

**CRIMINAL RECORD WITHIN THE POLICE ACTIVITY.
PREVENTION, OFFENSE, ANTISOCIAL ACTS, DATABASE,
OPERATIONAL INFORMATION**

Abstract:	<p><i>For a better security of citizens in the European Union's Area of Freedom, Security and Justice, concrete measures were taken to allow an efficient exchange of information on criminal convictions between the Member States.</i></p> <p><i>The numerous studies have proven that often the national courts deliver judgments based only on the previous convictions listed in their national file without any knowledge of the criminal convictions in other Member States. Consequently, the offenders have often been able to escape the criminal record by simply moving from one EU State to another.</i></p> <p><i>It was established an information system called ECRIS (European Criminal Records Information System). It had to be applied in all Member States by April 2012. ECRIS was created in response to the obvious need to improve the exchange of information on the criminal records at European level¹.</i></p>
Keywords:	Criminal record; prevention; offense; antisocial acts; database; operational information
Contact details of the authors:	E-mail: cristigabas@yahoo.com
Institutional affiliation of the authors:	Alexandru Ioan Cuza Police Academy Bucharest
Institutions address:	Aleea Privighetorilor, Nr. 1-3, Sector 1, Bucuresti Cod Postal: 014031 Tel:021.317.55.23 Fax: 021.317.55.17 Email: secretar@academiadepolitie.ro Website: www.academiadepolitie.ro

Introduction

In the history of the Romanian Police, the police criminal record also existed between the World Wars, as "it was created with an aim to prevent, detect

¹ Framework Decision 2009/315/JAI of the EU Council, February 27th, 2009, <http://eur-lex.europa.eu>, (20.10.2021)

and repress the felonies and the anti-social actions that were jeopardising the public order and the general security of the Romanian state, as well as in order to draw up analysis, synthesis and efficient information works regarding the course of certain informing aspect”¹.

By analogy with the provisions of Articles 1 and 2 of Law no. 290/2004², amended and republished, we argue the following:

- In order to prevent and combat the acts provided and punished by the law, the criminal record is organized as a means of knowledge and operational identification of persons who committed offenses against the public order and, in general, the citizen’s safety.
- The criminal record shall include records of convicted natural and legal persons according to the contravention legislation in matters of public order and peace.

The data in the criminal record will be communicated in accordance with the Law on Criminal Record and in compliance with the provisions of Law no. 544/2001³ on free access to information of public interest and:

- Regulation (EU) 2016/679⁴ on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)
- Law no. 102 of May 3rd, 2005⁵ on the set up, organization and functioning of the. National Supervisory Authority for Personal Data Processing, with subsequent amendments and completions – Republished.
- Law no. 190 of July 18th, 2018⁶ on implementing measures to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation)

¹ Vasile Bobocescu, *Istoria poliției române*, Editura MAI, București, 2000, p. 315

² Law No. 290 of June 24, 2004 (republished) regarding the criminal record, published in the Official Gazette No. 777 of November 13, 2009, <http://legislatie.just.ro/Public/DetaliiDocument/113349>, (20.10.2021)

³ Law No. 544 of October 12, 2001 on free access to information of public interest, published in the Official Gazette No. 663 of October 23, 2001, <http://legislatie.just.ro/Public/DetaliiDocument/31413>, (20.10.2021)

⁴ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46 / EC (General Regulation on data protection), <https://eur-lex.europa.eu/eli/reg/2016/679/oj>, (20.10.2021)

⁵ Law No. 102 of May 3, 2005 (republished) regarding the establishment, organization and functioning of the National Authority for the Supervision of Personal Data Processing, published in the Official Gazette No. 947 of November 9, 2018, <http://legislatie.just.ro/Public/DetaliiDocument/61409>, (20.10.2021)

⁶ <http://legislatie.just.ro/Public/DetaliiDocument/203151>, (20.10.2021)

- Law no. 363 of December 28th, 2018¹ on the protection of natural persons with regard to the processing of personal data by competent authorities for the purpose of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data⁶.
- The Guidelines issued by the National Supervisory Authority for the Processing of Personal Data

The Criminal Record is organized by the Ministry of Administration and Interior and it is kept by the Romanian Police Units, through specialized structures in the field, based on the principle of the place of birth of a natural person (*Jus Soli*) and the registered office of a legal person. We propose that at the moment of establishing the criminal record in the title of the specialized directorate of IGPR, but also in that of the specialized services within the county police inspectorates and the DG.M.P. Bucharest, the phrase *special records of the Romanian Police* is introduced.

The Criminal Record

The Criminal Record will be computerized and will be organized and operated by the Romanian Police which ensured the coordination of the activities carried out in the field of personal records in automatic databases set up for this purpose. The activity of the criminal record will be led at central level by the General Inspectorate of Romanian Police, through the Criminal Record, Statistics and Operational Records Directorate and the special records of the Romanian Police. The General Inspectorate of Romanian Police will operate the central criminal record where the records of the natural/legal persons with criminal records are kept.

The central criminal record will keep also the record of natural/legal persons about who were received communications for the application of sanctions for acts endangering the public order and civic safety from: the gendarmerie, border police, local police and the competent bodies of other states².

Practically, the ECRIS system electronically interconnects the databases with the criminal records from all Member States so that the exchange of information on convictions can be done quickly, evenly and easily transferable to the computer. Thanks to this, the judges and prosecutors will have easy access to complete information on the criminal record of any EU citizen, regardless of the EU countries where he was convicted in the past. Thus, offenders could no longer

¹ <http://legislatie.just.ro/Public/DetaliiDocument/209627>, (20.10.2021)

² *The Act No. 4*, 11.01.2008, as republished, regarding violence prevention and fight on the occasion of sporting competitions and games - its section 47, par. 1 - it is the case of the Romanian citizens whose access to sporting events was prohibited, as well as the case of those punished from the contravention point of view for having violated the legislation of a state on whose territory certain Romanian nationals have taken part in rallies, <http://legislatie.just.ro>, (20.10.2021)

“escape” from the criminal record by simply moving from one Member State to another and due account will be taken of contraventions/offenses that have already been committed. The system could also help to prevent the commission of contraventions/offenses.

ECRIS will be based on a decentralized IT architecture where criminal records data are stored only in the national databases of the Member States and are electronically exchanged between the central authorities of the Member States.

The Member State of a person’s nationality will become the central depository of all convictions ruled against that person. It will store and update all information received and upon request, will resend the information. Therefore, each Member State will be able to supply comprehensive, updated and complete information on the criminal records of its nationals when requested by another Member State, regardless of the place of convictions.

A Member State convicting a non-national has the obligation to provide information, including updates, on that conviction to the Member State whose national is the perpetrator.

The information on convictions will be sent electronically via a standard European format, using two reference tables of the categories of contraventions/offenses and the categories of punishments. The tables help with the automatic translation and strengthen the mutual understanding of the information sent. A Member State sends information on convictions indicating the appropriate code of the category of contravention/offense and punishment or sanction, which will be automatically translated into the recipient’s language, allowing to react as soon as it has received the information.

The general principles regulating the exchange of information and the system operation are stated in the *Framework-Decision* on the exchange of information extracted from the criminal record and the ECRIS Decision¹. The Member States were obliged to apply the system by April 2012. Technical and financial measures were taken to help them prepare the technical infrastructure necessary to connect their criminal record systems.

The Commission has made special software available to Member States, called the “implementation model”, to facilitate their interconnection with other criminal records.

Since ECRIS with its principle of centralizing information in the state of nationality addresses only EU citizens, currently it is not possible to determine whether the persons from non-EU countries (third-country nationals) had been previously convicted in other Member States without consulting all those States. Consequently, it is analyzed the possibility to further supplement the ECRIS with a European index of convicted third-country nationals, which would allow their detection on all EU Member States.

¹ *Framework Decision 2009/315/JAI of the EU Council*, dated February 27th, 2009, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009F0315>, (20.10.2021)

We consider that the provisions of Art.1 of Decision 2005/876/JHA¹ of 21 November 2005 on the exchange of information extracted from the criminal record, can also apply to contravention matter, considering that the states are allowed to decriminalize some offenses and sanction them and the European Convention of Human Rights “in principle leaves states free to criminalize and prosecute criminal acts ...”².

The county police inspectorates and Bucharest General Directorate of Police will organize and operate *the local criminal record* with records of natural persons born and legal entities with registered offices in the territorial administrative area of the county, respectively of Bucharest municipality.

Within the structure of the county police inspectorates and of Bucharest General Directorate of Police, *the criminal record* will operate within the Criminal Records, Statistics and Operational Records Directorate of the Romanian Police.

The listing in the criminal record will be made nominally, by entering the civil registry data for natural persons, the identification data for legal persons and the contravention data.

Data included in the criminal record and the procedure for removing these data from the records

The criminal record includes data regarding:

- Main contravention sanctions, except warnings, applied to natural persons for violating the provisions of the following normative acts:
 - Law no. 61/1991 amended, for sanctioning acts of violation of certain norms of social coexistence, public order and peace³;
 - Law no.60/1991 republished, on the organization and conduct of rallies⁴;
 - Law no.4/2008 preventing and combating violence during competitions and sports games⁵;
 - Law no.205/2004 amended, on the protection of animals⁶;
 - GEO no.55/2002 amended, on the regime of keeping dangerous or aggressive dogs;

Because in violation of the provisions of Laws no. 61/1991 amended, 60/1991 republished, 4/2008 sometimes weapons, ammunition and explosive materials are used or these violations occur under the effect of toxic substances,

¹ *The Official Journal of the European Union No. 322*, 09.12.2005, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:322:0038:0038:EN:PDF>, (20.10.2021)

² *ECHR Decision dated 04.10.2007, Anghel vs. Romania case, section 67*, [https://hudoc.echr.coe.int/fre#{"tabview":\["document"\],"itemid":\["001-210491"\]}](https://hudoc.echr.coe.int/fre#{), (20.10.2021)

³ <https://legislatie.just.ro/Public/DetaliiDocument/125693>, (20.10.2021)

⁴ <http://legislatie.just.ro/Public/DetaliiDocumentAfis/156395>, (20.10.2021)

⁵ <http://legislatie.just.ro/Public/DetaliiDocument/88568>, (20.10.2021)

narcotics and precursors, I consider that it would be appropriate to register in the criminal record the main contravention sanctions applied for violating their regime.

- Complementary contravention sanction supplied to natural/legal persons as a result of the application of the main contravention sanctions for the violation of the normative acts listed above.
- Measures to replace the contravention fine with community service
- Forced execution measure supplied to the offender's natural/legal persons for non-payment in bad faith of the fine, in case of fines not challenged within the legal term or when the courts have delivered final and irrevocable decisions rejecting the appeals.
- Commencement, interruption and termination of community service, complementary sanctions, payment of contravention fines
- Prescription of the execution of the contravention sanction.
- Sanctions and measures imposed by final decisions delivered by foreign courts, as well as measures taken by acts performed by the competent public order bodies abroad, if such decisions have been recognized by the competent Romanian bodies.
- Final decisions amending the criminal record

The data will be registered in the criminal record based on the final, irrevocable and enforceable documents, according to the Romanian legislation in force. Until the final documents mentioned above are issued, the sanctions will be registered provisionally in the operative records in order to follow the procedural stages provided by the law, when they will be deleted from the records. Such data are not registered in the criminal record certificate issued to a natural person.

The natural persons listed in the criminal records or in respect of which provisional noted have been made are removed from the record if they are in one of the following situations¹:

- a) the acts committed are no longer provided by the law as contraventions;
- b) have been sentenced to a fine or community service of not more than 25 hours for adults and 12 hours for minors who have reached the age of 16 and one year has elapsed from the date on which the obligation to enforce the sanction became final due to lack of appeal or as a result of the delivery of a final, irrevocable and enforceable court judgment by which the appeal against the violation report and application of the contravention sanction was rejected.
- c) the natural person died;
- d) the appeal against the report was accepted, but the report was cancelled;
- e) 6 months have passed since the date of execution of the complementary sanction;

¹ *Noul Cod de Procedură Penală al României, Titlul IV, Proceduri Speciale, Capitolul I, Urmărirea penală și judecata pentru infracțiuni grave*, <http://legeaz.net>, (20.10.2021)

f) was not committed acts of the nature of those for which they were sanctioned within a period of 1 year.

When other notes are registered in the criminal record of natural persons, only the notes requiring removal from the record are deleted.

Conclusions

In order to facilitate the activity of the bodies responsible with the maintenance, assurance and restoration of public order in order to prevent, detect and fight crimes and illegal acts that harm the public order and civic safety, but also in the context of Romania's accession to the Schengen area, I consider it is necessary to set up a criminal record to ensure police cooperation in this area.

Considering that, in view of the accession to the Schengen Area, a series of operative databases were organized, we consider that according to the model of the automatic database on the record of penalty points for drivers, an automatic record of main and complementary contravention sanctions can be organized.

Such automatic database must comply with the legal provisions on the protection of natural persons with regard to the processing of personal data and on the free movement of such data. The international police cooperation in the matter is realized through the specialized structure of the General Inspectorate of Romanian Police.

Another pro argument for the criminal record comes from the practice of some courts that during an appeal against a violation report, when the offender states that he has not been sanctioned, ask the police to communicate, as a matter of urgency, whether or not he has been sanctioned before. It is obvious that in small communities the offender is known especially when he is a local, but in large urban communities or when the offender does not live within the jurisdiction of the police unit that sanctioned him, most of the time an inadequate answer is given, because there is no criminal record.

Last but not least, the need to set up a criminal record is also required by the provisions of the New Criminal Code in the case of offenses, usually when it is a situation in which the repeatability of the wrongful act must be proved or when such acts are consumed within several localities (sometimes several counties) and in the absence of a clear record of the sanctions applied to the same person for the same kind of acts it is very difficult to prove the criminal activity, and the provisions of the Criminal Code are almost impossible to apply.

In our opinion, the criminal record can ensure the use of the special procedure for offenses for which the repeatability of the wrongful act is required, i.e. the repeated existence of a contravention, repeatability that constitutes the condition of the existence of an offense, offenses that infringe the person's freedom, the relations of social coexistence, etc.

The safety of citizens and the public order are pressing concerns not only of the legislature and the executive of states but also of citizens who are no longer willing to accept a climate of insecurity.

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