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Legal Aspects of the use of Force and Reasonableness Standard

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Abstract: In the social and political environment, regardless of jurisdiction, the use of force and the intervention of law enforcement agencies, especially of the police force, is current issue, and the topic of adequate intervention - a topic of debate. In different jurisdictions, different terms can be found to designate the general hypothesis of this research. The paper aims to elaborate on the content and to develop the legal concept of reasonableness, which will include references to reasonable suspicion and reasonable belief, the objective observer, and other matters of interest. From the above-mentioned reasoning, this research is dedicated to the subject of reasonableness of intervention and use of force, and it aims to identify and to develop on a standard to which a practicing professional can refer.

Keywords: use of force; intervention; jurisprudence; reasonable suspicion; belief; reasonableness; legality; objective

Introduction

In the social and political environment, regardless of jurisdiction, the application of force and the intervention of law enforcement bodies, especially the police force, will be a current issue, both isolated cases and for mass events, with a single or prolonged character. The issue of appropriate intervention becomes a subject of debate, especially concerning the reasonableness and the legality of the intervention, its proportionality and purpose, as well as the conduct of those that are involved. Thus, an important matter that affects not only the police, but also society as a whole

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(Charles, Gruber, & Schmidt, 2015, p. 501) is the use of force.

It is true, that the national legislation of Moldova regulates several aspects in this regard, by means of normative acts subordinated to the law, but by means of guides, methodological instructions, etc., however, the matter is accurate, adequate and complete to the extent to which it can be argued that the normative framework regulates all known field of the human activity. For those that are not initiated in it might be unimportant, but for those who are initiated in the matter, the mere fact that at least there is no explanation for the "use of force", "the use of excessive force" or "the excessive use of force" could generate some concerns. Another concern relates to the regulation of form at the expense of the substance. Rather, the normative framework exposes hypotheses in which the use of force is allowed or prohibited by way of example, benchmarks expressed in principles, enumerations of procedures, prohibitive hypotheses, the technical notion of professional intervention or physical use of force is also defined, which in general terms, would amount to an overall interpretation, and that is not necessarily adequate, being in a strong correlation with knowledge and training of the subject in the exercise of the duty.

For the purposes of this research, a short summary of the subject is useful. According to the Moldova's national normative framework in the field of intervention, the cornerstone is the principle of proportionality, with the application of gradualism in the particular cases. These categories are enshrined at the level of principle in the Guide regarding professional intervention in the exercise of the function[1], approved by Joint Order no. 4/44/17-O/6/1/4 of January 11, 2018, developed in order to implement the National Plan of Actions for the Implementation of the Association Agreement between the Republic of Moldova and the European Union. It is understood from the preamble that the acts that form the basis of the elaboration of this guide refer to the international and conventional framework in matters related to human rights and fundamental freedoms, in particular the right not to be subjected to torture, inhuman and degrading treatment. Although this guide aims to presents "guidelines to ensure a course of action that allows the effective resolution of professional intervention situations", the focus is broadly "the third party" or the "individual" and not the "professional". The Guide is a mixture of indications, procedures and methods of intervention, and does not involve the substantive

[1] Ghidul privind intervenţia profesională, aprobat prin Ordinul comun MAI/MJ/ MF/CNA/SIS/SPPS nr. 4/44/17-O/6/1/4 din 11 ianuarie 2018/The guide regarding professional intervention, approved by the Joint Order MAI/MJ/MF/CNA/SIS/SPPS no. 4/44/17-O/6/1/4 of January 11, 2018, available: politia.md

assessment of the need for intervention, respectively it does not *de jure* allow a professional to avail himself of this guide in case of real intervention. The Guide prescribes that the application of force is an exceptional measure, carried out after the evaluation and after the non-violent establishment of control over the person has failed, with the express indication of the gradual nature of the intervention (although there is a mention that it is not mandatory to go through all the phases, primary or later coercive, etc.), to the extent necessary, in direct relation to the active actions of the third party and their results, which are assumed to be material, i.e. to be consumed. Finally, three aspects were identified that have a correlation to the reasonableness of the intervention, that were copied and distorted from the law: (1) the existence of reasonable suspicions regarding the person that is intoxicated, providing several examples of the objective circumstances that can be taken into account such as the smell of alcohol from the oral cavity, instability of the pose, disordered gait, pronounced tremors of the fingers, eyelids, tongue, inappropriate behaviour, the confession of the person examined about the fact of consumption, etc. (*unlike point 21) para. (5) art. 25 of Law no. 320/2012 *regarding the activity of the police and the status of the police officer,* which establishes a lower threshold – "the suspicion", without raising it the level of "reasonable", using the phrase "when it is suspected that the person..."; **secondly, should be taken into account the "Brăguţă case"[1]and others, which is well known for non-compliance with the objective criteria mentioned in relation to the particular circumstances); (2) in matters of "body search" the phrase "reasonable grounds" is used, which concerns the situation when the person possesses objects or documents that could be important for the fair resolution of the case; (3) in the section dedicated to primary intervention actions, where it is indicated on the prevention of unjustified use of immobilization and control techniques.

In matters of human rights, subsidiary to the classic conventional framework such as the European Convention for the Protection of Human Rights and Fundamental Freedoms with the protocols additional documents, the Universal Declaration of Human Rights, the relevant Pacts, etc., a special role is possess to the Declaration on the police[2] which at point 12 recommends that, in the exercise of his function, the police officer should act with all the necessary determination without resort to force, especially to perform a task required or authorized by law if this is not reasonable.

[1] Note of the National Police on "Andrei Brăguţă" case, din 31 august 2017, available: politia.md/ro/content/update.

[2] Declaration on the police adopted by the Council of Europe Resolution nr. 690 din 1979, available: pace.coe.int

The same thread is followed in the Code of Conduct of law enforcement authorities[1] which at art. 3, confers the right to use of the force by law enforcement officials only when it is strictly necessary and to the extent necessary to fulfil their duties. In the subsequent commentary to this Code of Conduct, it is indicated that the use of force is exceptional and is used to the extent that it is reasonably necessary in circumstances to prevent crimes, in the application of the detention (arrest) of both accused and suspects, in agreement with the principle of proportionality, and that extreme measures must be applied when the others are not effective.

To note that the normative framework such as the Law no. 218/2012 *regarding the application of physical force, special means, and firearms*[2], the Government Decision no. 474/2014 regarding the approval of the *Nomenclature of special means, types of firearms and related ammunition, as well as their application rules*[3] or Law no. 130/2012 *regarding the regime of weapons and ammunition for civilian use*[4], do not mention reasonable suspicion, grounding, reasonableness, etc. From these main laws and regulations, only the first two refer to proportionality, which must be inferred from the existence of real, imminent danger. The same thing refers to the Trainer's Guide for Training in the field of human rights of police collaborators[5], which in the chapter dedicated to the respect of human rights in matters of physical force, elaborates concise that the intervention should aim at refraining from the unfounded use or excessive disciplinary measures, excessive or unnecessary use of force.

On the contrary, the intervention should not result from general patterns, to imply arbitrary, improvised, and reactive behaviour, but should infer from the internal assessment of the particular circumstances of each and every case. This requires a high level of quality training, sharpening the practical skills and theoretical

[1] Code of Conduct for Law Enforcement Authorities Adopted by United Nations General Assembly Resolution nr. 34/169 din 1979, available: ohchr.org.
[2] Legea nr. 218/2012 privind modul de aplicare a forţei fizice,a mijloacelor speciale şi a armelor de foc, cu modificările din 15.11.2018/ Law no. 218/2012 regarding the application of physical force, special means and firearms, with the amendments of 15.11.2018, available: legis.md.
[3] Gov Decision nr. 474/2014 cu privire la aprobarea Nomenclatorului mijloacelor speciale, al tipurilor de arme de foc şi al muniţiilor aferente, precum şi a regulilor de aplicare a acestora, 03.04.2019/ Government Decision no. 474/2014 regarding the approval of the Nomenclature of special means, types of firearms and related ammunition, as well as the rules for their application, 04/03/2019, available: legis.md.
[4] Legea nr. 130/2012 privind regimul armelor şi al muniţiilor cu destinaţie civilă/ Law no. 130/2012 regarding the regime of weapons and ammunition for civilian use, 15.11.2018, available: legis.md
[5] PNUD Moldova, 2008, Ministerul Afacerilor Interne/ Ministry of Internal Affairs and PNUD ONU, Bons Offices, available: undp.org.

knowledge through permanent situations modelling, so that to allow prompt and decisive action, to be reasonably objective, and that is backed with effective and balanced safeguards. Otherwise, the normative regulations would remain declarative, lacking predictability, and the intervention and practices defective, inconsistent, inadequate and unreasonable.

In this context, an example from the Moldova legal framework could be brought. Whilst, the law uses the terms "defeat of the resistance opposed to the legal requirements", this naturally results in the the conclusion that one can immediately challenge the "legality of the orders" to obey, and therefore, a logical conclusion is imposed that, there is no a "presumption of the legality" of the intervention by the law enforcement. It shows an inversion of the burden of probation in the matter of non-application of torture, inhuman or degrading treatment, which is not necessarily a negative aspect, but a fact. On the contrary, the legislation of the state of Oregon in the United States of America for example, at ORS 161.260, prohibits the use of physical force to resist law enforcement detention/arrest. Thus, "a person may not use physical force to resist an arrest by a peace officer who is known to be a peace officer or reasonably appears to be a peace officer, regardless of whether the arrest is lawful or unlawful".

Therefore, for the mentioned reasons and in order to elucidate the issue of the use of force and the standard of reasonableness, we developed this research.

Should be mentioned at the beginning, that in order to clarify these important aspects, we used the definition developed by the International Association of Chiefs of Police[1] so that, by "use of force", it means "the volume of effort required by the police to impose compliance on a subject what opposes". Further, the same association defines excessive use of force as "the application of a greater volume or intensity of force than is necessary to impose compliance on a cooperating or resisting subject". Both meanings are interesting. Moreover, in the United States of America, this concept has been developed, for example, from the classic "use of force" to the variety of "use of force in the street".

The first necessary conclusion that is imposed is the conceptual difference between "the use of force in excess" and "excessive use of force", correlated to the basic concept of "use of force". This comes with that, in the first case, the use of force is required according to the circumstances of the case, but the amount of the force differs, and in the second case, the use of force would have been excessive, not being

[1] IACP, Police use of force in America, 2001, p. 18

a priori necessary, lacking the reasonableness as a premise. In the same vein, we argue that "excessive use of force" is rather a category that designates and attributes a generic and usually designated collective trait to a certain phenomenon, by generalization (for example, excessive use of force by " police"), and not a particular one determined in fact, or having legal content. Subsequently, a subject may not necessarily resist when intervened, but be cooperative, at least apparently and initially, but still the force is necessary in a certain volume.

The public records of the Federal Bureau of Investigation[1] show that, in the United States of America, in the period 2010-2019, several 503 police officers died in connection with the exercise of their duties, including interventions, while the average experience of the officers who passed away in the line of duty was 11 years. In the Republic of Moldova, there are records kept, but it is understood that the specifics of the matter differ in the two jurisdictions.

When analysing the national normative framework of Moldova, as well as the foreign jurisprudence in matters of intervention, could be inferred that in cases of interaction, there is a moment of truth, generally accepted, when the imaginary line is crossed, and the intervention is admitted in order to put an end to a supposedly prejudicial deed cognitively prefigured in this way by the person entitled to act, that is, to apply the coercive force of the state with which is invested, or vice versa, when the force is not reasonable.

If upon becoming aware of the suspicions in order to decide the application of coercive procedural measures regarding the suspect, including choosing which of the coercive procedural measures are to be applied, either to decide to submit the official notification of the commission of a crime, or to apply the measures (method) special investigations or the performance of intrusive criminal prosecution actions, the evaluation of the involvement of other suspects, with the appropriate legal effects for the situation of the individuals, the state agent has the opportunity to evaluate to some extent the circumstances of the particular case, analyse the situation and based on these reasonings to adopt a decision. This could be the case of, unplanned and uncoordinated intervention during carrying out the duty, the mission, in a situation when usually the agent is limited in time and planning, being necessary to decide in fractions of a second. This may also be the case when, although the intervention has been planned, the results at the situation at the site differ from expectations that were

[1] Law Enforcement Officers Killed and Assaulted Report, 2019, Uniform Crime Reporting (UCR) Program's Law Enforcement Officers Killed and Assaulted (LEOKA) data collection.

taken into account, although it is obvious that while being on a mission, the intervention on the spot, imposes on the official subject a certain requirement of prior caution, a psychological prepared attitude and mindset towards the surrounding world, which cannot relate to the condition of an ordinary person who has neither the training nor the legal obligation to act.

Thus, as indicated in the Anglo-Saxon law system with specific American jurisprudence, and that is a well-recognized standard, and that any professional can refer, the reasonable/suspicion, objective reasonableness and probable cause are central concepts in assessment of the nature of the intervention.

It is true that the legal category of suspicion/reasonable suspicion in the United States differs to some extent as a legal category from that existing in national legislation of Moldova for example, and moreover, as a part of relationship of interdependence with the standard of "probable cause", which does not have an identical correspondent in the Moldovan law. In the same way, although "reasonable suspicion" represents a legal standard of proof, even if it is less than so-called "probable cause", it is still more than an incipient, unspecified suspicion, and must be based on specific and articulable facts (Pântea, 2019, p. 212). At a certain moment, the Supreme Court of the United States, in Terry v. Ohio[1] would have diminished the standard of protection for example in the case of the search for a test of the balance of reasonableness, later carried out to the contrary in Dunaway v. New York[2], Michigan v. Summers[3] (correlation of protected values, such as search and crime prevention on the one hand, compared to liberty and security in the case of detention the arrest on the other hand, explaining the exceptional character of these cases, etc.) and so on.

In the jurisprudence of different jurisdictions, but also in the national normative framework of Moldova, notions such as reasonableness, justice, justification, concrete factual and legal circumstances, elements of fact, reasonable indices, well-founded indices, plausible reasons, trust or reasonable belief can identified, and that designate in whole or in part a typical hypothesis - the intervention, which can be summarized in terms of content at "suspect" or "reasonable belief", "objective reasonableness", and less to the "probable cause". These terms help to understanding

[1] Decision Federal Supreme Court of the US Terry c. Ohio 392 U.S. 1, 1968, available: supreme.justia.com.
[2] Decision Federal Supreme Court of the US Dunaway c. New York, 442 U.S. 200, 1979, available: supreme.justia.com.
[3] Decision Federal Supreme Court of the US Michigan c. Summers, 452 U.S. 692, 1981, available: supreme.justia.com.

the legal reasonings.

From the above mentioned reasonings, our research selected the reasonableness in intervention and the use of force, to identify a standard to which a professional can refer in active duty, aiming at explaining the problems and standard in practice.

Results and Discussion

Although the reasoning on which for example, the initiation of criminal prosecution is based, or during the application of preventive measures on the one hand and the intervention on the other hand are not equivalent legal categories, and more than that, they differ in content, jurisdiction and not only. However, from the point of view of practical and scientific utility, to understand these legal categories, one should use the entire spectrum of scientific remedies, including comparative law, modelling, and to apply those to situations. The same exercise is carried out in the part where we will refer to the "particular circumstances of the case" and the concept of "objective observer".

We recall that, according to the jurisprudence of the European Court for Human Rights, reasonable suspicion requires the existence of facts or information that will convince an objective observer that the person concerned has committed the crime. What can be considered reasonable, however, depends on all the circumstances of the case (§ 32 Fox, Campbell and Hartley v. the United Kingdom, 1990; and others).

Moldova Criminal Procedure Code at art. 6 point 4^3) took over the concept and explains that "reasonable suspicion" means the suspicion that results from the existence of facts and/or information that would convince an objective observer that a crime attributable to a certain person has been committed or is being prepared to be committed and that there are no other facts and/or information that remove the criminal nature of the act or prove the person's non-involvement.

Without elaborating on the strengths and weaknesses of the legal definition, for example, innuendos, impressions, ideas, rumours, or prejudices, as indications of the person's participation in the commission of the crime, do not result in the fulfilment of the condition of the existence of sufficient credible reasons, ensuring genuine guarantees against arbitrariness (Pântea, 2019, p. 186).

To point out that, in the common law system, the recognized starting point in the matter of the use of force results from rules and legal judgments that have a long history. To cite one of the relevant examples, "if persons pursued by [...] officers for

crimes or the just suspicion thereof [...] shall not obey such officers, but shall either resist or elude before or being apprehended, they will save themselves, resist or evade, so that they cannot be apprehended otherwise, and thereby killing may be necessary, because he cannot be apprehended in any other way, this does not constitute murder"[1]. In the same line, "if a thief resists and does not allow himself to be caught, either being summoned and requesting the help of passers-by[2] or being pursued, if he is killed by the pursuers, it is not a crime[3]". This standard is applicable both to the representatives of the authorities, in the presence or absence of a warrant[4] and by individuals in their private capacity. A similar standard for the law of self-defence, for example, was invoked in the judgment of the court in England and Wales in the case of R v. Dudley (Thomas)[5].

Rules of common law, being exposed in the works of the renowned lawyer and judge Sir Matthew Hale, cited in the Anglo-Saxon legal system, found reflection in jurisdictions with a system of as common law, including in the American system. As the doctrine about the use of force is defined primarily by the states that make up the Union, this rule was found in the statutes in different variations, but there was also an impressive and coherent jurisprudence on the matter at all levels, Local, State, as well as Circuit or Federal levels.

To note that there has been a constant evolution of the rules governing the use of force in the American jurisprudential system, both in the part in which it referred to the legal norms with a vocation to grant protection to the rights of individuals on the one hand, or on the other hand to confer the right to act reasonably and legally, but the content has remained constant and unaltered.

For example, the use of force has been analysed through the lens of the law of self-defence (*implies the right to life, to which we will later refer), either by raising the protection of the V, VI, VIII or XIV amendments to the Constitution of the United States of America, or by means of the clause to "due process". Finally, Amendment IV of the Constitution of the United States of America, was recognized as the cornerstone and standard of civil rights for the intervention of law enforcement

[1] Tennessee, cited // Sir Hale Matthew, Historia Placitorum Coronæ.
[2] See „hue and cry", statute of Winchester 1285, available: thehistoryofengland.co.uk.
[3] Sir Hale Matthew, The History of the Pleas of the Crown, Vol. I, Philadelphia, 1847, p. 52, available: upload.wikimedia.org.
[4] Sir Hale Matthew, Pleas of the Crown or the A methodical summary of the subjects matters relating to that subject, 1716, p. 36, available: lawlibrary.wm.edu.
[5] Decision Supreme Court of England and Wales R c. Dudley (Thomas), 14 QBD 273, 1884, available: casemine.com.

authorities.

It enshrines "the right of people to be safe in terms of their own person, domicile, documents, and acting against unreasonable searches and seizures, which cannot be violated, warrants can only be issued on the basis of probable cause, supported by oath or affirmation, which would particularly describe the place to be searched, the persons or things to be detained".

The constitutional reference to the concept of "reasonable" and "probable cause", in the amendment to the Constitution of the US should not be understood in a narrow and isolated sense, but both with the subsequent jurisprudence. This is expressly stated in Ornelas v. United States[1]. On this occasion, the Federal Supreme Court of the US ruled that, "the legal rules that refer to probable cause and reasonable suspicion acquire content only through application", and not through abstract application, but "can be given meaning only by application to the particular circumstances of the case."

In Graham c. Connor[2] the Federal Supreme Court stated that, "claims regarding the use of excessive force during the detention, stop control or other "seizures" of a free citizen are best characterized by invoking the protection of the fourth amendment and must be judged by reference to the "reasonableness" standard.

The test of "reasonableness" in the Fourth Amendment encompasses whether the officers' actions are "objectively reasonable" in light of the facts and circumstances facing them, without regard to their "underlying intent" or "motivation."

Citing the relevant findings in Ornelas, the Federal Supreme Court of the US noted that "it is not possible to precisely articulate the meaning of "reasonable suspicion" and "probable cause". These are concepts of common use (usual, common sense, good faith, etc.), of a non-technical nature that concern "the factual and practical considerations of everyday activity, in which a reasonable and prudent person act, and not legal technicians" (professionals, etc.), or in Bell v. Wolfish[3] case-law, the Court stated that "the reasonableness test under the Fourth Amendment is not capable of precise definition or mechanical application."

[1] Decision Federal Supreme Court of the US Ornelas c. US. 517 U.S. 690, 1996, available: supreme.justia.com.
[2] Decision Federal Supreme Court of the US Ornelas c. US. 517 U.S. 690, 1996, available: supreme.justia.com.
[3] Decision Federal Supreme Court of the US Bell c. Wolfish, 441 U.S. 520, 1979, available: supreme.justia.com.

Unlike those mentioned above, from the jurisprudence of the European Court for Human Rights, in the case of Timuș and Țaruș v. Moldova[1], the law enforcement (police officials) argued on the self-defence to justify the use of lethal force (§37, 43 Timuș and Țaruș v. Moldovia). In this kind of cases, articles 2 of the European Convention, referring to "right to life" and 3 "prohibition of torture" differ.

To better understand the "reasonable suspicion", known in the legal literature also as "reasonable belief", one should elaborate on the concept of "objective observer" as well.

The element of "belief" in correlation to the "objective observer", in the national legislation and in the jurisprudence established by the ECtHR, it can be perceived as related to the inner side, of the subjective element, and does not refer to objective responsibility at all, by inferring only from an objective sequence, materialized in the external world through action or inaction, having or not, as the case may be, prejudicial consequences.

The "belief" is the cognitive, intellectual foreshadowing, after which it can be said with a high probability that the decision in the case was not arbitrary.

Previously we explained that, through the concept of "belief" of an objective observer, formed as a result of the analysis of the evidence for i.e., understood as a sovereign power to assess the value of the criminal evidence and to reflect it in reasonings regarding the veracity of the evidence, following which the person called to resolve the criminal action acquires a feeling of certainty regarding the existence of the crime and the guilt of the perpetrator (Pântea, 2019, p. 94) At the same time, the observer, in addition to being "objective", must also be "impartial" (Pântea, 2019, p. 129) Although we noted that the use of the noun "belief" rather relativizes the responsibility of the empowered agent to assess and appreciate the evidence of the case (Pântea, 2019, p. 94) we believe that the content of this belief will differ depending on the "subject" entitled and to whom the "role" to be the "objective observer" is assigned. In Michigan v. Summers[2], the US Court held that the "balancing of competing interests" is "the key principle of the Fourth Amendment".

As we have explained on other occasions, the "objective observer" is neither clear nor regulated now in national legal framework, because it is not mentioned who is he, the criminal investigation officer, the prosecutor, the judge or third persons (Pântea, 2019, p. 59). This dilemma develops to the extent to which several

[1] Decision ECHR Timuș and Țaruș c. Moldova, nr. 70077/11, 2013, available: hudoc.echr.coe.int.
[2] Michigan quoted above.

categories of subjects are entitled to use force by virtue of the provisions of the general normative framework, for i.e., art. 3 of Law no. 218/2012. The adjective "objective" raises questions such as: who determines the degree of objectivity; what the degree of objectivity depends on; and of course, who appoints the "observer". From these reasonings, it is necessary to clarify who the is "objective observer", whether the observer is an ordinary or special subject.

First, the depersonalization of "suspicion" or "belief" in the sense that the concept would have autonomous existence and significance from that the "objective observer", is lacking substance.

The presence of the "objective observer" is a central, around it gravitates the other elements, the "suspicion", the circumstances, the facts, or the information [...], and the emphasis is placed on the person who "suspects" someone or something. This hypothesis allows to avoid the quantification of the "objective circumstantial" elements as much as possible and to reach the extent that "grants" and ordinary observer to be "decisively objective". In this kind of assumptions, considering the circumstances of the case that make up a generic pattern behaviour, any "ordinary individual" will act with high probability in the expected way, and that is, the generally accepted as "reasonable", and therefore "legal".

From the provisions of art. 168 Criminal Procedure Code of Moldova, that regulates the right of any citizen to arrest the person "suspected" of committing the crime, the text of the law establishes that "anyone has the right to arrest and forcibly bring to the police or another public authority the person caught in the act of committing a crime or who tried to hide or flee immediately after committing the crime". Thus, the "caught person" can be bound if he resists arrest. The code regulates the assumption that, if there are "reasonable grounds" to assume that the arrested person has a weapon or other dangerous objects or objects of interest for the criminal case[1], the person who caught him can control his clothes and take the respective objects to surrender them to the law enforcement.

This conclusion results from the provisions of the Criminal Code of the Republic of Moldova, as well as the Contravention Code in the part that regulates general rules in which, the illegality of the act is excluded acting in state of self-defence or extreme necessity (see also the state of legitimate defence and extreme necessity in the

[1] The law requires revision, because in the case of flagrant crimes, flagrant misdemeanours, this provision is in contradiction with the provisions that regulate the criminal process (i.e. art. 1, 6 point 5 and others from the Code of Criminal Procedure).

context of Law no. 130/2012 *on the regime of weapons and ammunition for civilian use*[1] and to some extent, the "execution of the superior's order or disposition" (note, that the Criminal Code does not establish such an excuse), being supplemented by the provisions of art. 275 Criminal Procedure Code through which it is applied.

If the right to detain the alleged criminal, with the application of force as appropriate, including if in the state of self-defence, is being granted to any citizen, then any citizen can become that "objective observer" who reasonably "believes" or "suspects" someone of committing an act illegal, and to be entitled to use force, including when resisting.

Moreover, for example in "Timuș and Țaruș" case cited above, self-defence was argued by the law enforcement authorities of the Republic of Moldova during the criminal proceedings that were subsequently initiated after the death of the suspect, in order to justify the intervention of the police in an operation to apprehend persons suspected of robbery.

An eloquent example in the common law system that was found in the History of the Pleas of Crown was highlighted as follows,- "if A commits a crime and evades, or resists the men who come to take him, so that he cannot be caught without being killed, such killing is not a crime, he who did this or lost any of the things belonging to A. shall not be indicted, even if he had no warrant from, any court of justice, in which case the law makes every person an officer for to apprehend a criminal[2]".

This right could extend to killing the offender if appropriate. A classic example is found in the same common-law collection of, "if a thief attacks a real man, either outside or in his house, to rob or kill him, the real man is not bound to give back, but he may kill the aggressor and it is not murder[3]", and there is more debate in more recent jurisprudence, such as People v. Toler, 2000.

In a landmark case, Boykin v. People[4], 1896, the Colorado Supreme Court in the US held that while there is a theory that an assault "must have been so apparent and oppressive that a reasonable person under the circumstances case would have reason to believe that he could not otherwise escape the harm threatened or defend himself without shooting the person...", however added that this "...is a statement of the old

[1] *Legea nr. 130/2012 privind regimul armelor şi al muniţiilor cu destinaţie civilă/ Law no. 130/2012 regarding the regime of weapons and ammunition for civilian use*, available at legis.md/.
[2] Sir Hale Matthew, cited, p. 489.
[3] Sir Hale Matthew, cited., p. 481; see doctrine „law self-defence" and „true man".
[4] Decision Supreme Court of Colorado, US, Boykin c. People, 22 Colo. 496, 45 P. 419, 1896 Colo. LEXIS 275, available: lawofselfdefense.com.

common law doctrine looking "retreat to the wall", which does not apply to an officer who does not provoke the assault and who is lawfully and properly engaged in making an arrest [...] where a defendant (the officer, etc.) is in a place where he is entitled to is, as for example, a police officer engaged in making an arrest, and is assaulted in such a way that the defendant, in good faith and honest belief, and the circumstances being such as to induce a similar belief in a reasonable man, that he is about to receive bodily harm or loss of life at the hands of his assailant, if he did not provoke the attack or fall within some of the exceptions [...] he is not obliged to retreat or flee in order to save life, but may stand firm and even, in some circumstances, pursue his assailant until the latter has been disarmed or immobilized from accomplishing his unlawful purpose; and this right of the accused goes even to the extent, if necessary, of taking human life [...]". In another vein, in Williams v. United States[1] the Federal Supreme Court of the US had no difficulty in upholding a police officer's conviction, finding a violation of the right to a fair trial "where police officers take matters into their own hands, detain persons, [and] beat them until they get the testimony".

In People v. La Voie[2], the Colorado Supreme Court uses the phrase "...reasonably prudent person under the same circumstances..." and also appreciates that, "the appellant, acting as a reasonable person, had the right to judge alone as to the danger to which he was subject [...]". Although the arguments set forth above were substantially supplemented by the trial court's failure to properly instruct the jury on the legal issues of self-defence, the appellate court found this issue a problem of substance rather than of technique, thus depriving the appellant of his legal and constitutional rights, and these being of universal application, resulted in affecting not only the private rights of the defendant, but the rights of all citizens of this state.

From the same "Timuș and Țaruș" case, the European Court assessed that "[...] the way in which the prosecutors assessed the circumstances of the case could give an independent observer the impression that they did not really try to elucidate the circumstances of the case and establish the apparent truth, prosecutors favoured the version of police to such an extent that they were willing to disregard the essential discrepancies that existed between this version and the evidence in the file. Moreover, the witness statements were treated as so irrelevant that the prosecutors

[1] Decision US Supreme Court Williams c. US, 341 U.S. 97, 71 S.Ct. 576, 95 L.Ed. 774, 1951 available: courtlistener.com

[2] Decision Supreme Court of Colorado, US People c. La Voie 395 P.2d 1001,1964, available: law.justia.com.

did not even try to explain why they were not considered. For example, the trajectory and ballistics examination was conducted only to verify the trajectory of the bullet from the place where the police claimed the victim was [...]" (§55 Timuș, cited above). Although, it is unclear if the European court replaces the "objective observer" with the "independent" one, if it assigns an additional criterion, of "independence", or creates a new standard for other types of private cases. In the end, this case, and other cases that refer to object use of force, the European Court rather points to the efficiency of the investigation and the reasonable term for examining the case, than to the findings of substance.

For example, in Corsacov v. Moldova[1], recalled in the later jurisprudence in Sochichiu v. Moldova, the European Court assessed that, "the investigation must [...] be effective in such a way as to allow establishing whether the force used by the police was or was not justified in the circumstances of a case (justified, etc.) [...] The investigation of serious allegations of ill-treatment must be complete. This means that the authorities must always make a serious effort to find out what happened and must not rely on hasty or unfounded conclusions to end their investigation or base their decisions on. They must take all reasonable steps available to them to secure evidence regarding the incident, including *inter alia* eyewitness statements and forensic evidence [...] Any omission during the course of the investigation that undermines its ability to establishing the cause of the bodily injuries or the identity of the persons responsible risks not meeting this standard." The ECtHR highlighted that, "the text of Article 2 of the Convention *(ECHR – a.n.)*, taken as a whole, demonstrates that it does not only consider intentional murder, but, to the same extent, also situations in which the use of force is possible and can lead to killing a person involuntarily. Any use of force must be "absolutely necessary" to achieve one or more objectives [...] This condition requires that a stricter and more rigorous test be applied than that normally applied in determining whether state action is "necessary in a democratic society" under paragraphs 2 of Articles 8 to 11 of the Convention. Accordingly, the use of force must be strictly proportionate to the achievement of the permitted objectives [...] Given the importance of Article 2 in a democratic society, in its judgment the Court must look very carefully at cases where a person has been killed, especially when intentional lethal force is used, taking into account not only the actions of the state agents who actually used the force, but also all additional circumstances, including such matters as the planning and control of

[1] Decision ECHR Corsacov c. Moldova, 18944/02, 2006, available: hudoc.echr.coe.int; Sochichiu c. Moldova, 28698/09, 2012, available: agent.gov.md.

the actions examined. Therefore, in determining whether the use of force is compatible with Article 2, it may be relevant whether the law enforcement operation was planned and directed so as to minimize the use of lethal force or accidental loss of life as much as possible [...]". ECtHR appreciates that, "the general obligation of the state under Article 1 [...] implicitly requires that an effective official investigation must be carried out when persons have been killed as a result of the use of force [...] The form of the investigation that could achieve these goals may vary depending on the circumstances. However, regardless of the method applied, the authorities must act on their own initiative as soon as the case comes to their attention [...] A requirement of promptness and reasonable celerity is implicit in this context" (see §46-49, Timus and Țarus, quoted above).

However, we consider that this approach is not a complete and is only partially correct, in relation to the second one, which could relate the reasonableness to a higher level, "above average", of the observer, who precisely, because of the training, the authority being invested, owes objectivity, and can make an abstraction, for example, of "insignificant circumstances", and at the same time guide him or herself with the law and relevant circumstances in the assessment of the particular case and act, trusting that the application of force was reasonable and therefore legal.

This would be the "subject", or the "objective observer" that has a level beyond the "ordinary", mentioned in the concept that was described above. In support of this concept there are several reasonings.

While verifying the constitutionality of the Tennessee Statutes in the case of Tennessee v. Garner[1] [39], 1985, the US Court stated that "the killing of a fleeing or attempting to flee suspect is protected by the Fourth Amendment of the Constitution, and is lawful to the extent that is reasonable. Under these circumstances, to be reasonable, there must be probable cause supported by an oath or affirmation".

The Court acknowledged that, "it is not better for any suspect to die than to escape. If the suspect does not pose an immediate danger to the officer or others, the harm resulting from the failure to apprehend him does not justify the use of lethal force to do so. It is undoubtedly unfortunate when a suspect who is in plain sight gets away, but the fact that the police arrive a little late or are a little slower does not always justify killing the suspect. A police officer cannot detain an unarmed, harmless suspect by shooting him. The Tennessee statutes are unconstitutional insofar as they authorize the use of lethal force against these categories of fleeing suspects", because

[1] Tennessee, quoted above.

in the particular case analysed, "the officer was "reasonably sure", and "he realized that (the suspect, etc.) was not armed. Also, "the Tennessee statute is not unconstitutional [...] where the officer has probable cause to believe that the suspect poses a threat of serious harm to himself or others, it is not constitutionally unreasonable to prevent his escape by using lethal force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving provocation or serious injury, deadly force may be used if necessary to prevent escape, and if, where it is feasible, the summons was given."

This concept of "objective reasonableness" was developed in Graham Connor[1], 1989, thus giving a special place to objective material acts.

So, in Marion County, Oregon, for example, a probable cause affidavit or memorandum may be based on, among other things, a reliable eyewitness, a self-incrimination/admission or provable false statement, physical evidence linking the suspect, which it is certified by the statement of the case officer under criminal liability. At the same time, the necessity of the existence of the probable cause, does not imply the cessation of any actions to elaborate the statement, the memorandum for the probable cause, this will be done after the apprehension, use of force.

Finally, in the more recent jurisprudence of the Federal Supreme Court, Ornelas v. United States[2] quoted above, the court argued on the central element, namely that an "objectively reasonable police officer, measures a reasonable suspicion or cause probable [...]" developing in this regard what he had previously said in Graham v. Connor, cited above. Also necessary is the statement in United States v. Ortiz[3] that, "since one of the factors is the extent of the intrusion, it is clear that reasonableness depends not only on the time [...] but also on the manner in which it is carried out."

One last point that we will refer to in the paper is the law of self-defense. This was one of the remedies applicable to the use of force, which as mentioned earlier, has been recognized as less protective than Amendment IV although, in principle, it applies in many jurisdictions. Referring to Young v. People[4] to argue the state of self-defence, the court stated that, "the fear of crimes [...] and the homicide committed with the purpose of prevention, cannot be sufficient to justify the murder.

[1] Graham, quoted above.
[2] Ornelas, quoted above.
[3] Decision Federal Supreme Court of the US Ortiz, 422 U.S. 891, 895, 1975, available: supreme.justia.com.
[4] Decision Supreme Court of Colorado, US Young c. People (47 Colo. 352, 1910, available: courtlistener.com.

It must appear that the circumstances were sufficient to excite the apprehensions of a reasonable person, and that the party who killed actually acted under the influence of those apprehensions and not in a spirit of revenge." The Colorado Supreme Court further pointed out that, "it is the duty of the jury to assess whether the person acted in self-defence, as a result of a real or apparent danger justifying the action."

Thus, it is highlighted that the person can act in self-defence even in the case of "appearances", which in those conditions are based on reasonable grounds to believe, and which are believed. The same reasoning is consistently pursued, such as in People v. La Voie, 1964[1].

Citing Boykin v. People, "the court properly instructed the jury on the law of self-defense, if the statements of the witnesses for those people (the jury) were true, but it was its duty to instruct on the opposing party's theory that the killing was committed in a state of self-defense. Where a defendant is where he has a right to be, such as a police officer engaged in making an arrest, and is assaulted in a way that the defendant (police officer, etc.) believes honestly and in good faith, and the circumstances would induce a similar belief in a reasonable man, that he is about to receive from the assailant bodily harm or lose his life, the defendant, unless he himself caused the assault or does not fall within some of the above-mentioned exceptions, he is not obliged to retreat or flee for his life, but he may resist and even, under certain circumstances, pursue his assailant until the latter has was disarmed or disabled from fulfilling an illegal purpose; and this right of the accused goes even to the extended extent to which, if necessary, human life shall be taken." In the same case the Court noted that, "it is understood from the testimony that [...] the defendant had reasonable grounds to fear that he was about to be seriously injured or killed and that the defendant honestly and seriously believed that he was in such of danger and that he could not avoid or prevent such injury or death the same by retreating or otherwise than by shooting the person and that he fired the fatal shot for the purpose of so defending himself".

In conclusion, as society, regardless of jurisdiction, the security of the society, the public order, the use of force and the involvement of law enforcement bodies, especially the police force, will remain current issue and will continue to be a subject of debate.

We believe that the paper achieved the objectives pursued, including to contribute to the elucidation of the content and to develop the concept of reasonableness, to

[1] La Voie, quoted above.

explain the concepts of "reasonable suspicion or belief", and of the "objective observer", as well as related issues.

We can conclude that the intervention, and the use of force, at first sight common thing, it has complex content when "reasonableness" is balance. We have tried to argue, that this topic requires more research and development. There is jurisprudence in comparative law that can be analysed and used at national level.

Further analysis requires the standard of the concept of "beyond a reasonable doubt" when judging these categories of cases, and to continue to identify case-law on these topics. At the same time, the methodology initial and continuous professional training require review and development. Lastly, an important subject for research is the best theories and practices in holding accountable for the violation of the law and how to commit law enforcement to be responsible before society.

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