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SUMMARY
OF THE PHD. THESIS
CRIMINAL PROTECTION OF THE AUTHORITY

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The stability and functionality of society is directly related to the authority of the State. The social-historical practice has shown that the State authority is far greater when it is achieved through persuasion, when it relies on the force of arguments and not on the argument of force. This relationship requires a concordance between the objectives of the power and the ones of the majority, the understanding being regulated, and bestowing legitimacy to the authority. But even legitimating authority respect towards it is not always fully or permanent, socio-historical and judicial practice recording not few cases, sometimes of the most serious, of rising against the authority and its representatives. The authority is therefore not invulnerable. The authority, as a fundamental attribute of the State, must be awarded with maximum protection, whereas any weakening of the attribute of authority is likely to undermine not only the prestige of which people entrusted with the exercise of State authority must enjoy, but sometimes the very existence of the institutions of the State and authority.

An important role in the process of preventing and combating crime have the rules of Title V of the Criminal Code, concerning *Offences against the authority*, but also the provisions of special laws that criminalize effectively facts which may infringe upon the prestige which should be placed on State authority, or specific rules are prescribed in reference to this.

The present work chosen for the actuality of the subject, but also for the fact that there are few efforts in researching the issues, presents the historical evolution with such offences, with emphasis on interlinkages between constitutional, administrative law and criminal law with regard to the protection of the same institution, but also of the differences caused by the autonomous character of criminal law, continuing with their current settlement in the Romanian

law and of other States with established systems of law with regard to the creation of sources of inspiration for the Romanian Criminal Codes, as well as to other regulations of European reference. At the same time, they were considered in the context of the New Criminal Code which will come into force on February 1, 2014, not overlooking aspects of criminal procedure, with the establishment of complex causality of the phenomenon and the formulation of proposals of *lex ferenda.*

From a structural point of view, the thesis contains five chapters, which will analyzed below along with their sudivisions.

Chapter 1, entitled *General considerations regarding the notion of authority*, is structured in three sections, i.e.: *State Authority. Notion. The need for and the actuality of legal protection of the authority; The Public servant. The public servant entrusted with the exercise of State authority; The phenomenon of crime and causality.*

In the *first section* is analyzed *the need for and the actuality of legal protection of the State authority*, the State authority being defined as an attribute of power specific to state organizational forms, but which is conferred by law to some forms of non-state organizations, when they aim to promote the general interest.

We started the analysis of content of this section from the fact that, from ancient times, in any human society, regardless of the organization method, there were multiple forms of authority, of fixing and the consolidating a system of moral, religious, political, legal values. It was taken into account that the good functioning of the State assumes its undimmed authority, and the authority of the State shall be maintained only if the citizens manifest due respect towards the State institutions, any weakening of the authority, as a fundamental attribute of the State, is likely to undermine not

only the prestige which the people entrusted with the exercise of State authority must enjoy, but, in some cases, the very existence of the authority institutions of the State itself.

The need to preserve State authority appears even more evident during times of transition, as is the case of Romania after the December 1989 revolution, because, if the excess of authority leads to the establishment of authoritarian regimes or even totalitarian regimes, to the violation of individual rights and freedoms and the subordination of the person in relation to power, disrespecting his dignity, in the same way, the lack of authority in general, or the lack of effective authority leads to chaos in human life and society, to the violation of individual rights and freedoms, to the ruling of randomness and violence, and the creation of the conditions for establishment of totalitarian regimes.

In *the second section* of the chapter, was attained the conceptual delimitation of the notion of civil servant/public official entrusted with the exercise of State authority.

It was envisaged that, by authority, we also understand, alternatively, the notion of state authority within the State power, in this instance, authority being synonymous with the representative of such an institution, hereinafter broadly referred to as a civil servant or public official. According to the criteria underlying the separation of powers, one can speak of legislative authorities, executive authorities and judicial authorities, each category of authorities bringing to fruition a particular form of activity under its jurisdiction, which is reserved by law. Criminal protection is considering, of course, only those authorities which are in effect a legally recognized official authority, also having, according to law, certain powers which give it the right to impose its will and to issue acts producing legal consequences. The public official was defined in accordance with the provisions of article 147 of the Criminal code, and article 175 of the New Criminal Code, in accordance with the relevant provisions of other

legislations, the notion of *public official* designating *the person exercising , temporarily or permanently, functions that allow him/her to make decisions, to participate in decision-making or to influence them within a legal person carrying on an activity that cannot be subject to private industry.* It was pointed out that, in the context of this thesis, we are interested in the official exercising State authority, by a *clerk who performs a function that involves the exercise of State authority* must be understood only that official through which official State power is carried out, which under the law or other normative provisions, is empowered to take binding measures and impose compliance to them, or the one which , although he/she does not have the right to issue laws and take binding measures, is responsible for the compliance with such provisions or measures taken by the competent authorities.

Since there is no single legislative instrument to include in one single body structured into several parts, the general statute and special statutes of all officials who are invested with the exercise of State authority, like some kind of Public Officials Code, lies onto the judicial examination authorities to verify if in the normative documents is made any mention of the fulfilment by them of a function that implies the exercise of State authority. If in the Criminal Code, in the texts of incrimination of the crime of *contempt*, it is expressly mentioned that can be passive subjects of this facts the judge, public prosecutor, criminal investigation authorities, the expert, the Court Enforcement Officer, the policeman, the court policeman, with regard to other public officials invested with the exercise of State authority, the texts of special laws must be consulted , in the thesis specifying to Law No. 14 of 24 February 1992 concerning the organization and functioning of the Romanian Intelligence Service, Law No. 218 of 23 April 2002, republished ,on the organisation and functioning of the Romanian Police, Law No. 360 of 6

June 2002, on the status of the policeman, Law No. 293 of 28 June 2004 republished on the status of public officials with special status in the National Administration of Penitentiaries, Law No. 226 of 5 June 2009 on the organisation and functioning of official statistics in Romania, law No. 51 of 7 June 1995 republished, for the organization and exercise of the profession of lawyer.

In *the third section*, we proceeded to examine the status, structure and dynamics of the phenomenon of crime in relationship to the protection of the State authority, taking into account the statistical data, and was stressed out that the decrease in the number of defendants sent to judgment does not entirely reflect, in reality, a drop in crime in this area, observing rather a decline as a result of the exculpation of some of the offences or of some of the means to commit them.

Regarding the causes which give rise to committing such offences, was highlighted their complex character, based primarily on conditions related to age, education, the environment and the place where he is living his life, on economic and social conditions, especially those in time of crisis or transition, with influence on the functional system of public authorities and which lead to a reduction in the standard of living and as a result, to public outcry from citizens, some of whom understand to poor out with or without physical or psychological violence on people invested with public authority. It was stressed out the need for involvement in the preventive and educational process not only of family and school, but non-governmental organizations as well, and, in particular, of the Church, knowing that the Church enjoys the highest degree of confidence on the part of the population in Romania.

Definitely a particularly important role to play in this preventive and educational process can played by the media, by informing the community about the reality of the

phenomenon of crime, the penalties provided by the legislator in case of infringements of the State authority, the importance of respect for the public authority, raising awareness of citizens, in particular young people, with the insignia of the country for which their ancestors have sacrificed even their lifes on battlefields.

Chapter 2 of the thesis, entitled the ***Evolution of legislation in the field of the protection of State authority***, comprises three sections, i.e.: *Historical perspective; Common issues relating to offences which protect the authority in Romanian criminal law ; The development of regulations for offences against the authority.*

In *the first section*, stressing the fact that in criminal laws of all time and of all social establishments have been numerous and severe provisions relating to the suppression of real or supposed facts which prejudiced the respect due to archaic authorities and State rulers, corresponding to the importance and the powers they had, we made a journey through time, showing the legal precedents in this matter, to see the evolution of offences at different stages of history.

Was analyzed the evolution of the concept along with the development of human society, especially after the emergence of legal institutions, with roots in Roman law, the development of the regulations of our country being presented it in the form of a brief history of the legislation, with forays into Vasile Lupu's Code, known as *"Vasile Lupu's Code"* or *"Romanian learning book from royal codes and other counties"*, Matei Basarab's code, known as *"The great code of laws"* or *"Correction of the Târgoviște law, The Great book of Criminality"* from Moldova, *"Sturza's legislation"*, *" Barbu Știrbei's legislation"*, the Organic Regulations, which put on a wallpaper for the first time the separation of powers in the State, the Paris Convention and the Statute expanding the Paris Convention, the Constitution of 1866, the Constitution of 1938 and, in particular, the Criminal Codes of

1864, 1936, 1969, but also the Military justice codes of 1881, 1866 and 1937 with the subsequent amendments, which have governed the organization and functioning of the military justice system for both peacetime and wartime, and, last but not least, the Criminal Codes of 2004 and the one which will enter into force on 1 February 2014, developed as a result of the fact that, on one hand, the provisions of the Criminal code from 1969 are no longer in line with the changes in the structure of the Romanian society after 1990, and on the other hand, whereas it is necessary to align Romanian legislation with European Union legislation, structure in which Romania joined on January 1, 2007.

In *the second section* were considered the common aspects of offences which protect the Romanian criminal law authority, over the course of five subsections regarding *the generic and material legal object* of the offences against the authority, *the subjects* of such offences, *the objective* and *subjective side*, as well as *the forms, procedures and penalties* provided by the rules.

The generic legal object of the crimes against authority is represented by the social value which can not be preserved without ensuring the prestige and respect due to the autority of these institutions under all its manifestation forms. In addition to this legal generic object, each offense will have a special juridical object, consisting of a certain fascicle of social relationships, whose existence and development is linked to the appreciation of the specific social value, for which was indicted that deed.

The material object consists in the belonging, asset or the natural person against whom the criminal action or inaction was directed. Not all, but just some of the crimes that are part of this group may well have a material object. This is the case of *offense against emblems, contempt with violence, illegal bearing of decorations or distinctive signs, theft or destruction documents, breaking of seals and theft of seized*

property. The crime of usurpation of official qualities lacks a material object.

Subjects of the offence are the people involved in its enactment, either by committing it, either by bearing its consequences, of the evil caused as a result of commiting the incriminated action or inaction. In general, *the active subject* of the crimes against authority is not conditioned by any special quality of the perpetrator, he being therefore unqualified. Sometimes, however, the law requires a certain quality of the perpetrator which characterizes an aggravated character of the crime, such as the quality of public official, in case of *theft or destruction of documents*, or custodian, in the case of *breaking seals and theft of seized property.*These qualities are required by law only for the offender, not for the participants, and must exist at the time of committing the offence. The crime of *illegal bearing of distinctive signs or decorations* cannot be committed in the co-offender form, being susceptible of participation only in the form of instigation and complicity.

The passive subject of the the offence against authority is, in general, the State and, by influence, the public authority, whose authority was put in jeopardy by committing the offence. Some offences against the authority also have a secondary passive subject, as is the case of the offence of *contempt*, by whose incrimination is not only the State institution protected, but also the person belonging to that State authority.

The material element of the *objective side* of the crime against the Authority is achieved through an action, which can be single or composed of several alternative actions. Sometimes are stipulated some essential requirements that complement the material element of the offence, as in the case of crimes of *usurpation of official functions* and *illegal bearing of decorations or distinctive signs*, where it's mentioned the requirement that the action to be committed

without right. Some of the offences against the authority, such as *the contempt, the offence brought against the authority or breaking of seals* have alternative contents, each of them being capable to achieve by their own the material element of the offence. For example, *the contempt* can be committed both by the threat, as well as through injuries, and the *breaking of seals* can be committed either by the action of removing, either by the action of destroing a legally attached seal. The immediate consequence consists, as a rule, in committing the offending action, and in this way creating of a state of danger to the social value protected by the law, i.e. for the authority of public institutions. Secondly, the immediate consequence consists in violation of one or some of the fundamental attributes of the person, such as the destruction of documents, breaking a legally applied seal, injury of the civil servant, etc. Between the incriminated action and immediate consequence must be noted a causality link. The causality relationship arises from the very materiality of the committed offence.

Crimes against authority are performed with direct or indirect intention, excepting the offence of *theft or destruction of documents*, which can also be committed by negligence. They can be made progressively in time, so that the preparatory acts, as well as the attempt are possible. Concerning the preparatory acts, according to the general rule, they are not punished. Only the tentative is sanctioned, but only in the case of *theft or destruction of documents.* The consummation of the offense takes place in the moment the offending action is committed, at which time the socially dangerous result also occurs. *The illegal bearing of decorations or distinctive signs*, being a continues offence, also has a wearing out moment, i.e. the moment when the criminal activity ceases.

Crimes against the authority stipulate one or more normative methods in the simple variant of the crime, and some also stipulate aggravating methods.

The aggravating circumstance in such cases aims at either the special quality of the subject (for example, when the deed is committed by the *custodian*, in case of *seals breakage and theft of seized property*) or means of achieving the material element (for example, the *illegal wearing of military uniforms, ranks or badges in times of war*). Crimes against the authority are sanctioned with jail, whose limits vary from one crime to another, and in some cases, imprisonment is provided alternately with the penalty of fine.

The third section of this chapter concerns the development of regulations for offences against the Authority set out in Title V of the Criminal Code, i.e. the crimes of *offense against emblems, contempt, usurpation of official functions, illegal bearing of decorations or distinctive signs, theft or destruction of documents, breaking seals and theft of seized property*, the subsections concerning *the notion and definition, the legal objective* and *the material objective, the active subject* and *the passive subject, the objective side* and *the subjective side, the attempt* and *the consummation, the penalty/special cases of punishment*, also, all of them reported to the provisions of the Criminal Code of 2004, the New Criminal Code, which will come into force on February 1, 2014.

The offense against emblems, stipulated by Article 236 of the Criminal Code (article 180 of the Criminal Code of 1864, article 216 of the Criminal Code of 1936), it is decriminalised in the New Criminal Code, although the values it protects are not ordinary ones which indulge only a contraventional protection, at least those conserning the Romanian emblems, i.e. the flag, the national day, the national anthem, the Coat of Arms and the seal of the State

being constitutional values that must be protected, including through the provisions of criminal law.

The contempt, stipulated by Article 239 of the Criminal Code (Art. 182-189 of the Criminal Code of 1864, article 253-255 of the Criminal Code of 1936, article 257 and 279 of the New Criminal Code), is the typical offence for the group of criminal offences against the authority, being, in fact, the offence in this group most often encountered in the judicial practice. The offence has suffered a number of changes over the years, one with pretty damaging consequences for the prestige of the authority being the decriminalization of *the contempt* through *insult* and *defamation*. In the section these consequences have been analyzed and argued for the reincrimination of this variation, taking into account that through decision of the Constitutional Court, the provisions of decriminalization of the insult and defamation were declared unconstitutional.

The offence of *contempt* has been analyzed in relation to the offences through which its material element is realized, i.e. the threat, assault and battery, body injury and severe body injury, with the emphasis that in the New Criminal Code, the material element is supplemented with assault or injuries causing death and murder. Taking into account the special quality of some categories of passive subjects of the offence of *contempt*, i.e. judge, Prosecutor, criminal investigation authorities, expert, Court Enforcement Officer, the policeman, the court policeman, or soldier, the legislator understood to aggravate the manifestations of *contempt* committed against them. The New Criminal Code has incriminated separately the contempt against the judge, the Prosecutor and the Lawyer in the criminal offence of "Direct Contempt of Court", stipulated by Article 279 of the Tiltle named *"Offences against justice, the Contempt"*, among criminal offences against authority, being aggravated according to the special quality of the passive subject only

when he is a police constable or court policeman (art. 257). *The special cases of punishment* were analysed both in terms of coverage of the people towards which the facts could be committed, as well as reported to their settlement in the Criminal Code, with the underlining that, if in the current Criminal Code, these are treated as a continuation of the offence of *contempt,* in a separate article, the New Criminal Code has stipulated them as a paragraph under the criminal offence of *contempt*. Furthermore, through the provisions of the New Criminal Code, has widened the scope of people against which criminal acts can be committed, more specifically was replaced the term *spouse or close relatives* with the concept of *family member*, the latter notion including people who have established similar relations to those between spouses or between parents and children, in cases where they live in concubinage. It was argued for the removal of this latter condition, of the concubinage, as long as it is required in the case of the spouse or close relatives, and was even proposed an addition to this sphere of people with people with whom the public officer invested with the power of State authority is in a close bond of friendship.

Usurpation of official functions, stipulated by Article 240 of the Criminal Code (article 164 and 207 of the Criminal Code of 1864, article 256 and 257 of the Criminal Code of 1936, article 258 of the New Criminal Code) concerns the use without right of an official function, conditioned by the fulfilment of a deed relating to that function. It was emphasized that the active subject of this offence may also be a person who is vested with an official function, but uses without a right a different function, as well as the person who had that function, but lost it in the meantime.

Incidentally, the latter variant was specifically stipulated in the New Criminal Code (art. 258 para. 2), precisely as it was stipulated in the Criminal Code of 1864 and 1936. The novelty of the Criminal Code which will come

into force on February 1, 2014 is that it has been stipulated in this case the alternative punishment with the fine to the one with imprisonment.

The offence of *illegal bearing of decorations or distinctive signs*, stipulated by Article 241 of the Criminal Code (art. 208 of the Criminal Code of 1864, article 415 of the Criminal Code of 1936, article 257 of the Code of Military Justice of 1881 and art. 569 of the Code of Military Justice of 1937) is absorbed in the New Criminal Code by the provisions of article 258 regarding the *usurpation of official functions*, the legislator considering that the *bearing of decorations or distinctive signs,* in order to be punishable under criminal law, must be followed and a deed related to the function represented by those decorations or distinctive signs. What the New Criminal Code has not taken over, and it has been argued in this thisis that would have been necessary is that, through the provisions regarding usurpation of official acts through the use of decorations or distinctive signs were removed the aggravating circumstances for committing the offence in time of war, and through illegal use of miliatry uniforms or distinctive signs.

The offence of *theft or destruction of documents*, stipulated by Article 242 of the Criminal Code (art. 204 and 304 of the Criminal Code of 1864, article 292 and 562 of the Criminal Code of 1936, Article 259 of the New Criminal Code), the legislator ensures the protection of the social relationships regarding the security of deeds and documents that are in the possession of a State authority or institution, or of any other of the authorities referred to in article 145 of the Criminal Code, thereby ensuring their authority. To be mentioned is that, in the New Criminal Code has not been incriminated the negligent destruction of documents of any of the documents of this genre that represent an artistic, scientific, historical, archive, or other similar value as well. At the same time, the demarcation was done between

documents that contain a definite material value or of those which are issued by a law enforcement agency, Court of law or another jurisdiction agency, in which case the deed will no longer fit into the legal provisions of article 242 of the Criminal Code, but in criminal offences against property or into article 257 regarding the offence of *retantion or destruction of documents* from the category of those that impede the realization of Justice.

Relations concerning the existence and integrity of seals legally applied on behalf of the public authority are protected by criminal law article 243 of the Criminal Code regarding the offence of *breaking of seals*. Unlike previous Criminal Codes incriminations (articles 198-201 Criminal Code of 1864, article 263 Criminal Code of 1936), which stipulated an unique offence in case the sealed good was stolen by the perpetrator, i.e. the complex offence of *theft of sealed property*, the present Criminal Code, as well as the New Criminal Code (art. 260) stipulate separate offences in such a case, the perpetrator committing in contest both the offence of *breaking of seals* as well as the offence of *theft of seized property*. The deed is getting aggravated now, too, as in the past, as well as by the provisions of the New Criminal Code in so far as it is committed by the custodian.

The last offence against the authority, *theft of seized property*, stipulated by Article 244 of the Criminal Code (article 200, 202, 204-205 of the Criminal Code of 1864, article 264-265 of the Criminal Code of 1936 and article 261 of the New Criminal Code), it protects the criminal seizure measure applied by the entitled authorities. If the perpetrator has the function of custodian, the offence presents itself aggravated form, this aggravated form being stipulated as such under all the Criminal Codes. Seeing the incriminations of other states, where, in addition to the notion of *legally seized good*, reference is made of the *legally confiscated good*, we support this supplement in case of offencess of its

kind in our Criminal Code, even more so when the legal provisions in this matter operate with both categories of goods, without the notion of seizure to be synonymous with the notion of *confiscation.*

In *Chapter 3*, entitled *Protection of State authority through incriminations in the special laws*, over two sections were analyzed, on the one hand, *general considerations and rationalization for such incriminations*, while on the other hand, we analyzed concretely the *incriminations in the special laws targeting State authority.*

In *the first section* it was underlined that, while it is desirable that the provisions that criminalize acts which pose the danger of an offence, including those that affect the authority should be contained in a single legislativeact, such as the Criminal Code, the social-historical evolution of society makes impossible their total reunification. Even if they have absorbed in the special provisions some of the facts that previously were incriminated by special laws, neither the Criminal Code in force, nor the New Criminal Code have not ruled out the possibility of incrimination through special laws. First, whereas comprising into a single law all of the provisions of the special criminal laws, which are very numerous, would have led to the elaboration of an extremely bulky and hard to handle Criminal Code. Secondly, many of the provisions with a criminal character of the criminal laws are subject to more frequent changes, which would have involved changing each time the entire Criminal Code.

The criminal provisions of the special laws can be presented as *simple new incriminations* (the deed is new, has not been previously stipulated in the Criminal Code, and in the special law it is provided with both content and penalty), *as new incriminations accompanied by derogations* (when certain derogations are expressly stipulated from the provisions of the general part of the Criminal Code, derogations allowed, otherwise, by the provisions of article 362 of the Criminal

Code; exceptions may concern the forms of the offence, participation, the contest of offences and relapse, punishment reductions or increases etc.), *derogations without new incrimimations* (the incriminations are those from the Criminal Code, in the special laws are stipulated only certain derogations which may concern the nature and special limits of the penalty, the way of putting in motion the criminal proceedings etc.), *legal exculpations* (repeals of acts already stipulated in the Criminal Code, when the committing of that offence would take place in the sphere of activity or related to the activity regulated by the special law) or *mixed-content provisions* (i.e. a mixture of the cases mentioned in the preceding). In addition to the criminal law and special laws containing rules for reference or refering to the criminal law, there are many other regulatory acts that contain no incriminating provisions, but that protect the State authority by regulating certain categories of professional civil servants which fall into the special category of officials fulfilling a function involving the exercise of State authority or by regulating the institutions which State authority operates with. Thus, in article 12 of the Romanian Constitution, are listed and detailed Romania's emblems referred to by article 236 of the Criminal Code, regarding the crime of *offense against emblems*, i.e. the Romanian Flag, the National Day of Romania, the Romanian National Anthem, the Coat of Arms and Seal of the State. Constitutional provisions are supplemented by law nr. 75/1994, concerning the Romanian flag exhibition, intonation of the national anthem and the use of seals with the coat of arms of Romania by the public authorities and institutions, law No. 102/1992 regarding the country's coat of arms and seal, law nr. 10/1990 by which the Romanian Parliament proclaimed 1 December as the National day of Romania, law No. 99/1998 by which the Romanian Parliament proclaimed the day of July 29, Day of the Romanian national anthem and law No. 96/1998 by which the

Romanian Parliament proclaimed the day of June 26 Day of the national flag. And in article 239 of the Criminal Code, regarding *the contempt*, it is mentioned that the passive subject is the public servant who performs a function that involves the exercise of State authority. It is not expressly enumerated which are the public officers who perform a function that involves the exercise of State authority, only in paragraph 5 is proved that the offence is more serious if it is commited against a judge or a Prosecutor, law enforcement agency, expert, Court Enforcement Officer, Constable, policeman or soldier. Otherwise, it's the judicial inquiry institutions duty to check whether in the special laws governing categories of public officers is made any mention of the fulfilment by them of a function that implies the exercise of State authority, just like this being applicable the provisions of article 239 of the Criminal Code. There were identified, in this context, law No. 14/1992 concerning the Organization and functioning of the Romanian Intelligence Service, the Government's Emergency Ordinance No. 12/1998 regarding the transport on the Romanian railways and the reorganization of the Romanian National Railway Company, the local Government Act No. 215/2001, law No. 393/2004 on the Status of local elected officials, law No. 218/2002 concerning the organisation and functioning of the Romanian Police, law No. 293/2004 concerning the Status of public officers with special status in the National Administration of Penitentiaries, law No. 226/2009 on the organisation and functioning of official statistics in Romania, law No. 51/1995 on the establishment and exercise of the profession of lawyer. Finally, it should be mentioned that, by the provisions of law No. 187/2012 for implementing Law No. 286/2009 relating to the Criminal Code, in the context of the main objective pursued by the legislator, i.e. the congruence of the existing criminal legislation with the provisions of the New Criminal Code, we may observe the

intention of the legislator in developing and adopting this normative act, i.e. to includ in the New Criminal Code as many of the excessively numerous incriminations that are currently in the special laws. The working technique adopted is to repeal the criminal provisions of the special laws, even more so beacuse many of them are already contained, in one form or another, in the Criminal Code, the provisions of the special laws making only a reference to the sanctions of the Criminal Code.

In section II, suggestivelly called *The Incriminations in the special laws*, over the course of 11 subsections were analyzed, chronologically, on the same skeleton as in the case of offences from the Criminal Code (incriminating texts, legal object, material object, active subject, passive subject, objective side, subjective side, attempt and consumation, the penalty and special cases of punishment), the offences in the following enactments: *Decree-Law No. 41/1990, on ensuring a climate of order and legality* (this one containing the special offence of contempt, stipulated by article 1); *Law No. 16/1996 regarding the National Archives* (stipulates, in article 27, the offence of theft or destruction of documents); *Law No. 189/1999 concerning the exercise of legislative initiative by citizens* (article 10 stipulates the offence of usurpation of official functions); *Law No. 29/2000 on the national decorations system of Romania* (art. 84 stipulates the use without right of decorations emblems); *Government Emergency Ordinance No. 59/2000, on the Status of forestry personnel* (in art. 41 and 42 are stipulated offences of contempt); *Law No. 188/2000 regarding Court Enforcement Officers* (article 38 provides for the offence of ocontempt); *Law No. 191/2003 crimes against the shipping regime* (article 32 stipulates the offence of contempt); *Law No. 550/2004 on the organisation and functioning of the Romanian Gendarmerie* (article 43-the law text does not expressly refer to crimes against State authority, but it uses a general term,

i.e. it refers to crimes that could be commited against military personnel of the Romanian Gendarmerie, their husband, wife or children, for the purpose of intimidation or revenge for legal action taken by him/her in the performance of his/her job duties); *Law No. 289/2005, concerning certain measures for preventing and combating criminal phenomena in the field of railway transport* (article 8 provides for the offence of contempt); *Law No. 4/2008, on preventing and combating violence at sports games and competitions* (art. 41 stipulates the crime of offense against emblems and article 42 stipulates the offence of contempt), *Emergency Ordinance of the Government No. 24/2008 concerning access to the own files and the unveiling of the Inteligence Service, as amended by law No. 293 of 14 November 2008* (article 30 stipulates the offence of theft or destruction of documents). In each subsection, we analyzed the elements which were discordant or were not entirely following the provisions of the afferent offences of the Criminal Code, with the final note that these legislative issues have been resolved by the provisions of law No. 187/2012, by which all these offences in special laws were repealed with effect from 1 February 2014, the acts committed against the officials in these regulations shall be stated explicitly that they are invested with the exercise of State authority, following to be legally classified and penalized according to the New Criminal Code offences.

Over the course of ***Chapter 4***, which carries the title ***Comparative law Aspects regarding the criminal protection of the authority***, were examined the criminal provisions regarding State authority by comparison with established law systems regarding the creation of inspiration sources for our Criminal Codes, but also reported to more recent Criminal Codes, i.e. were considered the Criminal Codes of Germany, Italy, France, Spain, Portugal, Finland, Sweden, Belgium, The Netherlands, Poland, Turkey, The Republic Of Moldova, The Russian Federation, Kosovo.

Initially, the notion of *civil servant* was examined. In the regulation of the present Criminal Code, as well as in that of the New Criminal Code, the concept of *civil servant/ public official* is explicitly defined in the General part, opting inclusivelly for the assimilation with officials of natural persons exercising a profession of public interest, for which special empowering by the public authorities is needed and which is subject to their control. The same is treated the notion of civil servant and in the General Part of the Criminal Codes in Germany, The Netherlands, Spain, The Republic of Moldova, Finland. At the same time, it is observed that the German, Swedish and Finnish criminal legislator, have understood to give the same enhanced protection not only the actual persons invested with public authority, but also to those associated with public officials and that enjoy the same protection or who are called upon to assist a public authority in the conduct of its activities. It has also been noted that, in those laws not only the national authority is criminally protected, but also the foreign authority, people with public position foreign citizens or members of foreign parliaments.
Much of the crimes in our criminal law are contained in the laws of these countries, but also in countries outside the European Union, but also finding offences which were exculpated in some countries, however, subsisting in other countries, or being incriminated under other names, or in the table of contents of several chapters or sections, not all foreign laws including separate chapters dedicated to offences which protect the authority, its protection also being made within the framework of General chapters, but in which there are references to the passive subjects of those offences, in particular public officials invested with State authority. As are legislations which, while devoting a separate chapter to offences against the authority, incriminate acts of genre in the other chapters of the Code too, specifying that they concerns and public officials invested with State authority as well.

The criminal codes of Germany, The Republic of Moldova, Sweden and The Netherlands contain chapters dedicated exclusively to *Offences against the authority*, while the French, Belgian, Finnish, Spanish and Kosovan Criminal Codes do not include a specific chapter for offences against the authority, but stipulate such offences under other titles, chapters or sections. In the New Criminal Code of Romania, *the contempt* committed against a magistrate or lawyer was incriminated separatelly from the actual offence of *contempt*, exactly to the provisions of the Italian Criminal Code (article 341 and 343) and of the Criminal Code of the Russian Federation (article 295). *The contempt* is incriminated through the criminal provisions from Germany, France, Spain and the Netherlands including when the material object is accomplished through insult or slander. The crime of *offense against emblems* was exculpated by the New Criminal Code of Romania, but exists as a criminal offence in the Polish Criminal Code (art. 137), the Criminal Code of the Republic of Moldova (art. 347), the French Criminal Code (art. 433) and in the Criminal Code of Turkey (art. 301), as well as in the Criminal Code of Germany, but not in the context of offences against the authority, but in the context of endangerment of the democratic rule of law. The offence of *theft or destruction of documents* is incriminated in Belgian law in the chapter the offences against property, not those against authority, as did the legislators from our country, the Netherlands or the Republic of Moldova.

Theft of seized property is prosecuted as an economic offence in the legislation of the Republic of Moldova, while in the Criminal Codes of Romania, Germany and Spain it is prosecuted as an offence against the authority. Instead, the French legislator has incriminated it as a criminal offence against the exercise of Justice, doing the same with the offence of *breaking of seals.* In the German Criminal Code, *breaking seals* and *theft of seized property* are not

incriminated individually, but form a single complex offence. The offences of *taking and giving bribery,* of *escape,* of *false declarations*, in the Criminal Codes of Finland, the Republic of Moldova and the Netherlands are referred to in titles regarding offences against the authority, unlike the Romanian legislator who has stipulated them in chapters and sections different from those for offences against authority.

Chapter 5 is entitled ***Criminal Procedural Aspects***, and contains the following sections: *Methods for putting in motion the criminal action, Competence of cases settlement, Competence of solving cases which have as their object the offences against Authority stipulated by the special laws and Legal Assistance.*

In *the first section*, it was pointed out that, regardless of the act that incriminates them, no provision has been made in the case of any crime against authority that the criminal proceedings are started at the injured person's prior complaint, setting in motion the criminal action in the case of these offences being made ex officio.

The *second section* concerns the competence of prosecution which is the task, as a general rule, of research organs of the judicial police, and as an exception, according to the provisions of article 209 para.3 of the Code of Criminal Procedure, in the case of crimes of *offense against emblems, contempt and special cases of punishment of the contempt*, stipulated by article 236, 239 and 239^1 of the Criminal Code, to the Prosecutor. According to the provisions of article 25 of the Code of Criminal Procedure, the court judges in the first instance all offences except those given by law in the jurisdiction of other courts. In accordance with the provisions of article 36 paragraph 1 letter (b) of the New Code of Criminal Procedure, in the case of *contempt with death causing injuries and manslaughter*, the jurisdiction lies with the Court, the intention being exceeded in this variant and causing the death of the victim.

With regard to the rights of appeal under the provisions of article 361 and 385^1 of the Code of Criminal Procedure, as amended by law No. 202/2010, these are: the appeal of the Court of appeal settled for the crimes for which sentences were handed down by the judges, category which includes all crimes against authority. According to the provisions of the New Code of Criminal Procedure, ensuring the celerity of the criminal process by reducing the duration for the resolution of the criminal case, i.e. that of art. 408, the appeal is referred to as single ordinary and devolutive legal remedy, if the law does not stipulate otherwise.

The next section examines the competence of solving the causes which have as object offences against authority stipulated by special laws, provided that in these regulations is stipulated, in general, that criminal proceedings shall be carried out celerity and with priority, and *the contempt* stipulated by Law No. 191/2003 regarding the shipping regime is judged in the first instance by the maritime and fluvial bureaus of the courts.

In *the last section* are considered the legal provisions concerning the legal aid, provided that any accused or defendant, therefore also the perpetrators against authority, shall have the right, under the provisions of art. 171 of the Code of Criminal Procedure, to be assisted by a defender throughout the criminal investigation and of the judgment, the judicial authorites having the obligation to inform them of this right.

The last part of the scientific approach outlines a series of ***Conclusions***, imperfections of the current legislation and ***Proposals of lex ferenda***, of repeal, amend or complete certain provisions of the New Criminal Code concerning offences against the authority, so that they fully satisfy the requirements of both adherence of the national legislation to the European legislation, as well as to meet the needs of practitioners in this field.

* Initially, we analyzed and argued, following to make a proposal of *lex ferenda*, regarding the need, at least from the point of view of practitioners in the field, that acts involving State authority should not be incriminated through special laws anymore. During preparation of the Ph.D thesis, however, through the provisions of law No. 187/2012 for implementing as from 1 February 2014 the law No. 286/2009 regarding the Criminal Code, these incrimination inconsistencies have been resolved through the repeal of law texts within the special laws, and in the latter acts specifically mentioning only if the category of public officials is invested with the State authority.

* As regards **the General part of the New Criminal Code**, related to ***Title X – The meaning of terms or phrases in criminal law***, we have proposed the introduction of two new articles, and changing an existing one, i.e. an article which should define the meaning of the term *public official entrusted with the exercise of State authority*, and another article which should define the term *institution or a representative of a foreign state*. At the same time, within article 177, para.1 letter (c), which defines the term of *family member*, I proposed removing the condition *in case they cohabitate*, stipulated for people who have established similar relations to those between spouses or between parents and children, on the grounds that neither to the latter ones are imposed such a condition.

* As regards **the Special part of the New Criminal Code**, related to ***Title III, Chapter 1 - Offences against the authority***, I proposed *the reincrimination* of the *offense against emblems*, going target both the *Romanian emblems as well as of a foreign State*, and the *reincrimination* of the *defamation of the country or the nation*, both worsening if *they are committed inside a meeting or a public manifestation.*

At art. 258, para. (3) regarding the offence of *usurpation of official functions*, I proposed that, in addition to bearing, without right, uniforms or distinctive signs of a public authority, the facts at para. (1) and (2) to also target the *use of cars bearing external signs real or identical to those used by the organs invested with State authority*. Furthermore, I proposed an additional paragraph, by which the offence aggravates when *its performed in times of war*.

In the case of the offence of *breaking seals*, we also support *the penalization of infringements of a barrier or a sign installed by a public authority meant to shut down or to isolate an object or location*, and in the case of the offence of *theft of seized property*, and the penalization of *theft of lawfully confiscated property*. In the case of both offences, we propose agravation of the offence when it is *committed through the use of threats or violence towards individuals also, such as punishment of the attempt.*

As it regards the infraction of *contempt*, I argued the need *to reincriminate contempt committed through insult or slander;* in paragraph (1) and (2) I proposed that after refering to the imprisonment punishment, to expressly indicate that *by increasing the penalty should not be exceeded the maximum limit stipulated in article 60 of the Criminal Code*; in paragraph (3) I proposed that acts of *contempt* to regard, in addition to family member of the public official also *a person with whom he is in a close relationship of friendship*. At the same time, we support *the repeal of paragraph 4 of art. 257* regarding the aggravation of *the contempt* committed against a police officer or court policeman, or, if the aggravation is considered necessary, to relate to the facts of *contempt* committed against an *official with special status in the prison system, bailiff, interpreter, expert or mediator.* At the same time, we proposed to expressly indicate that *criminal actions committed against a person who, at the request or with the consent of a public official who performs a function that*

involves the exercise of State authority, is assisting him in the performance of official duties involving the exercise of public authority, shall be sanctioned as if they were committed against the public official. And considering the adherence of Romania to the European Union, as well as this type of incriminations in the legal systems of countries from the European Union or even from pro-European countries, we support the express stipulation that the *provisions on contempt should apply when the criminal actions are committed against an organ or a representative of a foreign State, as well as their family members as well, if they are accompanying them.* Finally, we *support the penalization of the attempt, insofar as it is punishable for offences that are included in the contempt.*

* As regards ***the Special part of the New Criminal Code,*** related to ***Title IV - Offences against the exercise of Justice,*** I proposed, as a first option, *the repeal of art. 279 regarding Contempt of Court*, whereas we support an unique judicial protection for all categories of public officials invested with State authority, provided that the State authority is not hierarchized by any normative act in degrees of greater or smaller importance, and the Rule of Law is characterised by a separation of powers in the State, in which neither is higher than the other one, on the contrary, they all work together and control each other for performs the roles and powers conferred by the Constitution and other normative acts. Moreover, even if we would support a separate incrimination of *the Contempt of Court*, we would support not only a special protection granted to the lawyer, who is not part of the judicial power, as well as the category of police officers belonging to of judicial police and judicial experts, to which we might also add the cathegory of Court Enforcement Officers or of public officials with special status within the National Administration of Penitentiaries.

In the case of preservation of this incrimination, I proposed the reincrimination of the contempt through insult or slander; in paragraph (1) and (2), I proposed, after reference to the imprisonment punishment, to expressly indicate that, *by increasing the penalty shall not be exceeded the maximum limit stipulated in article 60 of the Criminal Code*; in paragraph (3) I proposed that acts of contempt to reguard, in addition to the family member of the judge or Prosecutor, also *a person with whom he/she is in a close relationship of friendship*; besides the judge, Prosecutor and lawyer, the provisions regarding *Contempt of Court* to be also properly applied to acts committed against a *police officer of the Court police, Court expert, interpreter, mediator, an official with special status within the prison system or Court Enforcement Officer during or* in connection with the exercise of the profession. At the same time, I have argued that *the same punishment shall apply to acts committed against the above mentioned people who have fulfilled their respective functions, if they are related with the performance of job duties, and the provisions regarding Contempt of Court also to apply in the case when the criminal actions are committed against a person who, at the request or with the consent of the above mentioned people, assists them in carrying out their official duties involving the exercise of State authority.* Finally, I have argued for *the punishment of the attempt, insofar as it is punishable and for the offences included in the Contempt of Court.*

In conclusion, the present work presents the evolution of the crimes which protect authority, starting from the roots they have in history, highlighting the interdependence between constitutional law, administrative and criminal law with regard to the protection of the same institution, but also of the differences caused by the autonomous character of criminal law, continuing with a rigorous analysis over the matter, with a particularly practical nature, in the current

regulation of Romanian legislation and of other States with legal systems with a tradition in terms of creation of sources of inspiration including for the New Romanian Criminal Code. In addition, there were also evidenced issues of criminal procedural law, with the assessment of complex causality of the phenomenon, the perennity of which is demonstrated by the history of evolution.