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# THE DANGER OF ISLAMIC TERRORISM IN ROMANIA

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## **Motto:**

*"Romanian army went to Iraq, Afghanistan, with weapons, to fight. It's clear that Romanian soldiers did not go to Afghanistan to give people ice cream. I do not think the Romanian army has come such long way to the Gulf to distribute ice cream. They gave people bombs! They went to fight. If you keep yourselves away from fights with Muslims, Romania will be God's earth and people will be free to follow Jesus, Moses, Abraham or Muhammad or to follow Obama and your prime ministers." - OMAR BAKRI Sheikh interview - TVR 2012<sup>1</sup>*

## **1. Why in Romania, too?**

The question is rhetorical, if we consider the above mentioned statements of the Sheikh. And, should there be only such statements, there would not be grounds for great concern.

The migration from Middle East, driven by the wars in Syria and Iraq, opened Pandora's box, by unleashing a wave of terrorist attacks, which have terrified civilian population and all political factors in the European Union.

In Romania, there are over 70,000 practitioners of the Sunni Islam cult, officially recognized and placed under the authority of a mufti. Most of them are Turkish-Tatar, sedentarised and integrated into Romanian society, and practicing a peaceful and tolerant Islamism<sup>2</sup>.

About 5,000 people, citizens coming from the Arabic states, live in Romania today, most of them being Syrians, Iraqis, Lebanese and Jordanians.

After the armed conflicts in the Near East, many Arabs fled to Romania together with their wives of Romanian origin, and the most important waves of refugees were in 2006 (from Lebanon), 2012 (from Syria) and 2014 (from the Gaza Strip).

With the migration of the population of Arab origin, there have appeared dozens of unauthorized mosques and Islamic foundations in Romania. In Bucharest only there are 17 mosques, built after 1990, unauthorized by a mufti<sup>3</sup>.

There is the suspicion that these mosques, unauthorized by a mufti, are engaged in proselytism and are promoting an Islam that is considering jihad as a form of violent promotion of the teachings of the Koran.

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<sup>1</sup> [http://stiri.tvr.ro/terorismul-o-amenintare-reala-interviu-in-exclusivitate-pentru-tvr-cu-seicul-radical-omar-bakri\\_28649.html](http://stiri.tvr.ro/terorismul-o-amenintare-reala-interviu-in-exclusivitate-pentru-tvr-cu-seicul-radical-omar-bakri_28649.html) (visited on 19.06.2016).

<sup>2</sup> [stirile.rol.ro/ce-crede-muftiul-din-romania-despre-atentatele-din-belgia-si-islamul-pur](http://stirile.rol.ro/ce-crede-muftiul-din-romania-despre-atentatele-din-belgia-si-islamul-pur) (visited on 06.06.2016).

<sup>3</sup> [stirile.rol.ro/ce-crede-muftiul-din-romania-despre-atentatele-din-belgia-si-islamul-pur](http://stirile.rol.ro/ce-crede-muftiul-din-romania-despre-atentatele-din-belgia-si-islamul-pur) (visited on 06.06.2016).

A first case of terrorism was discovered in Romania in 2006, when said F.L. was surprised by the police while carrying in his own car two gas cylinders connected to an explosive device consisting of a mobile phone and a stove lighter, which he planned to detonate in a high-traffic area of Timisoara. The investigating bodies found that he has converted to Islam, and has participated in religion training camps organized in Romania, where he made contact with members of the "Muslim Brotherhood" extremist terrorist organization, and intended to detonate the bomb in order to sanction the pro-Western policy of Romania<sup>4</sup>.

In another case, in 2015, a 17 years old young man, attending a mosque, showed "willingness" on the social networks to become a martyr for the Islamic State, both by moving to the areas where ISIS acts, to fight alongside the group members, and by sacrificing himself in a European country, at the order of the Islamic State members. For this purpose, he searched to inform himself how to acquire AK weapons, grenades, bullet-proof vests, and studied how to make a homemade bomb, which is why his activity is under investigation by the Directorate for the Investigation of Organized Crime and Terrorism (DIICOT)<sup>5</sup>.

Another terrorist attack, also foiled by the prosecutors, occurred in 2015, when two Romanian citizens of Hungarian ethnic origin, members of the nationalist-extremist organization, HVIM Hungary, intended to detonate a homemade bomb at the celebration of the National Day of Romania. In that case, said S.Z., chairman of HVIM Transylvania, asked B.I. to manufacture an explosive device which he was supposed to detonate in public, so that the latter's attitude could rather be understood as one of submission to a superior's order, with the purpose of committing terrorist acts, and of "martyrdom" to allow him to become a member of the terrorist organization.

Official statistics of The Romanian Intelligence Service (SRI), disclosed at the request of HotNews, show that, between 2009-2013, a total of 41 foreign nationals have been declared undesirable and have been expelled from the territory of Romania, based on court decisions, as a result of preventive measures taken by The Romanian Intelligence Service<sup>6</sup>. Such preventive measures are taken under Article 44 of the Law no. 535/2004 on combating and preventing terrorism: "against foreigners or stateless persons about whom there are reliable data or indications that they intend to commit terrorist acts or to encourage terrorism, who will be declared undesirable in Romania or their staying in Romania will be stopped, whether they have not been placed under interdiction to exit Romania, according to the law on the legal status of foreigners in Romania".

According to Mediafax, militants of the Islamic State terror network transited Romania on their way to Syria.

Since 2004, Romania has a National System for Terrorist Alert (SNAT) to support the process of planning anti-terrorist activities, at the national level, as well as that of informing the population about the terrorist alert level. So far, since the establishment of SNAT in Romania, the terrorist alert level was SAFE (BLUE), except for a short period, occasioned by the conduct in Bucharest (2008) of the NATO Summit, when the level was raised to YELLOW -MODERATE<sup>7</sup>.

<sup>4</sup> Timișoara Court of Appeal, file no. 7459/59/2006.

<sup>5</sup> [www.ziare.com](http://www.ziare.com) › Stiri › justitie (visited on 06.06.2016).

<sup>6</sup> [www.HotNews.ro](http://www.HotNews.ro), January 12, 2015.

<sup>7</sup> [www.sri.ro/sistemul-national-alerta-terorista.html](http://www.sri.ro/sistemul-national-alerta-terorista.html).

## 2. The safety and security *versus* fundamental rights and freedoms dilemma

It is undisputed that the uncertainty generated by terrorism and the other forms of organized crime will change many paradigms of classic criminal law. Organised crime has led to a broadening of the scope of inchoate offences that are criminalized independently or as attempted offences, particularly in the case of terrorist offences and other forms of organized crime<sup>8</sup>. Fighting organized crime determined the regulation of special procedures for obtaining evidence through a pro-active investigation, with important restrictions of fundamental rights.

The transfer of terrorist methods to the new frontier of the online environment<sup>9</sup> requires new legislative measures, parts of which are interfering with personal privacy.

Moving from a reactive, post-factual criminal law, towards a preventive criminal law, a security law<sup>10</sup>, seems to be a paradigm that national criminal laws can no more ignore.

Alongside criminal regulations, we need extra-penal regulations, to assist collecting information from the new communication techniques environment.

For this purpose, Romania enacted Law no. 82/2012<sup>11</sup> regarding the retention of general data or data processed by the electronic communications public networks providers and electronic communications for public use providers, amending and supplementing Law no. 506/2004 on the processing of personal data and the protection of privacy in the electronic communications sector<sup>12</sup>.

That law transposed into national legislation the Directive 2006/24/ EC of the European Parliament and of the Council of 15 March 2006<sup>13</sup> on the retention of data generated or processed in connection with the provision of publicly available electronic communications or public communications networks and amending Directive 2002/58/EC<sup>14</sup>.

It did not stay long in force, as the Directive 2006/24/ EC has been declared invalid by the Court of Justice of the European Union, on April 8, 2014, as the directive infringed Art. 7, Art. 8, and Art. 52 para. (1) of the Charter of Fundamental Rights of the European Union<sup>15</sup>.

As a result, by its Decision no. 440/2014<sup>16</sup>, the Romanian Constitutional Court established that the provisions of the Law no. 82/2012 regarding the retention of general data or data processed by the electronic communications public networks providers and electronic communications for public use providers are unconstitutional,

<sup>8</sup> L. Picotti, *L'élargissement des formes de préparation et de participation, Rapport général*, *Révue internationale de droit pénal* no. 3-4/2007, p. 355-404.

<sup>9</sup> S. Signorato, *Misure di contrasto in rete al terrorismo: blak list, inibitione dell' accesso ai siti, rimozione del contenuto illecito e interdizione dell'accesso al domino internet* in R. E. Kistoris e F. Viganò, *Il nuovo "pacchetto" antiterrorismo*, G. Giappichelli Editore, Torino, 2015, p. 55-73.

<sup>10</sup> U. Sieber, *The paradigm shift in the global risk society: from criminal law to global security law – an analysis of the changing limits of crime control*, *supra*, p. 11-12.

<sup>11</sup> Published in the Official Journal of Romania, Part I, no. 406 of 18.06. 2012.

<sup>12</sup> Published in the Official Journal of Romania, Part I, no. 1101 of 25.11.2004.

<sup>13</sup> Published in the Official Journal of the European Union no. L 105/54 of 13.04.2006.

<sup>14</sup> Published in the Official Journal of the European Communities no. L 201 din 31.07.2002.

<sup>15</sup> Judgment in Joined Cases C-293/12 and C-594/12 *Digital Rights Ireland and Seitlinger and others* available at <http://curia.europa.eu> (visited on 19.06.2016).

<sup>16</sup> Published in the Official Journal of Romania, Part I, no. 653 of 04.09.2014.

for the exact reasons given by the Court of Justice of the European Union, and the law has afterwards been repealed.

The Constitutional Court did not deny the fact that it is imperatively necessary to ensure appropriate and effective legal means, consistent with the ongoing process of modernization and development of the means of communication, so that criminal phenomenon can be controlled and countered, but the adoption of surveillance measures, in the absence of adequate and sufficient safeguards, could result in “the destruction of democracy under the guise of defending it”.

The Court showed the same reticence about the enactment of the Law on cyber security in Romania, meant to replace the Emergency Ordinance no. 98/2010 concerning the identification, designation and protection of critical infrastructures<sup>17</sup>.

The Court held<sup>18</sup> that, at the European level, even though under Art. 114 of the Treaty on the Functioning of the European Union, there has been initiated the ordinary legislative procedure for the adoption of a Directive on measures to ensure a common level of security of networks and information in the Union – NIS Directive (Network and Information Security), at the time when the case was before the Constitutional Court, there was no enactment at the European Union level on cybersecurity<sup>19</sup>.

Examining the above mentioned law, within the procedure of preliminary control of constitutionality, the Constitutional Court found, among other grounds of unconstitutionality, that “requests for access to retained data for uses prescribed by the law, submitted by state bodies designated as authorities in the field of cyber security, for their specific activities, are not subject to authorization or approval by the court, so that there is no guarantee of effective protection of the stored data against the risk of abuse, and against any unlawful access to such data or use of it. This circumstance is likely to amount to an interference with the fundamental rights to privacy, family and private life, and the secrecy of correspondence, and, therefore, is contrary to the constitutional provisions that set forth and protect these rights”.

Given that “the measures taken based on a law subject to constitutional review are not of a clear and predictable character, state interference with the exercise of constitutional rights to privacy, family, private life and the secrecy of correspondence, although required by the law, is not clearly, rigorously and comprehensively described, to provide confidence to citizens, the strictly necessary character in a democratic society is not fully justified, and the proportionality of the measure is not ensured by way of adequate corresponding safeguards. The restriction of the exercise of such individual rights by reason of collective rights and public interests, targeting cyber security, breaks the right balance that should exist between interests and rights of the individual, on the one hand, and of the society, on the other hand, the criticized law failing to offer sufficient safeguards to allow the effective protection of data against the risk of abuse, and any unlawful access to personal data and use of it”.

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<sup>17</sup> Published in the Official Journal of Romania, Part I, no. 757 din 12.11.2010.

<sup>18</sup> C. C. dec. no. 17/21.01.2015 on the objection of unconstitutionality of the provisions of Cyber Security Law, published in the Official Journal of Romania, Part I, no. 79 din 30.01.2015.

<sup>19</sup> The initiative belongs to the European Commission, which on, February 7, 2013, referred the proposal for a Directive to the European Parliament and the Council. The draft directive has passed the first reading procedure in the European Parliament, where it was adopted, with amendments, on March 13, 2014. On June 10, 2014, the European Commission expressed partial agreement on the Parliament's amendments. The Council formally adopted the NIS Directive and, after the EP vote, probably in July, the directive could come into force, in August 2016.

The legislative process in the field will have to be resumed, given the objections of the Constitutional Court, to assure enactment of a legislation that meets both the requirements of security and of safeguards for the fundamental rights of individuals.

### 3. The Romanian legislation sanctioning acts of terrorism

Terrorist offences are not regulated by the Criminal Code, but by special legislation.

A first regulation in the field of combating terrorism was the Government Emergency Ordinance no. 141/2001<sup>20</sup> on the punishment of acts of terrorism and acts of violation of public order, in force from October 31, 2001 until December 11, 2004.

In accordance with the provisions of the Government Emergency Ordinance no. 141/2001, "homicide offences, assault and battery, aggravated assault, illegal deprivation of liberty, offences involving destruction, offences violating the regulations governing arms and ammunition, and the regulations governing nuclear, and other radioactive materials, as well as the regulations governing explosives, and the offences covered by Articles 106 to 109 of the Government Ordinance no. 29/1997 concerning the Air Code, committed for the purpose of creating a serious breach of the peace through intimidation, terror and/or triggering panic" were punishable as acts of terrorism.

The law also punished as acts of terrorism "the introduction or release into the atmosphere, soil, sub-soil or water of products, substances, materials, micro-organisms or toxins harmful to human or animal health or to the environment, as well as threats involving bombs or other explosive material", if they created a serious breach of the peace, through intimidation, terror or triggering of panic, as well as plotting to commit terrorist acts".

Attempts to commit such offences were also punishable, and inchoate offences, such as the production or acquisition of the means or instruments aimed at committing such offences, or the planning of measures for the purpose of their commission, were to be considered an attempt.

In 2004, intending to multiply the mechanisms aimed at fighting terrorism, the legislature enacted Law no. 535/2004<sup>21</sup> on preventing and combating terrorism, thus, also criminalizing other acts than those regulated by the Government Emergency Ordinance no. 141/2001, and repealing the Government Ordinance.

According to Art. 1 of the Law, terrorism refers to an array of actions and / or threats that menace public order and affect national security, having the following characteristics:

- a) are deliberately committed by terrorist entities that share extremist views and attitudes and are hostile to other entities that they target by violent and / or destructive means;
- b) are aimed at achieving specific goals of political nature;
- c) are directed against human and / or material factors representing the authorities and public institutions, civilians or any other element belonging to these entities;
- d) generate situations that have powerful impact on the population, which are meant to draw attention to the goals that they pursue.

<sup>20</sup> Published in the Official Journal of Romania, Part I, no. 691 din 31.10.2001.

<sup>21</sup> Published in the Official Journal of Romania, Part I, no. 1161 din 08.12.2004.

In the framework of the new law, offences can be grouped into five categories<sup>22</sup>, as follows:

- a) terrorist offences as such (Arts. 32, para. 2, 34 para. 2, 37 para. 1, 38);
- b) offences punishable as acts of terrorism (Arts. 33, 38);
- c) recruitment and public provocation to commit terrorist offences (Arts. 33<sup>1</sup>, 33<sup>2</sup>);
- d) establishment or leadership of terrorist organizations (Art. 35);
- e) terrorism financing (Art. 36).

**Terrorist offences** refer to the commission of any of the following acts that, due to their nature or the circumstances in which they have been committed, may grievously harm a country or an international organization, when committed for the purpose of intimidating civil population or determining the State authorities or an international organisation to do, not to do or to abstain from doing a certain act or of grievously destabilizing or destroying fundamental political, constitutional, economic or social structures of a country or an international organization<sup>23</sup>:

- a) offences of homicide, second degree murder and first degree murder, or bodily injury;
- b) threat or illegal deprivation of liberty;
- c) offences of destruction;
- d) communication of false information, that compromises the safety of the navigation of a ship;
- e) offences of non-observance of the regime of arms and ammunition, non-observance of the regime of nuclear materials and other radioactive matters, and of non-observance of the regime of explosives, provided in art. 279, art. 279<sup>1</sup> and art. 280 of the Criminal Code;
- e) commission, by using a device, a weapon or a substance, of an act of violence against a person in a civil airport, if the act endangered the safety and security of the airport, or commission of any act of physical or psychological violence on a person on board a civil aircraft, during flight, or while preparing for flight, or on its crew;
- f) offences of destruction or seriously damaging, by using a device, a weapon or a substance, installations of a civil airport or an aircraft in service or not in service, but on an airport, or causing damage that make the aircraft unavailable for flight or that are likely to endanger its safety during flight, as well as interruption of airport services, if the act is likely to jeopardize or compromise safety and security at the airport;
- g) offences of destruction or seriously damaging navigation installations or services or causing serious disturbance in their functioning, if one of these acts is likely to compromise the safety of the flight;
- h) offences of placing or causing to be placed on a aircraft, by any means, a device or a substance that is able to destroy the aircraft or to cause damage that makes the aircraft unavailable for flight or is likely to compromise the safety of the aircraft during flight;
- i) offences of taking charge of an aircraft, by any means, or of exercising control over it without right;
- j) offences of taking charge of a ship or a fixed platform or of exercising control over these, through violence or threat of violence;

<sup>22</sup> For another classification, see: R. I. Mocanu, *Feomenul terorist. Analiza legislatiei anti-teroriste române. Studiu comparativ*, Universul Juridic Publishing House, Bucharest, 2013, p. 203.

<sup>23</sup> Art. 32 para 1 of Law no. 535/2004.

k) acts of violence against a person who is on board a ship or a fixed platform, if these acts are likely to compromise the safety of that ship or fixed platform;

l) offences of destruction of a fixed platform or a ship or causing damage to the fixed platform or to the cargo of a ship, if this is likely to compromise the safety of the platform or of the navigation of that ship;

m) offences of placing on a ship or on a fixed platform, by any means, a device or a substance that is able to destroy them or to cause damage to the platform, the ship or the cargo that compromises or is likely to compromise the safety of that platform or of the navigation of that ship;

n) offences of destruction or of seriously damaging a fixed platform or installations or navigation services or causing serious disturbance in their functioning, if one of these acts is likely to compromise the safety of the fixed platform or of the navigation of a ship;

o) offences of non-observance of the regime of arms and ammunition, non-observance of the regime of nuclear materials and other radioactive matters, and of non-observance of the regime of explosives;

p) attack that endangers national security, attack against a community and acts of diversion;

q) fraud committed through computer systems and electronic payment means and offences against the security and integrity of computer systems and data;

r) takeover without the right of collective passenger transport means or cargo.

The following shall also be considered as terrorist acts, and shall be punished with imprisonment of 7 to 15 years and the deprivation of certain rights, when committed for the purposes described at para. 1:

"a) production, acquisition, possession, transportation, supply or transfer to other persons, either directly or indirectly, of chemical or biological weapons, explosive devices of any kind, and research in this field or development of such weapons or devices;

b) introducing or spreading into the atmosphere, on the soil, into the subsoil or into the water products, substances, materials of any kind, micro organisms or toxins that are likely to jeopardise the health of persons or animals or the environment or with intent to cause fires, floods or explosions that have the effect of endangering human life;

c) interfering with or disrupting the supply of water, power or any other fundamental natural resource, which have the effect of endangering human lives".

According to Art. 37 para. 1, "threats, by any means, against a natural or legal person, or a community, with the use of firearms, nuclear, chemical, biological arms, nuclear facilities or devices generating ionizing radiation, a nuclear explosion or a nuclear accident, or the spread or use of products, substances, micro organisms, toxins or materials, of any kind, such as to endanger the health of humans or animals or the environment or cause very serious consequences, committed for the purpose referred to in Art. 32 para. (1) constitute an offence punishable with imprisonment of 1 to 5 years".

Threat referred to in para. (1) against a State or an international organization is punishable by imprisonment of 2 to 7 years and the deprivation of certain rights.

The following acts **shall be treated as acts of terrorism** and shall be punished with imprisonment of 5 to 12 years and the deprivation of certain rights:

"a) acquisition, possession, manufacture, fabrication, transportation or supply of goods or dual-use technologies or of military goods or explosive or flammable substances, for the purpose of production of means of destruction, explosive devices of



any kind, as well as chemicals, biological, radiological or nuclear substances, that are likely to endanger the health of humans, animals or the environment;

b) instruction or training of an individual to use or manufacture firearms, ammunition, explosives, explosive devices of any kind, chemical, biological, radiological or nuclear weapons, including any equipment designed to be used in direct connection with the use of chemical, biological, radiological or nuclear substances”.

A person who commits any of the following acts under Art. 33 para. 2 shall be punished with imprisonment of 2 to 7 years and the deprivation of certain rights:

”a) facilitating border crossing, hosting or facilitating access to the area of the targeted objectives of a person who has committed or participated or will participate or commit a terrorist offence;

b) collection or possession, for the purpose of transmission, or making available data and information on targeted objectives by a terrorist entity;

c) forging official documents in order to facilitate committing one of the offences under this law;

d) blackmail in order to determine a person to commit an act of terrorism;

e) participation in instruction or training for the use of means of destruction, hazardous or toxic substances, firearms, explosive devices of any kind, ammunition, explosives, chemical, biological, radiological or nuclear weapons, in order to commit an act of terrorism;

f) aggravated theft for the purpose of committing terrorist offences”.

According to Art. 38, ”alarming, by any means and without good reason, a natural or legal person or a community, specialized bodies to intervene in case of danger, bodies with responsibilities in national security or public order, with respect to the use of firearms, nuclear, chemical, biological, radiological weapons or spread or use of products, substances, micro organisms, toxins or materials, of any kind, that are likely to endanger the life, physical integrity or health of humans or animals or the environment or cause very serious consequences shall be punished with imprisonment of 3 months to 2 years or a fine”.

### **Offences of recruitment and public provocation to commit a terrorist offence**

According to Art. 33<sup>1</sup>, ”the act of recruiting a person to commit a terrorist offence or other acts that are punishable as acts of terrorism shall be punished with imprisonment of 5 to 12 years”.

According to Art. 33<sup>2</sup>, ”the act of urging the public, orally, in writing or by any other means, to commit offences under this law shall be punished with imprisonment of 6 months to 3 years or a fine, without exceeding the penalty provided by the law for committing the offence which was the object of such urging.

If the act mentioned above is committed by a public official, the penalty shall be imprisonment of 1 to 5 years and the deprivation of certain rights, without exceeding the penalty provided by the law for the offence which was the object of such urging.

If public provocation resulted in the offence which was the object of such provocation, it shall be subject to the penalty provided by law for the actual offence.

According to art. 33<sup>2</sup> para. 4 ”promotion of a message via propaganda committed by any means, in public, with the intent to incite the commission of an offence of terrorism or acts that are punishable as acts of terrorism, regardless of whether the message supports or not directly terrorism, or if the actual offences were committed or not, shall be punished with imprisonment of 6 months to 3 years”.

### **Establishment or leadership of terrorist organizations**

According to Art. 35, "the act of association or initiation of an association with the purpose of committing terrorist acts or of joining or supporting, in any form, such association shall be punished with imprisonment of 5 to 12 years and the deprivation of certain rights, without exceeding the maximum punishment provided by the law for the offence that was the purpose of the association".

The act of leading a terrorist entity shall be punished with imprisonment of 7 to 15 years and the deprivation of certain rights.

### **Terrorism Financing**

According to Art. 36, "collecting or making available, directly or indirectly, licit or illicit funds, knowing that they are to be used, in whole or in part, for the purpose of committing terrorist acts or support a terrorist entity shall be punished with imprisonment of 5 to 12 years and the deprivation of certain rights.

Whoever commits an offence for the purpose of obtaining funds, knowing that they are to be used, in whole or in part, for the purpose of committing terrorist acts or support a terrorist entity shall be punished with the punishment provided by the law for the offence whose maximum shall be increased by 3 years".

## **4. Specialised bodies and procedural issues**

The Romanian Intelligence Service – the national authority in the field – consists of the Antiterrorist operative coordination centre through which it ensures the technical coordination of the National System for the Prevention and Combating of Terrorism, involving the public authorities and institutions provided for by the law.

In the event of a terrorist attack, the Romanian Intelligence Service, through its specialized unit, carries out counterterrorist interventions, alone or in cooperation with other authorized forces, across the country, at the objectives attacked or occupied by terrorists, for the purpose of capturing or annihilating them, freeing hostages and restoring legal order.

Counterterrorist intervention is carried out with the approval of the Supreme Council of National Defence.

Threats against the national security of Romania regarding the offences set forth by the law constitute the legal basis for the state bodies having responsibilities in the field of national security to require authorization to conduct specific activities of collecting information, as provided for by the Code of Criminal Procedure with respect to the special methods of surveillance or investigation.

Special surveillance or research techniques refer to: intercepting communications or any kind of distance communication; access to a computer system; video, audio or photo surveillance; locating or tracking through technical means; obtaining data on a person's financial transactions; detention, collection or searching of a person's mails; use of undercover investigators and collaborators; authorized participation in certain activities; controlled delivery; obtaining traffic and location data processed by providers of public electronic communication networks or providers of publicly available electronic communications.

Interception of communications or of any kind of distance communication, access to a computer system, video, audio or photo surveillance, locating or tracking through technical means, obtaining data on a person's financial transactions, detention,

collection or searching of a person's mails must be ordered by the rights and freedoms judge, when there is reasonable suspicion regarding the preparation or commission of a terrorist offence, and the measure is proportionate to the restriction of fundamental rights and freedoms, given the particular circumstances of the case, the importance of information or evidence to be obtained or the seriousness of the offence, and that evidence could not have been obtained otherwise or obtaining it would involve particular difficulties that would prejudice the investigation or there is a threat to the safety of persons or valuable property.

The prosecutor may authorize, for maximum 48 hours, the measures of technical surveillance mentioned above, if there is urgency and obtaining the technical surveillance warrant would lead to a substantial delay in the investigation, loss, alteration or destruction of evidence or would jeopardize the victim, a witness or their family members. The prosecutor must notify, within less than 24 hours after the expiry of the measure, the rights and freedoms judge from the court having the jurisdiction to hear the case at first instance or the appropriate court in rank in whose jurisdiction the office of the prosecutor who issued the order to confirm the measure is located.

Authorization to use undercover agents and controlled delivery is ordered by the prosecutor that is supervising or conducting the criminal investigation.

Within the Public Ministry there operates as a distinct entity the Directorate for Investigating Organized Crime and Terrorism, with local structures, which is also having jurisdiction to conduct criminal investigations in case of terrorist offences.

First instance trial of terrorist offences falls within the jurisdiction of the courts of appeal, and appeals are to be heard by the High Court of Cassation and Justice.

## 5. Conclusions

Islamic terrorism is a real threat for Romania and the other European countries involved in the Anti-Islamist coalition. In this respect, there is need for "the creation of a parallel criminal system, distanced from the principle of legality and, procedurally, unfaithful to the presumption of innocence, the adversarial principle and the principle of *ne bis in idem*"<sup>24</sup>. Romanian legislation on preventing and combating terrorism is comprehensive and provides adequate means to the judicial bodies to prevent and combat acts of terrorism. Even if we have our doubts about the adoption of regulations meant to allow a broader area for gathering information on persons suspected of acts of terrorism, Romania has already integrated into national law the European directives on combating and financing terrorism and is seeking further harmonization of national legislation with the European Union regulations.

<sup>24</sup> R. E. Kostoris in R. E. Kostoris e F. Vigano, *op. cit.*, p. XVI.