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Special Procedure on Preventing and Combating Terrorism in Romania

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ABSTRACT: Terrorism represents one of the most complex threats to national and international security, necessitating the development of a regulatory framework tailored to preventing and combating this phenomenon. This article analyzes the evolution of legal regulations in this area, beginning with the main instruments adopted under the auspices of the United Nations, continuing with the regulations developed by the Council of Europe and the European Union, and concluding with an analysis of the Romanian regulatory framework established by Law No. 535/2004 on the prevention and combating of terrorism. The research highlights how national legislation transposes international and European standards, establishing an integrated system for preventing and combating terrorism based on inter-institutional cooperation, information sharing, and special procedural mechanisms. Particular attention is given to the procedural provisions applicable in terrorism cases, concerning the referral of cases to judicial authorities, the exclusive jurisdiction of the Directorate for Investigating Organized Crime and Terrorism (DIICOT), the gathering of evidence through the use of special investigative methods, and the jurisdiction of the courts. The analysis highlights that the effectiveness of counterterrorism efforts depends on the existence of a coherent, flexible legislative framework adapted to the constantly evolving nature of terrorist threats, capable of ensuring a balance between protecting national security and respecting fundamental rights and freedoms.

KEYWORDS: Terrorism, Counter-Terrorism, Special Criminal Procedure, Law No. 535/2004, DIICOT, National Security, Criminal Investigation, International Judicial Cooperation, European Union Law, United Nations

Introduction

In the current context of globalization and the rapid development of digital technologies, terrorism has taken on new forms, becoming a complex phenomenon with major implications for national security, public order, and the stability of international relations. The diversification of the ways in which terrorism manifests itself, the growth of extremist networks, and the use of the online environment as a tool for radicalization, recruitment, and propaganda have prompted the international community and European states to develop a coherent legal framework capable of addressing both the repressive and preventive dimensions of counterterrorism. In Romania, the main legislative instrument in this area is Law No. 535/2004 on the Prevention and Combating of Terrorism, a legislative act that transposes international and European standards and establishes an integrated system designed to prevent, detect, and combat acts of terrorism. The law is not limited to criminalizing specific acts but regulates the entire range of institutional and procedural mechanisms necessary for managing terrorist threats, from prevention and intelligence-gathering activities to criminal prosecution, trials, and international cooperation.

The Romanian legal framework strikes a balance between the requirements of protecting national security and respecting fundamental rights and freedoms, demonstrating that the effectiveness of counterterrorism depends on the existence of a unified, flexible institutional and procedural mechanism that is constantly adapted to the evolving nature of terrorism.

1. United Nations Conventions on Combating Terrorism

Combating terrorism is one of the ongoing concerns of the United Nations (UN), which has established an international legal framework based on sector-specific conventions, in the absence of a universal definition of the concept of "terrorism". These instruments aim to criminalize the main forms of terrorism and strengthen international cooperation through extradition, mutual legal assistance, information sharing, and measures to prevent the financing of terrorism.

The first conventions were adopted in response to the rising number of aircraft hijackings and attacks on civil aviation. The Tokyo Convention (United Nations, 1963) established the jurisdiction of the state of registration of the aircraft and the obligation of states to restore order on board. Subsequently, the Hague Convention (United Nations, 1970) classified aircraft hijacking as an international crime and established the principle *of aut dedere aut judicare* ("extradite or prosecute"), while the Montreal Convention (United Nations, 1971) extended protection against acts of violence directed against civil aviation.

In the next phase, the UN expanded regulations on the protection of vulnerable persons and infrastructure. Thus, the Convention on the Protection of Internationally Protected Persons (United Nations, 1973) criminalized attacks against diplomats; the Convention Against the Taking of Hostages (United Nations, 1979a) established criminal liability for this offense and eliminated the possibility of invoking political grounds to refuse extradition, and the Convention on the Physical Protection of Nuclear Material (United Nations, 1979b) introduced obligations regarding the security of nuclear material. These instruments were supplemented by the Protocol on Airport Security (United Nations, 1988a), the Convention on the Safety of Maritime Navigation and the Protocol on Fixed Platforms (United Nations, 1988b, 1988c), as well as the Convention on the Marking of Plastic Explosives (United Nations, 1991), which strengthened preventive security measures. A key milestone was the adoption of the International Convention for the Suppression of Terrorist Bombings (United Nations, 1997) and the International Convention for the Suppression of the Financing of Terrorism (United Nations, 1999). The latter established the financing of terrorism as a standalone offense and required states to criminalize the collection or provision of funds intended for terrorist acts, to order the freezing and confiscation of assets, and to intensify international cooperation. The Convention became the foundation for subsequent regulations on combating money laundering and the financing of terrorism.

Following the attacks of September 11, 2001, the UN Security Council strengthened the legal framework through Resolutions 1368 and 1373, which characterized terrorism as a threat to international peace and security and imposed expanded prevention and cooperation obligations on states. Subsequently, Resolution No. 1624 (2005) aimed to criminalize incitement to terrorism, and Resolution No. 2178 (2014) introduced obligations regarding the fight against the phenomenon of "foreign terrorist fighters."

Overall, the conventions adopted under the auspices of the UN between 1963 and 1999 formed the foundation of international law on counterterrorism. Their evolution highlights the shift from sector-specific regulations on the protection of civil aviation to an integrated legal system based on prevention, international cooperation, and the punishment of all forms of terrorism and support for it.

2. European Regulations on Preventing and Combating Terrorism

2.1. Council of Europe Instruments

The Council of Europe has played a key role in developing the European legal framework for preventing and combating terrorism, promoting an approach focused not only on punishing terrorist acts but also on preventing them, strengthening judicial cooperation, and respecting fundamental rights. The evolution of these regulations reflects the adaptation of European legislation to new forms of threat, such as radicalization, online recruitment, the movement of foreign terrorist fighters, and the financing of terrorism.

The cornerstone of this system is the Council of Europe Convention on the Prevention of Terrorism (Council of Europe, 2005c, CETS No. 196) the first international instrument focused primarily on preventing terrorism. The Convention criminalizes preparatory acts, such as public incitement to terrorism, recruitment, and training for terrorist purposes, even in the absence of an actual terrorist act. At the same time, it facilitates judicial cooperation among states and eliminates the possibility of invoking the political nature of these offenses to prevent extradition, while maintaining the safeguards provided by the European Convention on Human Rights. Its implementation is monitored by the Consultation of the Parties (COP).

In light of the growing phenomenon *of "foreign terrorist fighters"*, the Additional Protocol to the Warsaw Convention (Council of Europe, 2015, CETS No. 217) expanded criminal offenses to include participation in terrorist groups, receiving training, traveling for terrorist purposes, and facilitating or financing such travel. The Protocol aims to harmonize European legislation and strengthen police and judicial cooperation, particularly through collaboration with Europol.

Another fundamental instrument is the European Convention on the Suppression of Terrorism (Council of Europe, 1977, ETS No. 90), which limited the possibility of classifying terrorist offenses as *"political* offenses" for the purposes of extradition and enshrined the principle *of aut dedere aut judicare*. This instrument was updated by the Amending Protocol (CETS No. 190, 2003), which expanded the list of offenses excluded from the political exception and strengthened safeguards regarding respect for fundamental rights in extradition proceedings.

In the area of combating the financing of terrorism, the Warsaw Convention on Money Laundering and the Financing of Terrorism (Council of Europe, 2005b, CETS No. 198) is the first European treaty to integrate the fight against the financing of terrorism into the framework of anti-money laundering measures. The Convention requires states to establish Financial Intelligence Units (FIUs), to grant authorities access to banking information, to regulate the confiscation of assets, and to develop effective mechanisms for international cooperation in the recovery of proceeds of crime.

2.2. European Union Regulations

The European Union has developed its own legal framework for combating terrorism, characterized by the harmonization of member states' criminal laws and the establishment of common cooperation mechanisms. Unlike other international organizations, the Union has formulated a uniform legal definition of terrorism, based on three cumulative elements: the intended purpose, the context in which the act is committed, and the nature of the act itself. The first key instrument was Framework Decision 2002/475/JHA (Council of the European Union, 2002), which established a common definition of terrorist offenses and required Member States to harmonize their domestic criminal laws. Terrorist acts are characterized by the intent to intimidate the population, coerce public authorities, or destabilize the fundamental structures of the state, and include acts such as murder, hostage-taking, mass destruction, or the use of chemical, biological, or nuclear weapons. At the same time, the decision introduced the concept of *a "terrorist group*," bringing the fight against terrorism closer to the mechanisms used against organized crime.

Subsequently, Framework Decision 2008/919/JHA (Council of the European Union, 2008) strengthened the preventive dimension of European law by criminalizing public incitement to terrorism, as well as recruitment and training for terrorist purposes, including via the internet. At the same time, it reaffirmed the need to respect freedom of expression and the constitutional principles of the Member States.

The current legal framework is Directive (EU) 2017/541 on combating terrorism (European Parliament and Council of the European Union, 2017), which replaced the previous framework decisions and adapted European legislation to new forms of terrorism. The directive expands criminalization to include travel for terrorist purposes, online self-training, the financing of terrorism, and support for terrorist groups, while also enshrining special rights for victims of terrorism. It also includes cyberattacks on critical infrastructure and the use of radiological weapons in the category of terrorist acts.

The fight against terrorism within the European Union is also supported by a range of operational and financial instruments. Regulation (EU) 2021/784 (European Parliament and Council of the European Union, 2021) requires the removal of terrorist content online within a maximum of one hour, and the Passenger Name Record (PNR) Directive 2016/681 allows for the use of air passenger data for preventive purposes. At the same time, the regulations on Europol and Eurojust strengthen information sharing and the coordination of criminal prosecutions, while legislation on asset forfeiture, anti-money laundering (AMLD4 and AMLD5), and the traceability of financial transfers complement the mechanisms for preventing terrorist financing.

Overall, the European legal system has evolved from the criminalization of individual terrorist acts to the development of an integrated mechanism for prevention, investigation, and judicial cooperation. The complementarity between the instruments of the Council of Europe and those of the European Union has enabled the harmonization of national legislation and the consolidation of a European model for combating terrorism, based on a balance between collective security and respect for fundamental rights.

3. Regulations on the Prevention and Combating of Terrorism in Romania

Law No. 535/2004 on the Prevention and Combating of Terrorism (Romanian Parliament, 2004) constitutes the primary legislative act governing the domestic legal framework for the prevention and combating of terrorism, and is harmonized with the standards of the United Nations, the Council of Europe, and the European Union. The law provides a comprehensive definition of terrorism, based both on the objective elements of the act—public danger and the undermining of fundamental social values—and on the subjective element, namely the political, religious, or ideological motivation and the perpetrator's intended purpose.

According to Article 1 of the law, terrorism encompasses acts, omissions, or threats intended to intimidate the population, unlawfully coerce public authorities or international organizations, or seriously destabilize the political, economic, and social structures of a state. Through this approach, the Romanian legislature has adopted the functional model promoted by international instruments, defining terrorism by its purpose and effects, not exclusively by the means employed.

The law also introduces a series of modern concepts adapted to the evolution of the phenomenon of terrorism, such as terrorist groups and organizations, radicalization, terrorist propaganda, terrorist propaganda materials, hosting service providers, and content providers. These concepts reflect the legislature's concern with combating radicalization and propaganda in the online environment, in line with the evolution of contemporary threats and the amendments introduced by Law No. 68/2023 (Romanian Parliament, 2023).

Efforts to prevent and combat terrorism are organized under a unified framework through the National System for the Prevention and Combating of Terrorism (SNPCT), coordinated technically by the Romanian Intelligence Service (SRI) and strategically by the Supreme Council for National Defense. The SRI houses the Anti-Terrorism Operational Coordination Center (CCOA), a structure that ensures the continuous exchange of information among participating institutions and provides the operational support necessary for managing crisis situations.

The SNPCT brings together the main authorities and institutions with responsibilities in the fields of national security and law enforcement, each with specific competencies in preventing radicalization, combating the financing of terrorism, information sharing, international cooperation, and operational intervention. The law distinguishes between preventive activities -intelligence and operational activities, counterterrorism control, security interviews, training, and international cooperation - and counterterrorism activities, which include identifying perpetrators, anti-terrorist and counter-terrorist operations, and judicial cooperation.

Crisis management is based on the principle of a single chain of command, and the National Terrorist Alert System establishes four alert levels (green, blue, orange, and red), which are set by a decision of the Supreme Council for National Defense (CSAT) or, in emergency situations, by its president. In the event of a terrorist crisis, the National Counterterrorism Action Center is activated, responsible for the unified coordination of interventions and defensive and offensive measures.

The law designates terrorist threats as a legal basis for applying the special procedures provided for in Law No. 51/1991 (Romanian Parliament, 1991) on national security, authorizing the conduct of specific intelligence activities. At the same time, it establishes legal obligations to cooperate for public authorities, as well as for individuals and legal entities that possess relevant information regarding terrorist activities.

An important element is the mechanism for the rapid exchange of information with other European Union member states. According to Article 22^1 of Law No. 535/2004, Romanian judicial authorities shall, upon request or on their own initiative, transmit relevant information regarding terrorist offenses to the competent authorities of other Member States, except in situations where such exchange would compromise ongoing investigations or essential national security interests.

The law also establishes a specific criminal regime for terrorism, criminalizing not only terrorist acts themselves but also preparatory acts, association for the purpose of committing terrorist acts, propaganda, recruitment, training, financing, and travel for terrorist purposes. Thus, the legislature has opted for a preventive approach, penalizing even conduct that precedes the commission of a terrorist act.

Following the amendments introduced by Law No. 68/2023, in implementation of Regulation (EU) 2021/784, Law No. 535/2004 also regulates the procedure for removing terrorist content online. Under this mechanism, the Romanian Intelligence Service is the competent national authority; the National Authority for Communications Administration and Regulation (ANCOM) issues removal orders; and the General Inspectorate of the Romanian Police verifies compliance with them. Hosting service providers are required to remove or block terrorist content within one hour of receiving the order; failure to comply is punishable by fines of up to 4% of global turnover.

Overall, Law No. 535/2004 establishes an integrated system for preventing and combating terrorism, based on inter-agency cooperation, rapid information sharing, preventive and repressive measures, as well as the ongoing adaptation of the regulatory framework to new forms of terrorist activity, including in the digital environment.

4. Procedural Provisions Regarding the Application of Law No. 535/2004 on the Prevention and Combating of Terrorism

The provisions of Law No. 535/2004 on the Prevention and Combating of Terrorism are implemented under a special procedural regime, established by combining the general rules of the Code of Criminal Procedure with the derogatory provisions set forth by special legislation in the field of national security and counterterrorism. This procedural mechanism addresses the specific characteristics of terrorism, which is characterized by complexity, transnationality, and a high degree of social danger, which is why the legislature has established special rules regarding referrals to judicial authorities, criminal investigation jurisdiction, the handling of evidence, and the jurisdiction of the courts.

The specificity of criminal procedure in terrorism cases stems primarily from the exclusive jurisdiction granted to the Directorate for Investigating Organized Crime and Terrorism (DIICOT), the use of special investigative measures authorized by the courts, the hierarchical oversight exercised over criminal investigation proceedings, and the assignment of jurisdiction to hear cases at first instance to the courts of appeal.

4.1. Referral of Terrorism Offenses

With regard to terrorist offenses, reports to criminal investigation authorities may be made in several ways, depending on the nature of the information and the individuals who become aware of activities that may constitute acts of terrorism. Thus, a report may be made through a complaint or denunciation filed by individuals or legal entities; ex officio, when judicial or criminal investigation authorities find evidence of a crime; through documents prepared by investigative authorities or by the commanders of ships and aircraft; in accordance with Articles 61 and 62 of the Code of Criminal Procedure, as well as through reports provided by intelligence services pursuant to the provisions of Law No. 51/1991 on national security.

In this context, the Romanian Intelligence Service, the Foreign Intelligence Service, and other authorities with responsibilities in the field of national security may transmit data and information regarding the existence of terrorist threats to the Directorate for Investigating Organized Crime and Terrorism. This information is analyzed by DIICOT prosecutors, who assess whether there is reasonable suspicion that a crime has been committed and, if so, order the initiation of criminal proceedings.

At the same time, the legislature has expressly designated terrorist threats as grounds for applying the special procedures provided for in Law No. 51/1991 on national security. Consequently, specific measures involving interception, technical surveillance, and monitoring may be ordered, in accordance with the principles of legality and proportionality and only on the basis of prior authorization granted by a judge of the High Court of Cassation and Justice.

In judicial practice, most terrorism cases are initiated as a result of intelligence reports prepared by the Romanian Intelligence Service, in its capacity as the national authority responsible for preventing and combating terrorism; these reports form the basis for launching criminal investigations and for the central unit of DIICOT taking over the cases.

4.2. Jurisdiction of Prosecutors within the Directorate for Investigating Organized Crime and Terrorism

The Directorate for Investigating Organized Crime and Terrorism (DIICOT) is the specialized unit of the Public Prosecutor's Office responsible for conducting criminal prosecutions in cases involving terrorist offenses. According to Articles 1 and 2 of Government Emergency Ordinance No. 78/2016 of DIICOT operates within the Prosecutor's Office attached to the High Court of Cassation and Justice, has legal personality, and exercises its powers throughout the territory of Romania.

DIICOT has exclusive subject-matter jurisdiction over all offenses provided for by Law No. 535/2004, regardless of the status of the person under investigation. In exercising their powers, the Directorate's prosecutors conduct criminal investigations, coordinate and supervise the activities of specialized criminal investigation bodies, and order the performance of technical-scientific analyses or expert assessments necessary for resolving the case.

Pursuant to Article 11, paragraph (1), point 2 of Government Emergency Ordinance No. 78/2016, DIICOT exercises all procedural rights and obligations in cases involving offenses governed by Law No. 535/2004, while also having responsibilities in the areas of international judicial cooperation and the operational exchange of information. Supporting the work of prosecutors are specialists in fields such as forensic science, information technology, the financial and banking sector, taxation, and customs, whose investigative reports constitute evidence, pursuant to Article 172(9) of the Code of Criminal Procedure.

4.3. Collection of Evidence in Terrorism Cases

The handling of evidence in terrorism cases is subject to a specific legal regime, determined both by the gravity of the acts under investigation and by the need to protect national security. In this regard, Article 20 of Law No. 535/2004 permits the application of the provisions of Law No. 51/1991 on intelligence gathering, which makes it possible to use special surveillance and investigative methods.

These methods include the interception of communications, ambient recordings, surveillance using technical means, GPS tracking, and access to computer or financial data. The implementation of such measures is subject to prior authorization by a judge of the High Court of Cassation and Justice, at the request of the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice.

According to Law No. 51/1991, the duration of the authorization order is a maximum of six months, with the possibility of successive extensions for periods of three months each, not to exceed two years for the same set of facts. In exceptional, urgent situations, the measures may be provisionally ordered by a prosecutor for a period of no more than 48 hours, to be subsequently confirmed by a judge under the conditions set forth in the Code of Criminal Procedure.

Information obtained through specific intelligence activities may be used as evidence only to the extent that it reveals the preparation or commission of a crime. Such information is transmitted to DIICOT along with the judicial authorization and, where applicable, with a proposal for the full or partial declassification of the information. In the absence of sufficient evidence to continue the criminal investigation, the person concerned may be subsequently informed of the measures taken against them, except in situations where such notification could affect national security or lead to the disclosure of operational sources and methods.

International cooperation in the area of evidence also plays an important role. Article 22^1 of Law No. 535/2004 establishes a mechanism for the rapid exchange of information and evidence between Romanian authorities and the competent authorities of European Union member states, for the purpose of preventing, detecting, and prosecuting terrorist offenses.

Upon completion of the criminal investigation, the prosecutor from DIICOT drafts the indictment in accordance with Articles 327 and 328 of the Code of Criminal Procedure. Before the case is referred to court, the indictment is subject to hierarchical review by the competent chief prosecutor to confirm the legality and soundness of the criminal investigation proceedings. This review is mandatory and serves as an additional safeguard to ensure compliance with the evidentiary standards specific to terrorism cases, given their implications for national security. Upon confirmation, the indictment is submitted to the competent court of appeals along with all the evidence gathered in the case.

4.4. Jurisdiction of the Courts

With regard to terrorist offenses, jurisdiction in the first instance lies with the courts of appeal, pursuant to Article 40 of Law No. 535/2004. This jurisdiction is established regardless of where the offense was committed or the status of the person under investigation, constituting an express derogation from the general rules set forth in the Code of Criminal Procedure.

The legislature's decision is justified by the complexity and gravity of terrorist offenses, as well as by the need for them to be adjudicated by courts with a high level of specialization and experience. Although the Code of Criminal Procedure does not expressly include these offenses within the jurisdiction of the courts of appeal, the special provision established by Law No. 535/2004 prevails, given the unique nature of the acts and their impact on national security.

This legislative solution is also consistent with the provisions of Article 3(j) of Law No. 51/1991, which classifies terrorist acts and activities intended to prepare for or support them as threats to national security. From this perspective, the offenses provided for in Law No. 535/2004 constitute a distinct category of offenses that affect state security, justifying the establishment of a differentiated procedural regime.

Overall, the criminal procedure applicable to terrorism cases reflects the legislature's concern to balance the effectiveness of combating terrorism with respect for the procedural safeguards characteristic of a state governed by the rule of law. The exclusive jurisdiction of DIICOT, the controlled use of special investigative methods, the hierarchical review of criminal investigation files, and the assignment of jurisdiction to the courts of appeal constitute a procedural mechanism tailored to the gravity and complexity of these offenses, ensuring both the protection of national security and respect for fundamental rights and freedoms.

Conclusions

An analysis of the international, European, and national legal frameworks highlights the fact that the prevention and combating of terrorism have undergone constant evolution, driven by the continuous transformation of threats to international security. From the first conventions adopted under the auspices of the United Nations, which focused on protecting specific areas, to the legal instruments developed by the Council of Europe and the European Union, there has been a shift from an exclusively repressive approach to an integrated one, based on prevention, international cooperation, and early intervention.

In Romania, Law No. 535/2004 establishes a complex and coherent system for preventing and combating terrorism, harmonized with international and European standards. The law establishes an institutional mechanism based on ongoing cooperation among authorities responsible for national security and law enforcement, affirming the central role of the National System for the Prevention and Combating of Terrorism and the Romanian Intelligence Service in coordinating specific activities.

At the same time, the procedural features analyzed demonstrate that the legislature opted to establish a regime that derogates from ordinary law, justified by the nature and gravity of terrorist offenses. DIICOT's exclusive jurisdiction, the use of special surveillance and investigative methods, the expanded mechanisms for inter-institutional and international cooperation, as well as the assignment of jurisdiction to the courts of appeal, constitute guarantees of an effective and specialized response to the phenomenon of terrorism.

Last but not least, the recent amendments to Law No. 535/2004, particularly those resulting from the implementation of Regulation (EU) 2021/784 on the removal of terrorist content online, demonstrate the legislature's commitment to continuously adapting the regulatory framework to new forms of terrorism. The integration of the digital dimension into prevention and counterterrorism mechanisms confirms that national security today entails protecting both the physical and virtual spaces.

In conclusion, the effectiveness of counterterrorism policies depends on the coordinated functioning of legislative, institutional, and judicial mechanisms, as well as on the strengthening of international cooperation. Law No. 535/2004 serves as the legal foundation of this system under Romanian law, providing a regulatory framework capable of meeting the current demands of counterterrorism and contributing to the protection of national security and the fundamental values of the rule of law.

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