts we can observe\footnote{Idem, p. 173.} that in the Criminal Code, there are incriminated (in Article 362 and 364) two separate offences („Alteration of computer data integrity” and „Unauthorized transfer of computer data”), but which takes the content of incrimination from special law (former Article 44), without limits of punishment, which are different. So, in special law, limits provided was imprisonment from 2 to 7 years (in case of standard variant) and imprisonment from 3 to 12 years (in case of aggravating variant), compared to imprisonment from 1 to 5 years, provided in Criminal Code (in case of alteration of computer data integrity and unauthorized transfer of computer data).

3.4. Regarding hindering of functioning system

According to (former) Article 45 of Law no. 161/2003,

„The serious hindering, without right, of a computer system operation, by the introducing, transmitting, altering, deleting or deteriorating computer data or by restricting the access to these data is considered a criminal offence and is punished with imprisonment from 3 to 15 years.”

According to Article 363 of Criminal Code,

„The serious hindering, without right, of a computer system operation, by the introducing, transmitting, altering, deleting or deteriorating computer data or by restricting the access to these data, is punished with imprisonment from 2 to 7 years”.

We can note\footnote{Idem.} that for this offence, limits of punishment provided in Article 363 of Criminal Code (imprisonment from 2 to 7 years) are lower than those provided in special law (former Article 45) for similar offence (imprisonment from 3 to 15 years).

3.5. Regarding illegal operations with devices or computer programs

According to (former) Article 46 of Law no. 161/2003,

„(1) The following are considered criminal offences and punished with imprisonment from one to 6 years:

a) the production, sale, import, distribution or making available, in any other form, without right, of a device or a computer program designed or adapted for the purpose of committing one of the offences established in accordance with Arts. 42-45;

b) the production, sale, import, distribution or making available, in any other form, without right, of a password, access code or other such computer data
allowing total or partial access to a computer system for the purpose of one of the
offences established in accordance with Arts. 42-45;

(2) The possession, without right, of a device, computer program, password,
access code or computer data referred to at paragraph (1) for the purpose of one of
the offences established in accordance with Arts. 42-45 is also punished similarly”.

According to Article 365 of Criminal Code,
“(1) Act of production, sale, import, distribution or making available, in any
other form, without right, of:

a) device or a computer program designed or adapted for the purpose of
committing one of the offences established in accordance with Arts 360-364;

b) password, access codes or other such computer data allowing total or partial
access to a computer system for the purpose of one of the offences established in
accordance with Arts. 360-364, is punished with imprisonment from 6 months to 3
years or with fine.

(2) The possession, without right, of a device, computer program, password,
access code or computer data referred to at paragraph (1) for the purpose of one of
the offences established in accordance with Arts. 360-364 is punished with
imprisonment from 3 months to 2 years or with fine”.

We can observe\textsuperscript{16} that for this offence, limits of punishment provided in Article
365 of Criminal Code (imprisonment from 6 months to 3 years or with fine and
imprisonment from 3 months to 2 years or with fine) are lower than those
provided in special law (former Article 46) for similar offence (imprisonment from
1 to 6 years).

3.6. Regarding computer forgery

According to (former) Article 48 of Law no. 161/2003,
“(1) The input, alteration or deletion, without right, of computer data or the
restriction, without right, of the access to these data, resulting in inauthentic data,
with the intent to be used for legal purposes, is considered a criminal offence and is
punished with imprisonment from 2 to 7 years”.

According to Article 325 of Criminal Code,
“(1) The input, alteration or deletion, without right, of computer data or the
restriction, without right, of the access to these data, resulting in inauthentic data,
with the intent to be used for legal purposes, is considered a criminal offence and is
punished with imprisonment from one to 5 years”.

We can note\textsuperscript{17} that for this offence, penalty limits provided in Article 325 of
Criminal Code (imprisonment from one to 5 years) are lower than those provided
in special law (former Article 48) for similar offence (imprisonment from 2 to 7
years).

\textsuperscript{16} Idem, p. 174.
\textsuperscript{17} Idem.
3.7. Regarding computer fraud

According to (former) Article 49 of Law no. 161/2003,

„Causing the loss of property to a person by the input, alteration of deletion of computer data, by restricting the access to such data or by preventing in any way the operation of a computer system, in order to obtain an economic benefit for himself or for other is punished with imprisonment from 3 to 12 years”.

According to Article 249 of Criminal Code,

„The input, alteration or deletion of computer data, access restriction to these data or prevent in any way the operation of a computer system, in order to obtain a economic benefit for himself or for other, if caused a damage to a person, is punished with imprisonment from 2 to 7 years”.

We can observe\(^\text{18}\) that for this offence, penalty limits provided in Article 249 of Criminal Code (imprisonment from 2 to 7 years), are lower than those provided in the special law (former Article 49) for similar offence (imprisonment from 3 to 12 years). In another line of thoughts it should be exposed detailed, both in terms of objective and subjective point of view, incrimination provisions adopted by the Romanian legislator, by introduction of few phrases like „without right” and „unjust”, so, Article 249 of Criminal Code should have the following formulation: „The input, alteration of deletion of computer data, by restricting the access to such data or by preventing in any way the operation of a computer system, without right, in order to obtain an unjust economic benefit for himself or for other is punished with imprisonment ...”

3.8. Regarding child pornography

According to (former) Article 51 of Law no. 161/2003,

„(1) Producing for the purpose of its distribution, offering or making available, distributing or transmitting, procuring for oneself or another of child pornography material, or possessing, without right, child pornography material within a computer system or computer data storing device is considered a criminal offence and is punished with imprisonment from 3 to 12 years.

(2) Attempt is punished”.

According to Article 374 of future Criminal Code,

„(1) Producing, possession for the purpose of exposing or distributing, procuring, storage, exposure, promotion, distribution and making available, in any way of child pornography materials is punished with imprisonment from one to 5 years.

(2) If the facts set up in par. (1) have been made through a computer system or other data mean storage, the punishment is imprisonment from 2 to 7 years.

(3) Accessing child pornography materials, without right, through computer systems or other means of electronic communications, is punished with imprisonment from 3 months to 3 years or with fine.

\(^{18}\) Idem, p. 175.
(4) By child pornography materials we mean any material which presents a child with a explicit sexual behavior or which, although is not representing a real person, is simulating, in a credible way, a child with such a behavior.

(5) Attempt is punished”.

By analyzing the texts we can observe\textsuperscript{19} that in the Criminal Code, in par. (4) of the Article 374 (where is explained the mean of term „child pornography materials”), it was not included the situation when „an adult person which is presented as a child with a explicit sexual behavior”, situation included in Article 35 paragraph (1) letter i) of the special law. Also, for this offence, penalty limits provided in Article 374 paragraph (2) of Criminal Code (imprisonment from 2 la 7 years) are lower than those provided in the special law (former Article 51) for similar offence (imprisonment from 3 to 12 years).

4. Norms of incrimination texts contained in Law no. 365/2002 on electronic commerce

Regarding norms of incrimination texts contained in Law no. 365/2002 on electronic commerce\textsuperscript{20}, in the Explanatory memorandum to the Draft Law for the implementation of the Criminal Code and amending and completing some certain normative acts containing criminal provisions, we find no reference\textsuperscript{21}.

However, according to Article 107 point 2 of Law no. 187/2012, Article 24-29 of the Law no. 365/2002 on electronic commerce is repealed.

4.1. Regarding forgery of electronic payment instruments

According to (former) Article 24 („Forgery of electronic payment instruments”) of Law no. 365/2002,

“(1) The forgery of electronic payment instruments shall be punished with imprisonment form 3 to 12 years and the banning of rights.

(2) The same punishment shall be applied for issuing on the market, in any way, of forged electronic payment instruments or owning them in order to put them into circulation.

(3) The punishment shall be imprisonment from 5 to 15 years and the prohibition of rights if the facts mentioned on paragraph (1) and (2) are carried out by a person who, by virtue of his/her job:

a) performs technical operations necessary to issue electronic payments instruments or to perform the types of operations mentioned on Article 1 point 10; or

\textsuperscript{19} Idem.


b) has access to the security mechanisms involved in issuing or using electronic payment instruments;

or

c) has access to the identification data or the security mechanisms involved in carrying out the types of operations mentioned on Article 1 point 10.

(4) Any attempt shall be punished”.

According to Article 311 („The forgery of credit titles or payment instruments”) of Criminal Code,

“(1) The forgery of credit titles, titles or instruments used to make payments or any other similar titles and values is punished with imprisonment from 2 to 7 years and the interdiction to exercise any rights.

(2) If the acts stipulated at paragraph (1) concerns an electronic payment instrument, the punishment is imprisonment from 3 to 10 years and the interdiction to exercise any rights.

(3) Attempts are also punished”.

According to Article 313 („The circulation of forged values”) of Criminal Code,

“(1) The circulation of forged values stipulated at art. 310-312, as well as the reception, possession or transmission thereof for circulation purposes is sanctioned with the punishment stipulated by the law for the offence of forgery.

(2) The offence of using the forged values mentioned at art. 310-312 made by the author or a participant to the forgery offence is sanctioned with the punishment stipulated by the law for the offence of forgery.

(3) The recirculation of any of the values stipulated at art. 310-312 by a person who noted, after entering the possession thereof, that it is forged, is sanctioned with the punishment stipulated by the law for the offence of forgery, whose special limits are reduced by half.

(4) Attempts are also punished”.

Analyzing the texts above, we find that the offenses of forgery of electronic payment instruments is included as a variant of forgery offenses of credit titles or payment instruments and putting into circulation of forged values. To be noticed that in special law, penalty limits provided was imprisonment from 3 to 12 years (in case of standard variant) and imprisonment from 5 to 15 years (in case of aggravating variant), compared to imprisonment from 3 to 10 years, provided in Criminal Code.

4.2. Regarding owning equipment to forge electronic payment instruments

According to (former) Article 25 („Owning equipment to forge electronic payment instruments”) of Law no. 365/2002,

„The manufacturing or the owning of equipment, including hardware and software, to be used to forge electronic payment instruments shall be punished by imprisonment from 6 months to 5 years”.
According to Article 314 („Holding instruments for the forgery of values”) of Criminal Code,

“(1) The manufacturing, reception, possession or transmission of instruments or materials for the purpose of forging the values or titles stipulated at art. 310, art. 311 paragraph (1) and art. 312 are punished with imprisonment from one to 5 years.

(2) The manufacturing, reception, possession or transmission of equipments, including hardware and software, for the purpose of forging electronic payment instruments are punished with imprisonment from 2 to 7 years.

(3) The person who, after committing any of the deeds stipulated at paragraph (1) or (2), before the discovery thereof and the beginning the forgery, hands over the possessed instruments or materials to the judicial authorities or informs such authorities on the existence thereof, is not punished”.

We can observe that, and this time the contents of the offenses owning equipment to forge electronic payment instruments is included as a variant of the offenses of holding instruments for the forgery of values, but penalty limits provided in Article 314 paragraph (2) of Criminal Code (imprisonment from 2 to 7 years) are higher than those provided in the special law (former Article 25) for similar offence (imprisonment from 6 months to 5 years).

4.3. Regarding false statements in view of issuing or using electronic payment instruments

According to (former) Article 26 („False statements in view of issuing or using electronic payment instruments”) of Law no. 365/2002,

„The inaccurate declaration, made by a bank, credit or financial institution or any other legal person authorised, under the conditions of the law, to issue electronic payment instruments or to accept the types of operations mentioned by Article 1 point 10, in order to issue or use an electronic payment instrument, for himself/herself or another, when, according to the law or the circumstances, the declaration serves to issue or use that instrument, shall be punished with imprisonment from 3 months to 2 years or with a fine”.

According to Article 326 („Misrepresentation”) of Criminal Code,

„Misrepresentation of the truth made to a person such as those stipulated at art. 175 or to a unit where such person performs his activity with a view to producing a legal consequence, for oneself or for another, when, according to the law, the statement helps produce the said consequence, is punished with imprisonment from 3 months to 2 years or with a fine”.

We can notice that it is maintain the same trend of inclusion of the content of incrimination norm from the special law in the content of legal provision from the Criminal Code, but this time keeping the limits of punishment.
4.4. Regarding performing financial operations fraudulently

According to (former) Article 27 („Performing financial operations fraudulently“) of Law no. 365/2002,

“(1) The carrying out of one of the operations provided in Article 1, point 10, by using an electronic payment instrument, including the identification data that allow its use, without the consent of the owner of the respective instrument, shall be punished with imprisonment with 1 to 12 years.

(2) The same punishment shall be imposed upon performing one of the operations mentioned in Article 1, point 10, to the unauthorised use of any identification data or by using false identification data.

(3) The same punishment shall be imposed to the unauthorised use, by another person of any identification data in order to carry out any of the operations mentioned in Article 1, point 10.

(4) The punishment shall be imprisonment from 3 to 15 years and the prohibition of the rights if the facts mentioned in paragraphs (1) - (3) shall be carried out by a person who, by virtue of his/her job:

a) performs technical operations necessary to issue electronic payment instruments or to perform the types of operations mentioned on Article 1 point 10; or

b) has access to the security mechanisms involved in issuing or using electronic payment instruments;

or

c) has access to the identification data or the security mechanisms involved in carrying out the types of operations mentioned on Article 1 point 10.

(5) Any attempt shall be punished”.

According to Article 250 („Fraudulent financial operations“) of Criminal Code,

“(1) The performance of any operation of cash withdrawal, uploading or downloading an electronic instrument or fund transfer through the use, without the holder’s approval, of an electronic payment instrument or identification data is punished with imprisonment from 2 to 7 years.

(2) The same punishment is applied to any of the operations stipulated at paragraph (1), for the illegal use of identification data or false identification data.

(3) The unauthorized transmission to another person of any identification date with a view to performing any of the operations mentioned in paragraph (1) is punished with imprisonment from one to 5 years”.

We can observe that, this time is maintained the content of incrimination norm, except the last variant aggravated, but is amended the limits of punishment within the meaning that the ones from special law, was imprisonment from 1 to 12 years (in case of standard variant) and imprisonment from 5 to 15 years (in case of aggravating variant), compared to imprisonment from 2 to 7 years (in case of standard variant) and imprisonment from one to 5 years (in case of attenuating variant), provided in Criminal Code.
4.5. Regarding accepting financial operations performed fraudulently

According to (former) Article 28 („Accepting financial operations performed fraudulently”) of Law no. 365/2002,

“(1) Accepting any of the operations mentioned in Article 1, point 10, knowing that it is performed by using a forged electronic payment instrument or using an electronic payment instrument without the consent of the owner, shall be punished with imprisonment from 1 to 12 years.

(2) The same punishment shall be given for accepting one of the operations mentioned in Article 1, point 10, knowing that it is performed by the unauthorised use of any identification data or by using unreal identification data.

(3) Any attempt shall be punished”.

According to Article 251 („Acceptance of fraudulent financial operations”) of Criminal Code

“(1) The acceptance of an operation of cash withdrawal, uploading or downloading an electronic payment instrument or fund transfer, knowing that it is carried out through the use of an electronic payment instrument forged or used without the holder’s consent, is punished with imprisonment from one to 5 years.

(2) The same punishment applies to the acceptance of any of the operations stipulated in paragraph (1), knowing that it is carried out through the unauthorized use of any identification data or the use of false identification data”

We can observe that, this time, also is kept the content of incrimination norm, and are modified the limits of punishment, meaning that the ones provided in Article 251 of Criminal Code (imprisonment from one to 5 years) are lower than those provided in the special law (former Article 28) for similar offence (imprisonment from 1 to 12 years).

5. Crimes/variants of committing crimes „traditional” introduced in the new Criminal Code that can be included in the field of cybercrime

The realities of social life, marked by an unprecedented development of information system and communication networks, as well as the penetration of all economic sectors, determined the legislator to review the offenses „traditional” (the ones that could be committed without the „intervention” of the informatic factor). This „graft” of the informatic factor makes that this „traditional” crimes to enter into the field of cybercrime.

Among this changes, we point out the following:

5.1. The violation of secrecy of correspondence

According to Article 302 of Criminal Code,

“(1) The opening, unlawful removal, destruction or retention, with no right, of the correspondence addressed to another, as well as disclosure with no right of the content of such a correspondence, even when it was open when it was received or open accidentally, are punishable with imprisonment from 3 month to one year or with fine.
(2) The interception, with no right, of a call, or of a communication conducted over the telephone or by any other electronic communication, is punishable with imprisonment from 6 months to 3 years or with fine.

(3) If the facts provided in par. (1) and para. (2) have been committed by a public official that has a legal obligation to respect professional secrecy and the confidentiality of the accessed information, is punishable with imprisonment from 1 to 5 years and the prohibition of certain rights.

(4) Disclosure, presentation or transmission, to another person or to the public, with no right, of the content of conversations or communications intercepted, even if the perpetrator is aware of this by mistake or accident, is punishable with imprisonment from 3 months to 2 years or with fine.

(5) It is not a crime the act committed:
   a) if the perpetrator surprises the committing of a crime or contributes to proving an offense;
   b) if surprises facts of public interest, that have significance to the community whose disclosure present public advantages larger than the damage caused to the injured person.

(6) The possession or manufacture, with no right of the specific means of interception or recording of communication, is punishable with imprisonment from 3 months to 2 years or with fine.

(7) For the offenses provided in par. (1), the penal action is initiated upon prior complaint from injured person”.

5.2. Outrage against public morality

According to Article 375 of Criminal Code,

“...The act of a person who, in public, expose or distribute with no right, image showing explicit sexual activity, other than that to which the art. 374 refers to, or commit acts of exhibitionism or other explicit sexual acts, is punishable with imprisonment from 3 months to 2 years or with fine”.

6. Acknowledgment: This work was supported by the strategic grant POSDRU/159/1.5/S/141699, Project ID 141699, co-financed by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007-2013.

7. References


Ioniţă G.-I., Incrimination of acts to the environmental protection under the new Criminal Code, in The international conference „European Union`s history, culture and citizenship 7th edition”, CH Beck Publishing House, Bucharest.


The Explanatory memorandum to the draft Law for the implementation of the Criminal Code and amending and completing some certain normative acts containing criminal provisions.