ASPECTS RELATED TO THE COMPETENCE OF THE COMPETITION INSPECTOR IN THE CONTEXT OF INSPECTIONS PROVIDED BY THE COMPETITION LAW COMPARED TO THE COMPETENCE OF CRIMINAL JUDICIAL AUTHORITIES ABOUT SEARCHES

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Abstract

The legal possibilities regarding the investigation by the competent authorities of practices that violate the provisions of Law no. 21/1996, which regulates competition in the economic environment, with explicit reference to the interests of consumers, as provided by art. 38 of the Law, can be analysed compared to those in the Criminal Procedure Code regarding the evidentiary search procedure, with the mention of similarities and differences, especially in terms of their nature, but also of the content that the specific regulations establish. The obligations established by this legal text for the lawyer concerning the disclosure of professional secrecy to the competition inspectors require a systematic interpretation from the perspective of the provisions of art. 11 of Law no. 51/1995, which obliges the lawyer to respect professional secrecy, with the admission of the exceptions provided for by law.

Keywords: *anti-competitive practices, competition inspector, inspections, competition law, comparative skills analysis, criminal searches, lawyer, professional secrecy.*

1. Introduction

As highlighted in the specialized literature, the need for an efficient legal framework to ensure the proper functioning of the European market has been evident since the early days of the Union's construction. It has been emphasized that achieving this objective would have been impossible without the existence of a competition policy[1]. The European Economic Community aimed to revise through the Single European Act[2] (SEA) the Treaties of Rome established the European Economic Community (EEC) and the European Atomic Energy Community by introducing major legislative innovations[3]. The revision was intended to relaunch the process of European integration and achieve the internal market (a space without internal borders, characterized by the free movement of goods, people, services, and capital) by January 1, 1993.

The Single European Act (SEA) amended the rules governing the functioning of European institutions and expanded the former European Community's competencies in several policy areas. By creating new community competencies and reforming institutions, the SEA paved the way for deeper political integration and economic and monetary Union, which would later be formalized in the Treaty on European Union (the Maastricht Treaty)[4].

From the perspective of the forms of enhanced cooperation within the legal framework of the EU, it was stated that they must comply with the Treaties and Union Law and cannot harm the internal market or economic cohesion. The doctrine analyzed, concerning the internal market, the changes that occurred after 2010 in the

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[1] I. Lazăr, *Dreptul Uniunii Europene în domeniul concurenței*, Universul Juridic Publishing House, Bucharest, 2016, p. 19. The author describes in their work the legislative evolution from the perspective of those European acts that laid the foundation for a system designed to prevent market distortion and emphasise the importance of introducing the concept of the single (internal) market through the Single European Act, adopted in Luxembourg on February 17, 1986, and in The Hague (Netherlands) on February 28, 1986, which entered into force on July 1, 1987. The cited author further highlights that the EU's competition policy focuses on combating **anti-competitive agreements** between companies operating in the EU internal market, **preventing the abuse of market power** by dominant enterprises in any sector or member state, **controlling state aid** granted to sectors and businesses that risk distorting competition, as well as **analysing economic concentrations**.

[2] OJ L 169/29.06.1987, Document 11986U/TXT. The importance of this act, which holds utmost significance within the regulatory framework of the European Community, lies in its decisive role in facilitating the implementation of legislation in member states for the completion of the internal market, retrieved 13.04.2024 from *https://eur-lex.europa.eu/legal content/RO/TXT/?uri=celex%3A11986U%2FTXT*.

[3] For a detailed analysis of this legislative reform, new approaches to internal market harmonisation, market freedom, structural balance, politics, economics and initiative in the context of the single market, see P. Graig, G. De Búrca, 4th ed., *Dreptul Uniunii Europene*, Hamangiu Publishing House, Bucharest, 2017, p. 765-794.

[4] *https://eur-lex.europa.eu/RO/legal-content/summary/the-single-european-act.html*, last consulted on 13.04.2024.

context of the enlargement of the EU, concerning the additional efforts made by the Council and the Commission to relaunch the European single market[5].

2. General Considerations on European and National Regulations in the Field of Competition

The principal regulations, to which we intend to refer in particular, are contained in art. 101-109 TFEU (ex-art. 81 TEC)[6].

We note that, **by art. 101 TFEU (ex-art. 82 TEC)**, the European legislator intended to prohibit any agreements between undertakings, any decisions by associations of undertakings and any concerted practices which may affect trade between the Member States which have as their object or effect the prevention, restriction or distortion of competition within the common market, after which it refers „in particular" to some instances. This aspect leads to the idea that it is an exemplary enumeration, an aspect noted in the doctrine. The idea has been accepted that the formula „in particular" allows us to understand the primary importance of these examples of anti-competitive manifestations, leaving, of course, space for the identification of any such manifestations; by the general rule of the regulation, it being up to the case-law and doctrine to make the necessary additions, which the regulation allows, in order to provide broader protection against anti-competitive agreements.[7]

We also note that **art. 102 TFEU (ex-art. 82 TEC) sanctions the abuse of a dominant position**[8]. By regulating this form of abuse concerning the possibility that it may involve the abusive use by one or more undertakings of a dominant position held on the internal market or a significant part of it, a definition of this anti-competitive practice is outlined, and variants of its commission are described, without the description having an exhaustive value. We note the circumstance that any form of abuse of a dominant position is not defined at this time by the European Commission and the CJEU but which could receive an appropriate description and sanction. This form of sanctioning of anti-competitive practices is similar to that which sanctions anti-competitive agreements in terms of reducing consumer welfare, increasing prices, decreasing the quality and diversity of products offered on the market, excluding competitors from the market, separating national markets, being, in this case, also an exemplary enumeration. The doctrine clearly emphasizes that if the actions of enterprises that are part of the regulations aimed at ensuring economic efficiency in the functioning of markets, if the purpose pursued

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[5] I. Lazăr, *op. cit.*, p. 47-49.

[6] Art. 101 TFEU provides: „(1) The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between the Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which: (a) directly or indirectly fix purchase or selling prices or any other trading conditions; (b) limit or control production, markets, technical development, or investment; (c) share markets or sources of supply; (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(2) Any agreements or decisions prohibited under this Article shall be automatically void.

(3) The provisions of para. (1) may, however, be declared inapplicable in the case of:

– any agreement or category of agreements between undertakings;

– any decision or category of decisions by associations of undertakings

– any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question."

[7] A.G. Mocan, *The effects of anti-competitive agreements on both enterprises and consumers*, in „Annales Universitas Apulensis", „1 Decembrie 1918" University, Alba-Iulia, Series Jurisprudentia no. 25/2022, Pro Universitaria Publishing House, Bucharest, p. 243-253.

[8] Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market as it may affect trade between Member States. Such abuse may, in particular, consist in:

(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

(b) limiting production, markets or technical development to the prejudice of consumers;

(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(d) concluding contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

by them is to ensure fair competition between enterprises present on the market, ensure pluralism or promote small enterprises, they are legitimate, otherwise they are abusive[9].

Regarding economic concentration operations, it should be noted that there are international regulations included in art. 3 of EC Regulation no. 139/2004[10] which establishes a definition of concentration, establishing that a concentration is considered to be achieved if the lasting change in control results from: the merger of two or more previously independent undertakings or parts of undertakings or the acquisition by one or more persons already controlling at least one undertaking or by one or more undertakings, either by purchase of securities or assets, by contract or by any other means, of direct or indirect control over one or more undertakings or parts thereof. Control arises from rights, contracts or any other means which, whether separately or in combination and having regard to the relevant legal or factual considerations, confer the possibility of exercising decisive influence over an undertaking, in particular through ownership or the right to use all or part of the assets of an undertaking, rights or contracts which confer a decisive influence on the structure, votes or decisions of the bodies of an undertaking. Control is acquired by persons or undertakings who are the holders of the rights or beneficiaries of the rights under the contracts in question or, although they are not the holders of these rights or beneficiaries of the rights under these contracts, have the power to exercise the rights arising from them. It is also noted in the analyzed normative text that the creation of a joint venture, which performs on a lasting basis all the functions of an autonomous economic entity, constitutes a concentration within the meaning of para. (1) (b) of art. 3 of the Regulation.

Para. (5) of art. 3 stipulates that a concentration shall not be deemed to have been achieved where credit institutions or other financial institutions or insurance companies, the regular activities of which include dealing in and dealing in securities for their account or the account of others, temporarily hold securities of an undertaking which they have acquired with a view to resale, provided that they do not exercise the voting rights attached to the securities in question in order to determine the competitive behavior of the undertaking in question, or provided that they exercise such voting rights only in preparation for the total or partial disposal of the undertaking in question or of its assets or the disposal of the securities in question and that the disposal takes place within one year of the date of the acquisition. The Commission may extend this period, on request, where the institutions or companies concerned can demonstrate that the disposal was not reasonably possible within the period laid down.

In the category of exceptions to the qualification as concentrations of such complex legal operations in the business area, the situation in which control is acquired by a person mandated by the public authorities by the legislation of the Member State regarding liquidation, bankruptcy, insolvency, cessation of payments, composition or other similar procedures, as well as the situation in which the operations provided for in art. 3 para. (1) letter (b) are made by financial holding companies referred to in art. 5 para. (3) of the Fourth Council Directive 78/660/EEC of July 25 1978, adopted based on art. 54 para. (3) letter (g) of the Treaty on the annual accounts of certain types of companies (6), provided, however, that the voting rights attached to the holdings are exercised, in particular as regards the appointment of members of the management and supervisory bodies of the undertakings in which they hold holdings, solely in order to maintain the full value of the investments in question and not to determine, directly or indirectly, the competitive behavior of those undertakings.

Concerning domestic legislation in this regard, we note the provisions of art. 11 of Law no. 21/1996[11] according to which economic concentrations that may significantly impede effective competition on the

[9] I. Lazăr, *op. cit.*, p. 235-239. The author emphasises, in the context of the problem under analysis, essentially, with arguments related to provisions of EU legislation, doctrine and European case law, that it is not the possession of a dominant position in itself that generates a situation that imposes sanctions on an undertaking, but various forms of abusing this position. The author highlights that the regulations on the abuse of a dominant position are found in the primary and secondary legislation of the European Union and also refer to the case law of the EU courts, as well as to the decision-making practice of the European Union. The author also mentions certain abusive practices that may fall under the provisions of Article 102 of the TFEU consisting of the above-mentioned regulations from the treaty, mentioning that they are exemplary. The author's analysis also covers secondary EU legislation in the field.

[10] *https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A32004R0139&form=MG0AV3*, last consulted on 16.02.2025.

[11] Published in the Official Gazette of Romania no. 153/29.02.2016, consolidated form. The legislation we are referring to defines economic concentrations by European legislation but presents apparent deficiencies concerning specific regulations that implicitly require a systematic interpretation, of which we exemplify the provisions of art. 10 letter d), which stipulates that enterprises, including those that are part of economic groups, carry out restructuring or reorganization operations of their own activities. Restructuring and reorganization operations, regulated as exceptions to the qualification as economic concentration, should have been clearly defined and with references to other normative acts, such as Law no. 85/2014 on insolvency. The formula of the legislative text leaves one issue unclear: how we define restructuring and reorganization, at the pleasure of the company's administration or according to clearly established legal criteria which should have been indicated.

Romanian market or a part of it, in particular due to the creation or consolidation of a dominant position, are prohibited.

Concerning state aid, we mention the regulations contained in art. 107-108 TFEU[12], as well as those included in art. 2 para. (1) letter b) of Law no. 21/1996.

3. Similarities and differences between the investigative powers of the competition inspector and criminal prosecution bodies regarding the possibilities of entering the registered office of a company

We will begin this section by making a reference that we consider pertinent to the definition of the undertaking from a doctrinal perspective through which the notion is defined as being, in the Höffner jurisprudence, it refers to „any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed"[13]. We note that the judgment covers a broader area of definition of the notion of undertaking than the subject matter of the case would indicate, but the effects of this definition subsequently had an impact on the definition of the notion of undertaking in other contexts of the CJEU's case-law, in particular in the field of competition[14].

The Mannesmann jurisprudence of the CJEU[15], showed that enterprises are characterized by „the unitary organization of material and immaterial personal elements related to a subject of law and the sustained pursuit of a determined economic purpose".

For reasons related to the subject of our study, we will summarize our analysis of the competencies related to the lucrative economic activities carried out by companies under the terms of Law no. 31/1990 and regarding the carrying out of economic activities by authorized individuals, and individual enterprises and family businesses regulated by GEO no. 44/2008[16].

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[12] Art. 107 TFEU (art. 87 TEC) provides for the following relevant matters:

„1. Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

2. The following shall be compatible with the internal market:

(a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;

(b) aid to make good the damage caused by natural disasters or exceptional occurrences;

(c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division. Five years after the entry into force of the Treaty of Lisbon, the Council, acting on a proposal from the Commission, may adopt a decision repealing this point.

3. The following may be considered to be compatible with the internal market:

(a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in art. 349, in view of their structural, economic and social situation;

(b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;

(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;

(d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest;

(e) such other categories of aid as may be specified by decision of the Council on a proposal from the Commission."

We will not further insist on procedural regulations related to this matter.

[13] CJEU, 6th Chamber, *Case Klaus Höfner and Fritz Elser v. Macrotron GmbH* (C-41/90), judgment from 23.04.1991 (the language of the case is German). The judgment can be accessed at *https://ier.gov.ro/wp-content/uploads/rezumate-cjue/61990J0041.pdf*, last consulted on 19.03.2025. The case highlights the following aspects in legal and imperative terms (para. 21-23): „The Court notes that in this regard, it is necessary to specify, in the context of competition law, that, on the one hand, the concept of an undertaking includes any entity carrying out an economic activity, regardless of its legal status and how it is financed and that, on the other hand, the activity of placement is an economic activity. The fact that placement activities are normally entrusted to public offices cannot affect the economic nature of these activities. Placement activities have not always been and are not necessarily carried out by public entities. This finding is valid, in particular, for the activities of placing executives and managers of undertakings. It follows, therefore, that an entity, such as a public employment office, which carries outplacement activities may be considered an undertaking for the purposes of the application of the Community competition rules." (We note that the judgment covers a broader area of definition of the notion of undertaking than the subject matter of the case would indicate, but the effects of this definition subsequently affected the definition of the notion of undertaking in other contexts as well).

[14] See, for an in-depth study on the jurisprudential and doctrinal understanding of enterprise, I. Lazăr, *op. cit*., pp. 29-35.

[15] CJEU judgment in case C-157/12, Salzgitter Mannesmann Handel. CJEU has ruled in case C-157/12, following a request for a preliminary ruling from a German court, on the interpretation of art. 34(4) of Regulation (EC) no. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

[16] Published in the Official Gazette of Romania no. 328/25.04.2008.

Law no. 21/1996 confers certain powers on competition inspectors in investigating anti-competitive practices.

Thus, we wish to analyses the provisions of art. 15, which stipulates that in order to exercise the powers provided for in para. (1) letters a) and g), the Competition Council may carry out preliminary examinations, within which it has the right to request the necessary information and documents, according to the provisions of art. 34 para. (2). In order to exercise the powers provided for in para. (1) letters a) and g), the Competition Council may carry out preliminary examinations, within which it has the right to request the necessary information and documents, according to the provisions of art. 34 para. (2). In applying para. (1) letter l), the authorities and institutions of central and local public administration are obliged to request opinions or points of view when initiating draft normative acts and draft public policy documents, which may have an anti-competitive impact. The observations and proposals formulated in the opinion or point of view of the Competition Council will be considered when finalizing the draft normative act, respectively, the draft public policy documents.

The possibility of preliminary examinations has no definition related to the meaning of this notion; there is no doctrinal clarification of it. As in the case of other legislative options that use general, vague, imprecise terms, we note that preliminary examinations establish a factual situation and a legal framework to determine whether it is appropriate to establish a sanction. However, the possibilities of preliminary examination of certain factual situations are not explained in terms of investigative powers (by exception, yes, we will explain). In criminal procedure, things are different; we note that in criminal matters, the home search involves other conditions justified by the possible engagement of a different form of liability, namely the criminal one. Here, in criminal procedural matters, in art. 158 CPP, we have clearly defined options for the legislator. This tells us that a home search may be ordered during the criminal investigation, at the request of the prosecutor, by the judge of rights and freedoms from the court that would have jurisdiction to judge the case in the first instance or from the court corresponding in degree to that in whose jurisdiction the headquarters of the prosecutor's office to which the prosecutor who carries out or supervises the criminal investigation belongs is located. During the trial, the search is ordered, *ex officio* or at the prosecutor's request, by the court entrusted with judging the case.

According to art. 158 para. (11) CPP, during the trial, *ex officio* or at the request of the prosecutor, the court may order a search to execute the warrant for the defendant's preventive arrest if there are reasonable suspicions that material means of evidence related to the crime that is the subject of the case are present in the place where the search is requested.

We note that, in principle, the purpose of the home search ordered by the criminal investigation body coincides with a sanctioning purpose that the competition legislation also has and which regulates a similar procedure.

Analyzing the differences, we note that competition inspectors do not have judicial police powers, so any criminal act they find must be referred, through official documents, to the bodies competent to carry out criminal prosecution.

Art. 32^1 of the Law no. 21/1996 establishes that among the admissible evidence before the Competition Council are: documents, oral statements, electronic messages, recordings and any other object containing information, regardless of the form and regardless of the type of support on which the information is stored.

Of course, the legislation seeks to find its coherence, but it must align itself with the Constitutional requirements, ECtHR legislation and the UE legislation. We note that art. 33 of the Law no. 21/1996, which regulates the competence of the Competition Council, according to its powers, to order the conduct of investigations if there are sufficient grounds (the sufficient term could be related to aspects of merit, but related to legal aspects, the clear mention of factual and legal grounds is required). The investiture can be carried out, according to the Law, *ex officio*, upon the complaint of a natural or legal person actually and directly affected by the violation of the provisions of art. 5, 6, 8 and 13 of the Law no. 21/1996, as well as of art. 101 and 102 TFEU, as well as *ex officio*, with prior notification of the European Commission, for the possible violation on the territory of Romania by an access controller of art. 5-7 of the Regulation on Digital Markets. Regardless of the regulations of this Regulation, it is difficult to accept the exclusion by the national legislator of other prior notifications addressed to national authorities (related to the attributions that they have linked to those of the Competition Office, criminal prosecution bodies, etc.).

The analyzed legal text [art. 33 para. (3) of the Law no. 21/1996] admits the possibility that in order to use the resources for initiating and conducting investigations rationally, the Competition Council may priorities cases depending on the potential impact on effective competition, the general interest of consumers or the strategic

importance of the economic sector concerned. As a corollary to the idea of the previous text, the legislator applies the provisions of para. (2) of the text provides [in para. (3)] that the Competition Council has the power to reject complaints regarding the possible violation of the provisions of art. 5, 6, 8 and 13 of the Law no. 21/1996, as well as art. 101 and 102 TFEU since the respective complaints do not constitute a priority in terms of the analysis of the cases.

We observe a correlation between prioritization and the priority that the legislator tries to achieve. Prioritization should mean an application of criteria (it should be clarified, however, what they are, the wording of the Law in the sense that these criteria are based on the potential impact on effective competition, the general interest of consumers or the strategic importance of the targeted economic sector does not cover the criteria, which, although exemplary, are nevertheless found in the Treaty, where we also find others, and have the vocation of general regulations) for evaluating the case, after which the legal text speaks of the possibility of the Competition Council to consider one case or another as a priority. We understood the legislator's intention to assimilate the provisions analyzed with those of the Code of Criminal Procedure that refer to the waiver of criminal prosecution regulated by art. 314 para. (1) letter b) CPP[17], but which contain clearer and more detailed provisions for applying to this institution. The legislator should have been more precise in describing the conditions for applying regulations that allow for prioritization (a word rarely found in legislation) and establishing priorities that would allow for greater clarification of the idea of impact on effective competition.

The search is carried out by the prosecutor or the criminal investigation body, accompanied, as the case may be, by operative workers. The regulation is criticisable for using operative workers in the context of criminal prosecution acts without clarifying their affiliation with the judicial police body.

It is obvious that we are talking about intrusions into private life in the context of such a procedure, within the meaning of art. 8 ECHR, which Law regulates, therefore admissible in a constitutional, conventional and Union sense, with respect for the conditions imposed by these national and supranational regulatory spaces. However, we emphasize the importance of compliance with the Law in the sense of respecting the rights of the competition inspector.

In the context of analyzing these rights, we highlight the provisions of art. 38 para. (2) of the Law no. 21/1996, which refers to the powers of competition inspectors with inspection powers who will proceed with the acts provided for in para. (1) only if there are indications that documents can be found or information can be obtained considered necessary for the performance of their mission, and their result will be recorded in a report of findings and inventory. Para. (3) of the same legal text stipulates that competition inspectors with inspection powers may carry out unannounced inspections and may request any information or justifications related to the performance of the mission, both on-site and upon summons at the headquarters of the Competition Council. Para. (3^1) of the legal text refers to the fact that the inspection activity is not limited to classic documents, and any information stored or archived in the electronic environment can be verified and seized, regardless of the medium on which it is located, such as a mobile phone, tablet, Personal Digital Assistant, laptop, including personal information used for business purposes or the place where it is stored/archived, such as an external server, cloud. During the inspection, the information stored or archived in the electronic environment may be copied in full and downloaded on electronic media, with seals affixed, and the collection of information necessary for the investigation shall be carried out in the presence of the representative of the enterprise/association of enterprises, at the headquarters of the Competition Council.

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[17] Art. 318 CPP regulates the waiver of criminal prosecution and provides, in paragraphs, in detail, the conditions for the application of this criminal procedural institution, as follows:

(1) In the case of offences for which the Law provides for a fine or a prison sentence of no more than 7 years, the prosecutor may waive criminal prosecution when he finds that there is no public interest in prosecuting the act.

The criminal procedural Law establishes that the public interest is analyzed about:

a) the content of the act and the concrete circumstances of the commission of the act;

b) the manner and means of committing the act;

c) the purpose pursued;

d) the consequences produced or that could have been produced by the commission of the offence;

e) the efforts of the criminal prosecution bodies necessary for the conduct of the criminal trial in relation to the gravity of the act and the time elapsed since its commission;

f) the procedural attitude of the injured person;

g) the existence of a clear disproportion between the expenses that the criminal trial would imply and the seriousness of the consequences produced or that could have been produced by the commission of the crime.

The Law clearly states that criminal prosecution cannot be waived for crimes that result in the death of the victim.

Based on the judicial authorization of the unannounced inspection at the headquarters of an enterprise or association of enterprises, any personal devices used based on the enterprise's policy, in the interest of the service and identified during the inspection carried out in the premises, lands or means of transport of the enterprise or association of enterprises in which it carries out its activity may be inspected.

The organization of this activity is subject to procedural measures. Thus, art. 39 establishes the basis of the judicial authorization given by the conclusion, according to the provisions of art. 40, the competition inspectors may inspect all the premises provided in art. 38 para. (1), legally owned and/or in which the undertaking and/or association of undertakings carries out its activity. Para. (2) of this legal text provides that in the event of a well-founded suspicion that the registers or other documents concerning the activity of the undertaking or association of undertakings or the information accessible to the entity subject to the inspection and which could be relevant to prove a violation of the Law are kept in any premises, on any land or in any means of transport, other than those mentioned in art. 38, including at the domicile/residence or in any other space intended for housing, on the land or in the means of transport belonging to the managers, administrators, directors and other employees of the enterprises or associations of enterprises, the competition inspectors may carry out unannounced inspections in the respective spaces based on the prior judicial authorization given by decision, according to the provisions of art. 40.

Regarding art. 40 of the Law no. 21/1996, we note a double procedural condition related to the possibility of the competition inspectors proceeding with inspections: an order issued by the president of the Competition Council and a judicial authorization given by decision by the president of the Bucharest Court of Appeal or by a judge delegated by him[18]. In the context of this procedure, the location intended for inspection must be described, and a posting report must be drawn up to this effect, indicating the date and time of posting.

In the matter of criminal procedure, the Code of Criminal Procedure contains, in Title IV, the regulation provided for in art. 97, which establishes that the evidence and means of proof referred to are evidence, means of proof and evidentiary procedures, and we retain the regulations related to art. 157 CPP, which regulates the cases and conditions in which a home search may be ordered and which provides in para. (1) that a home search or search of property in the home may be ordered if there is a reasonable suspicion that a person has committed a crime or is in possession of objects or documents related to a crime and it is assumed that the search may lead to the discovery and collection of evidence regarding this crime, the preservation of traces of the crime or the arrest of the suspect or defendant. The text specifies in para. (2) that domicile means a dwelling or any space delimited in any way that belongs to or is used by a natural or legal person.

We note, with reference to essential elements related to this institution regulated by criminal procedural norms, that it is intended to contribute to finding the truth in criminal proceedings while respecting guarantees related to the right to privacy and defense.

We also understand to analyses an aspect related to the involvement of lawyers in such procedures. The legislation regulating the matter shows that the legal profession is free and independent, with autonomous organization and functioning[19]. Para. (8) of the Law no. 21/1996 stipulates that communications between the undertaking or association of undertakings under investigation and its lawyer, made within the framework and for the exclusive purpose of exercising the right of defense of the undertaking or association of undertakings, respectively after the opening of the administrative procedure under this Law or before the opening of the administrative procedure, provided that these communications are related to the subject matter of the procedure, cannot be taken or used as evidence during the procedures carried out by the Competition Council. Para. (9) of this legal text shows that the undertaking requesting the protection of its communication with the lawyer must present to the competition inspectors an adequate justification and the relevant elements in light

[18] The legislation also establishes that a certified copy of the inspection order and a copy of the judicial authorization must be communicated to the person subject to the inspection before its commencement. Other procedural aspects relate to the authorization request being judged in the council chamber without summoning the parties. The judge rules on the authorization request within 48 hours from the request's registration date. The conclusion, the Law tells us, is motivated and communicated to the Competition Council within 48 hours of the ruling. A provision that caught our attention refers to whether the inspection must be carried out simultaneously in more than one space provided for in art. 39, the Competition Council will submit a single request, the court ruling through a conclusion indicating the enterprises and associations of enterprises that are to be inspected in the spaces provided for in art. 39 para. (1). It is also regulated that the authorization request must include all the information likely to justify the inspection, and **the judge notified is required to verify whether the request is well-founded**. Another important regulation establishes that whatever the circumstances, the inspection takes place between 8:00 and 18:00 and must be carried out in the presence of the person being inspected or his representative. The legal text tells us that the inspection may continue after 18:00 only with the consent of the person being inspected or his representative.

[19] Art. (1) of the Law no. 51/1995, published in the Official Gazette of Romania no. 98/07.02.2011.

of the arguments invoked for this purpose, without, however, being required to disclose its content. The text specifies that if, during an inspection, based on the elements presented by the undertaking, the competition inspectors carrying out the inspection cannot reach a definitive conclusion on the incidence of the provisions of para. (8) regarding communication with the lawyer, not excluding the possibility that it may be protected, they seal and remove the respective communication, in duplicate (we note that the Law takes into account that they have already acquired it, a serious aspect in the context of the possibilities of defense through a lawyer against any accusation of anti-competitive practice).

We note that the Law no. 21/1996 excludes the possibility of protecting communication between the company and the lawyer without strict criteria, while the Code of Criminal Procedure, which provides much more clearly in art. (6) that banking and professional secrecy, with the exception of the lawyer's professional secrecy, are not opposable to the prosecutor, after the commencement of criminal proceedings. In the case of criminal procedural regulations, there is a better and clearer settlement in the patterns and requirements of the ECHR.

3. Conclusions

There are, obviously, similarities and differences between the two institutions regulated by the Law no. 21/1996 and the Code of Criminal Procedure.

Law no. 21/1996 cannot have the vocation to regulate all criminal aspects in the matter, but once certain criminal acts have been found in the context of the checks, they can be referred to competent judicial bodies. Regarding the rights to enter certain registered offices of economic units for investigations, the rights of the competition inspector and the prosecutor can be compared; they are not identical, but similar to art. 8 ECHR. What a criminal prosecution body finds represents a means of evidence in a criminal trial, and what a competition inspector finds can be such a means of evidence if the state of affairs involves a criminal act or an occasion for finding a possibility for engaging in administrative liability. We prefer that the institutions analyzed, through the prism of their regulations, compete for the same goal related to the observance of legality.

Law no. 21/1996 superficially and deficiently regulates lawyers' rights regarding clear criminal procedural regulations.

A significant similarity between the institutions analyzed is that law enforcement and public safety bodies are obliged to accompany and provide the necessary support to competition inspectors in exercising their inspection powers.

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